
IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 30839

STATE OF SOUTH DAKOTA,
Appellee,

vs.

JESSICA JANIS,
Appellant.

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

HONORABLE CHRISTINA KLINGER, CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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and SARAH THORNE
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Notice of Appeal Filed September 18, 2024

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PRELIMINARY STATEMENT

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

Jessica Janis, Appellant Appellant/Defendant
The Honorable Christina Klinger, Circuit Court
Judge Trial Court
State of South Dakota State
Appendix APP

The Settled Record consists of Hughes County file CR No. 32 CRI 22-000412. It will be cited as "SR" followed by the page number(s) of the page(s) cited. The exhibits will be referred to as "EX" followed by the exhibit number, and, where applicable, a short description of a document included within the exhibit

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

Transcript of first change of plea December 21, 2022 ... COP1
Original Sentencing, February 7, 2023 SENT1
Change of Plea and Sentencing on first probation revocation
petition, June 25, 2024 SENT2
Change of Plea and Sentencing on second probation
revocation petition, August 13, 2024 SENT4

JURISDICTIONAL STATEMENT

Appellant appeals from a Second Order Revoking Probation and Judgment of Conviction issued at her Probation Revocation action on August 13, 2024. SR 212 and APP 1-2. On May 13, 2022, Defendant had plead guilty to

Attempted Aggravated Assault – Domestic Violence in violation of SDCL 22-18-1.1. See generally COP1. A pre-sentence investigation report was ordered by the Court and sentence was imposed on February 7, 2023. See generally SENT1. This sentencing was given by the Honorable M. Bridget Mayer, Circuit Court Judge. Appellant received a suspended execution of sentence of seven years and was placed on probation by the Court. APP 3-6.

A petition to revoke probation was filed on May 1, 2024. SR 171. Due to the rotation of judges, Appellant appeared before the Honorable Christina Klinger on June 25, 2024 and was re-sentenced to a suspended execution of sentence of seven years. See generally SENT2 and APP 7-8.

A second petition to revoke probation was filed on July 15, 2024. SR 199. On August 13, 2024 Appellant appeared before the Court and the Court revoked her probation and imposed the seven years in prison with two years suspended. See generally SENT3. The Court issued its Second Order Revoking probation and Judgment of Conviction which was filed on August 19, 2024. SR 212 and APP 1-2.

The Honorable Judge M. Bridget Mayer, Sixth Judicial Circuit Court, Hughes County, Pierre, South Dakota presided over the initial phases through the sentencing on February

7, 2023. Judge Christina Klinger presided over all other proceedings after the judges rotated assignments effective January 1, 2024.

This appeal arises from the Second Order Revoking Probation and Judgment of Conviction filed on August 19, 2024. APP 1-2.

Appeal is by right pursuant to SDCL 23A-32-2. Notice of appeal was filed on September 18, 2024. SR 216.

SECTION A

STATEMENT OF THE FACTS AND CASE

On June 19, 2022 at approximately 0540 hours Pierre Police Department was dispatched for a trauma injury report to a residence in Pierre, South Dakota. SR 2. The reporting party was SB who advised that she was bleeding from her arm. SB initially reported that she had fallen and was cut but did not advise police what she had fallen on. SR 2. When Police arrived, they found SB to be bleeding a lot from her upper left arm. SR 2. Police learned during their investigation that SB had been drinking with Appellant which was her girlfriend. SR 2. SB maintained that she had fallen on the knife and that is how she received the injuries. SR 2. The knife was found and taken into evidence by law-enforcement. SR 2. A third individual was found passed out and unresponsive in the bathtub. SR 2.

The ambulance service was called for that individual along with SB. SR 2. Investigation by police found that the wound was a deep wound and went straight down so the police did not believe the injury was caused by falling on the knife. SR 2.

Seven days later on June 26, 2022, SB contacted enforcement and an officer went to SB. SR 2. SB informed the officer that on the morning of June 19, 2022 her and appellant had been drinking alcohol with the third person. SR 2. She further advised that she had an argument with appellant about SB's previous relationships, and during the argument Appellant pulled a knife from her backpack. SR 2. Appellant held the knife over SB and then made a downward stabbing motion hitting SB in her upper left arm. SR 2. Appellant had immediately expressed remorse for stabbing SB. SR 2. SB reported to police that she did not initially want to call law-enforcement but an ambulance was needed. SR 2. SB also advised that she was in a romantic relationship with Appellant and they had been living together at the residence for some time. SR 2. Appellant was later arrested and charged with aggravated assault domestic violence as a result of this investigation. SR 2.

On June 27, 2022, Appellant made her initial appearance before Magistrate Judge Tara Adamski, was

advised of her statutory and constitutional rights, the nature of the charges against her and the maximum penalties. SR 6. Appellant requested and received court appointed counsel. SR 6.

On July 5, 2022 the Hughes County Grand Jury issued an indictment charging Appellant with one count of Aggravated Assault - Domestic Violence in violation of SDCL 22-18-1.1(2). SR 13.

On December 21, 2022, Appellant entered into a plea agreement to plead guilty to a reduced charge of attempted aggravated assault - domestic violence. SR 69. Appellant appeared before the Court, was advised of her rights and the maximum penalty for the reduced charge and plead guilty to the attempted aggravated assault - domestic violence charge. COP 15. Counsel requested a suspended imposition of sentence so the Court withheld a finding of guilt and ordered a pre-sentence investigation report. COP 18.

A pre-sentence report was prepared. SR 91. On February 7, 2023 sentencing was held. See generally SENT1. The Court did not grant the suspended imposition of sentence but rather handed down a suspended execution of sentence of seven years with several conditions of probation. SENT1 7-11. The Judgment of Conviction and Order Suspending Execution of Sentence was filed on February 15, 2023. SR 167. Conditions of adult probation were signed by Appellant and filed on February 10, 2023. SR 163.

A petition to revoke probation was filed on May 1, 2024. SR 172. Appellant appeared before the Honorable Christina Klinger on June 25, 2024, admitted to petition to revoke probation and was re-sentenced to a suspended execution of sentence of seven years. See generally SENT2 and APP 7-8.

A second petition to revoke probation was filed on July 15, 2024. SR 199. On August 13, 2024 Appellant appeared before the Court and the Court revoked her probation and imposed the seven years in prison with two years suspended. See generally SENT3. The Court issued its Second Order Revoking probation and Judgment of Conviction which was filed on August 19, 2024. SR 212 and APP 1-2.

SIGNIFICANT MOTIONS

There were no evidentiary motions filed.

STATEMENT OF COUNSEL

Counsel for Appellant states the following:

1. This brief is being submitted pursuant to State v. Korth, 2002 SD 101, 650 NW2d 528.
2. Counsel has thoroughly reviewed the record in this case.
3. Appellant was fully advised by the Court on multiple times of her rights and the maximum penalties. See generally COP, SENT2 and SENT3. Defendant was advised

of those rights by legal counsel multiple times in person and in writing through the plea agreement. SR 69.

4. Counsel has discussed this case and possible appellate issues with Appellant, by both written and telephonic correspondence.

5. Counsel has not identified any arguably meritorious issues on appeal.

Respectfully submitted this 16th day of January, 2025.

SIEBRASSE LAW OFFICE, P.C.



/s/David W. Siebrasse

David W. Siebrasse
Attorney for Appellant
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Pierre, SD 57501
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siebrasse@pie.midco.net

SECTION B

ARGUMENT OF APPELLANT

Here is my list of reasons why I should have received a better sentence.

This is my first time being in trouble this badly and being on supervised probation. I believe I should be given another chance on probation.

My probation officer and I did not get along very well. My probation officer was unfair and she was not texting me or call me back in a timely manner when my phone was turned on. We had several arguments about whether I was complying with my probation conditions.

In general, I have reading comprehension issues and have had a hard time putting words into place where people could understand me. I believe that this caused communication problems between me and my probation officer. Throughout school, I was on an individual education Plan for reading comprehension and math recovery. I have a hard time, understanding people and what they are saying unless it is broken down into the simplest way possible and it is repeated multiple times.

My dad has health issues and he and my mother need my support at home. My dad had open-heart surgery in the

summer of 2024. With this medical condition, he needs to take his medication and make it to his medical appointments. My mother and father also have custody of three of my nieces and nephews. Because of the health problems my father has, it makes it difficult for him to watch the three children by himself while my mother works. My mother is the primary financial provider for our family so she needs to work. My father also needs my help watching the kids, running errands, being sure he takes his medications, and being taken to his medical appointments.

I believe I can do good things if given another chance and let out of prison. I can hold a job. I can be productive in the community. I can help my family financially and with the three children. I can help my father with his medical condition, take him on walks, remind him to take his medication, take him to his appointments, and provide caretaker activities while my mother is at work.

While I am incarcerated at the state South Dakota women's prison in Pierre I have been doing positive things. I am currently going to AA and NA meetings. I had a job in the kitchen and am looking for another job within the prison. I am doing EDOVO classes on my tablet and earning certificates for doing them. I am currently on the waiting

I am asking for a chance for freedom. Again, please consider overturning my sentence to give me a chance on probation.

Jessica Janis
Appellant

Subscribed and sworn to before me this 20 day of
January, 2025.

EARL P. HOLBEN, II

SEAL NOTARY PUBLIC SEAL
SOUTH DAKOTA

13

CERTIFICATE OF SERVICE

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

MARTY JACKLEY
Attorney General
SARAH THORNE
Assistant Attorney General
State of South Dakota
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
atgservice@state.sd.us
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and one true and correct copy of the Appellant's Brief was served by first class mail, postage fully prepaid, upon:

JESSICA JANIS
Inmate No. 76574
South Dakota Women's Prison
3200 East Highway 34
Pierre, South Dakota 57501

Dated this 16th day of January, 2025.

SIEBRASSE LAW OFFICE, P.C.

/s/David W. Siebrasse

David W. Siebrasse
Attorney for Appellant
P.O. Box 118
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STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
	: SS	
COUNTY OF HUGHES)	SIXTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,)	
Plaintiff,	)	SECOND ORDER REVOKING
	)	PROBATION AND JUDGMENT
vs.	)	OF CONVICTION
)	
JESSICA ERIN JANIS,)	
DOB: 11/06/1999	)	32Cri22-412
)	
Defendant.)	

The above-entitled matter having come on for a probation violation hearing before this Court on the 13th day of August, 2024, pursuant to a Second Petition to Modify or Revoke Probation dated the 15th day of July, 2024; and, the State appearing through counsel, Casey Jo Deibert, Hughes County State's Attorney; Defendant appeared personally with court appointed attorney Dave Siebrasse.

On the 21st day of December, 2022, Defendant pled guilty to Attempted Aggravated Assault (SDCL 22-4-1 and SDCL 22-18-1.1), ½ of a Class 3 Felony, said offense having occurred on or about the 19th day of June, 2022. On the 7th day of February, 2023, Defendant received a Suspended Execution of Sentence, and was placed on supervised probation for a period of five (5) years under certain terms and conditions.

On the 26th day of April, 2024, a Petition to Modify or Revoke Probation was filed. On the 25th day of June, 2024, Defendant's probation was also revoked but reinstated, starting over for five (5) years under all previously ordered conditions.

On the 13th day of August, 2024, Defendant, having been informed of the right to an attorney and having been informed of Defendant's constitutional and statutory rights of the allegations and the maximum consequences for failure to comply, and Defendant having admitted to paragraphs two (2) and three (3) contained in the Second Petition to Modify or Revoke Probation, and the Court having found that Defendant's admissions were voluntary and that a factual basis existed for the admissions. Based upon said finding, the Court hereby

FINDS to the Court's reasonable satisfaction that Defendant has violated the terms of probation as ordered by the Court on the 7th day of February, 2023 and the 25th day of June, 2024.

DISPOSITION and SENTENCE

A Dispositional Hearing was held on the 13th day of August, 2024. Based on the Court's finding that Defendant had violated the terms and conditions of probation, and Defendant having waived their right to a 48-hour delay in sentencing, the Court thereupon pronounced the following sentence:

ORDERED that the Defendant shall be committed to the custody of the South Dakota Department of Corrections for placement at an appropriate facility for seven (7) years, with two (2)

years suspended, on the charge of Attempted Aggravated Assault (SDCL 22-4-1 and SDCL 22-18-1.1), ½ of a Class 3 Felony. It is further

ORDERED that the Defendant shall receive credit for one hundred eighty-one (181) days previously served. It is further

ORDERED that the Defendant shall pay all previously ordered financial obligations and the additional court appointed attorney fees as submitted by Dave Siebrasse (payable to Hughes County Auditor, Second Floor, 104 E. Capitol Ave., Pierre, SD 57501). It is further

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

Dated 8/17/2024 8:08:48 AM

BY THE COURT:

Attest:
Sitzman, Kelli
Clerk/Deputy




Christina Klinger
Circuit Court Judge

NOTICE OF RIGHT TO APPEAL

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

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,)	
)	
Plaintiff,	)	JUDGMENT OF CONVICTION
	)	AND ORDER SUSPENDING
vs.	)	EXECUTION OF SENTENCE
)	
JESSICA ERIN JANIS,)	
DOB: 11/06/1999	)	32CRI22-412
)	
Defendant.)	

An Amended Information was filed with this court on the 21st day of December, 2022, charging Defendant with Attempted Aggravated Assault (SDCL 22-4-1 and SDCL 22-18-1.1), 1/2 of a Class 3 Felony.

Defendant was arraigned on said Amended Information and received copies thereof on the 21st day of December, 2022. Defendant, Defendant's attorney, Dave Siebrasse, and Jessica LaMie, prosecuting attorney, appeared at Defendant's arraignment. The Court advised Defendant of all of the constitutional and statutory rights pertaining to the charges that had been filed against Defendant, including but not limited to the right against self-incrimination, the right of confrontation, and the right to have a preliminary hearing on said Amended Information, and the right to a jury trial. Defendant pled guilty to Attempted Aggravated Assault (SDCL 22-4-1 and SDCL 22-18-1.1), 1/2 of a Class 3 Felony, said offense having been committed on or about the 19th day of June, 2022. Defendant requested a Suspended Imposition of Sentence and therefore a finding of guilt was withheld.

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

It is therefore, the JUDGMENT of this Court that Defendant is guilty of Attempted Aggravated Assault (SDCL 22-4-1 and SDCL 22-18-1.1), 1/2 of a Class 3 Felony.

SENTENCE

On the 7th day of February, 2023, the Court asked Defendant, if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

ORDERED that the Defendant shall be committed to the custody of the South Dakota Department of Corrections for placement at an appropriate facility for seven (7) years, with seven (7) years suspended, on the charge of Attempted Aggravated Assault (SDCL 22-4-1 and SDCL 22-18-1.1), 1/2 of a Class 3 Felony.

AGGRAVATING FACTORS

Some of the aggravating factors that exist which could pose a significant risk to the public and would merit a departure from probation are:

- The Defendant violently stabbed someone she cared about.
- Sec PSI

MITIGATING FACTORS

Some of the mitigating factors that exist are:

- The Defendant is very young.
- The Defendant has taken responsibility for her actions.
- The Defendant has shown appropriate remorse.

It is further

ORDERED that the execution of this sentence is suspended on the following terms and conditions:

ORDERED that the Defendant shall receive credit for one hundred forty-nine (149) days previously served. It is further

ORDERED that the Defendant be placed on supervised probation for a period of five (5) years on the following conditions:

1. That Defendant shall be placed under the supervision of the Chief Court Service Officer of this Judicial Circuit, or her representative thereof, for a period of five (5) years.
2. That Defendant agree to and comply with all the standard conditions of probation and the rules and regulations of the Sixth Circuit Court Services Department and that the Defendant obey all directions and orders of any probation officer(s) under whose supervision the Defendant may be placed during any portion of this period of probation.
3. That Defendant shall participate in the 24/7 or SCRAM program until further order of the Court/as recommended by Court Services.
4. That Defendant shall submit to 3x weekly UA's as directed by Court Services.
5. That Defendant shall complete a co-occurring disorders assessment and follow the recommendations and finish and pay for treatment and aftercare as recommended by Court Services.
6. That Defendant shall participate or continue to participate in individual counseling as directed by Court Services.
7. That Defendant shall participate in anger management classes as recommended by Court Services.

8. That Defendant shall obtain an evaluation for alcohol as recommended by Court Services.
9. That Defendant shall obey all laws.
10. That Defendant shall not possess or consume alcoholic beverages, controlled substances, synthetic drugs, marijuana, or enter any establishment where the primary purpose of sale is alcoholic beverages.
11. That Defendant shall not enter any vape shops or head shops.
12. That Defendant shall not associate with anyone known to the Defendant to be in and/or associated with a gang.
13. That Defendant shall not possess any firearms or weapons.
14. That Defendant shall not participate in gambling or enter any casinos.
15. That Defendant shall submit to and pay for costs of random UA and PBT testing.
16. That Defendant's bond shall be exonerated and applied to the financial obligations in this file.
17. That Defendant shall make monthly payment toward the financial obligation in this file as directed by Court Services.
18. That Defendant shall attend and successfully complete CBISA and aftercare/MRT as required by Court Services.
19. That Defendant shall not associate with anyone known to the Defendant to be on probation, parole, or under the care/supervision of the South Dakota Department of Corrections.
20. That Defendant shall not associate with anyone deemed by Court Services to be detrimental to the Defendant.
21. That Defendant shall provide Court Services with access to all social media accounts/passwords and any other electronic device passwords.
22. That Defendant shall obtain full-time employment/obtain their GED.
23. The Defendant shall not associate with anyone known to the Defendant to consume alcoholic beverages.
24. That Defendant shall attend a sobriety support group as recommended by Court Services.

ORDERED that the Defendant shall submit to and pay for chemical or other test of Defendant's breath, bodily fluids, and substances at any time when requested to do so by any Court Service Officer

to determine whether Defendant has consumed or used any alcoholic beverages or controlled drugs or substances. It is further

ORDERED that the Defendant shall submit Defendant's person, property, place of residence, vehicle and personal effects to search and seizure at any time of the day or night without the necessity of a search warrant whenever requested to do so by any agent of the South Dakota Court Services Department or any agents of any other state under whose supervision Defendant may be placed. It is further

ORDERED that the Defendant shall pay court costs of \$116.50; Domestic Violence fee of \$25.00; restitution of \$758.81 (payable to Crime Victims' Compensation, 118 W. Capitol Ave., Pierre, SD 57501 – Ref. Claim #2023-00024) and, court-appointed attorney fees as submitted by Dave Siebrasse (payable to Hughes County, 104 E. Capitol Ave., Pierre, SD 57501), while on probation and on a schedule prescribed by Defendant's Court Services Officer. It is further

ORDERED that the Court expressly reserves control and jurisdiction over Defendant for the period of sentence imposed and that this Court may revoke the suspension any time and reinstate the sentence without diminishment or credit for any of the time that Defendant was on probation. It is further

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

DATED this 14th day of February, 2023, in Pierre, in Hughes County, South Dakota.

BY THE COURT:

Attest:
Lizama, Dellene
Clerk/Deputy

M. Bridget Mayer
M. Bridget Mayer
Circuit Court Judge



NOTICE OF RIGHT TO APPEAL

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

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
 Plaintiff,)
)
JESSICA ERIN JANIS,)
DOB: 11/06/1999)
)
 Defendant.)

**ORDER REVOKING PROBATION
AND ORDER RE-SUSPENDING
EXECUTION OF SENTENCE**

32Cri22-412

The above-entitled matter having come on for a probation violation hearing before this court on the 25th day of June, 2024, pursuant to a Petition to Modify or Revoke Probation dated the 26th day of April, 2024; and, the State appearing through counsel, Casey Jo Deibert, Hughes County State's Attorney; the Defendant appearing personally with court-appointed attorney, Dave Siebrasse.

On the 21st day of December, 2022, the Defendant pled guilty to Attempted Aggravated Assault (SDCL 22-4-1 and SDCL 22-18-1.1), 1/2 of a Class 3 Felony, said offense having occurred on or about the 19th day of June, 2022. The Defendant was sentenced on the 7th day of February, 2023 and received a Suspended Execution of Sentence. The terms of the Suspended Execution of Sentence included five (5) years of supervised probation under certain terms and conditions

On the 25th day of June, 2024, the Defendant, having been informed of the right to an attorney and having been informed of the Defendant's constitutional and statutory rights, of the allegations contained within the Petition to Modify or Revoke, and the maximum consequences for failure to comply; and the Defendant having admitted to all paragraphs contained within the Petition and the Court having found that the Defendant's admissions were voluntary and that a factual basis existed for said admissions. Based upon said findings, the Court hereby

FINDS to its reasonable satisfaction that Defendant has violated the terms of probation as ordered by the Court on the 7th day of February, 2022.

DISPOSITION and SENTENCE

A Dispositional Hearing was held on the 25th day of June, 2024, and based on the Court's previous finding that Defendant had violated the terms and conditions of probation, and Defendant having waived their right to a 48-hour delay in sentencing, the Court thereupon pronounced the following sentence:

ORDERED that Defendant shall be committed to the South Dakota Department of Corrections for placement at an appropriate facility for seven (7) years, with seven (7) years suspended, on the charge of Attempted Aggravated Assault (SDCL 22-4-1 and SDCL 22-18-1.1), 1/2 of a Class 3 Felony. It is further

ORDERED that the Defendant shall receive credit for one hundred sixty-three (163) days previously served. It is further

ORDERED that the Defendant's probation shall be revoked but reinstated, starting over for five (5) years under all previously ordered terms and conditions. It is further

ORDERED that Defendant shall pay all previous financial obligations in this file and court appointed attorney fees as submitted by Dave Siebrasse (payable to Hughes County Auditor, Second Floor, 104 E. Capitol Ave., Pierre, SD 57501). It is further

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

Dated 6/28/2024 12:08:31 PM

BY THE COURT:



Christina Klinger
Circuit Court Judge

Attest:
Marshall, Stephanie
Clerk/Deputy



NOTICE OF RIGHT TO APPEAL

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

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30839

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

JESSICA ERIN JANIS,

Defendant and Appellant.

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

THE HONORABLE CHRISTINA KLINGER
CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

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ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed September 18, 2024.

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<i>State v. Whitfield</i> , 2015 S.D. 17, 826 N.W.2d 133	10

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30839

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

JESSICA ERIN JANIS,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellant, Jessica Erin Janis, is referred to as “Appellant” or “Janis.” Plaintiff and Appellee, the State of South Dakota, is referred to as “State.” The victim in the underlying case is referred to by her initials, S.B. All other individuals are referred to by name. References to documents are designated as follows:

Settled Record (Hughes Co. Criminal File No. 22-412).... SR

Change of Plea Hearing dated December 21, 2022
(sealed document)COP

Sentencing Hearing dated February 7, 2023
(sealed document) SENT1

Change of Plea/Sentencing Hearing on Probation
Violation 1 dated June 25, 2024
(sealed document)..... SENT2

Change of Plea/Sentencing Hearing on Probation
Violation 2 dated August 13, 2024
(sealed document)..... SENT3

Appellant’s Brief.....AB

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

JURISDICTIONAL STATEMENT

Janis appeals from the Second Order Revoking Probation and Judgment of Conviction entered by the Honorable Christina Klinger,¹ Circuit Court Judge, Sixth Judicial Circuit, on August 17, 2024, and filed on August 19, 2024. SR 212-13. Janis filed a Notice of Appeal on September 18, 2024. SR 216. This Court has jurisdiction under SDCL 15-26A-3(4).²

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

PART A

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

The State concurs with Janis' counsel that there are no arguably meritorious issues for appeal based on the settled record.

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

PART B

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY REVOKING JANIS' PROBATION AND SENTENCING HER TO SEVEN YEARS IN PRISON WITH TWO YEARS SUSPENDED?

¹ Judge M. Bridget Mayer presided over the underlying case, and Judge Christina Klinger presided over the two probation violations.

² In *State v. Dietz*, 2024 S.D. 70, 14 N.W.3d 628, this Court held that SDCL 15-26A-3(4) provides the statutory basis for appellate jurisdiction to review an order revoking a suspended execution of sentence. *Id.*, ¶ 18, 14 N.W.3d at 634.

The circuit court revoked Janis' probation and sentenced her to seven years in prison with two years suspended.

State v. Delehoy, 2019 S.D. 30, 929 N.W.2d 103.

State v. Dietz, 2024 S.D. 70, 14 N.W.3d 628.

State v. Short Horn, 427 N.W.2d 361 (S.D. 1988).

STATEMENT OF THE CASE AND FACTS³

On June 19, 2022, at approximately 5:40 a.m., Officer Zachery Bruzelius from the Pierre Police Department was dispatched on a call for service for a reported trauma injury. SR 2, 127 (sealed document).⁴ The reporting party, S.B., stated she had fallen and was bleeding a lot from her arm. SR 2, 127. S.B. also reported she had been drinking with her girlfriend, Jessica Janis. SR 2, 127.

Officer Bruzelius had contact with S.B. and Janis at their residence and was advised that S.B. had fallen on the blade of a knife in her bathroom. SR 2, 127. S.B. had a deep laceration on her upper left arm and was transported to Avera St. Mary's Hospital for treatment. SR 2. Officer Bruzelius located a fixed-blade hunting knife with a camouflage handle on the back of the toilet. SR 2, 128, 130. The blade had blood on it. SR 2, 128, 130.

³ The Statement of the Case and the Facts are combined for brevity and clarity.

⁴ The facts set out in this section come from the Probable Cause Affidavit and law enforcement reports. The law enforcement reports are contained within the pre-sentence investigation, which is a sealed document in the Settled Record.

On June 26, 2022, S.B. contacted law enforcement, wanting to speak with an officer about the June 19 incident. SR 2, 130. Officer Bruzelius met with S.B., who reported that she had been drinking alcohol with Janis and Janis' cousin that morning. SR 2, 130. After Janis' cousin passed out, Janis and S.B. got into an argument about S.B.'s previous relationship. SR 2, 130. Janis pulled a knife out of her backpack, unsheathed it, and stated "Don't make me do this." SR 2, 130. Janis held the knife over S.B. and moved it downward, stabbing S.B. in the upper left arm. SR 2, 130. Janis immediately regretted stabbing S.B. and tried to help her. SR 2, 130. Janis did not want S.B. to call 911, but S.B. did so because she needed an ambulance. SR 2, 130. S.B. stated that she did not initially tell law enforcement what really happened as Janis was at the scene. SR 2, 130. S.B. described the knife, which matched the one located by Officer Bruzelius on the back of the toilet. SR 2, 130.

Janis agreed to speak to Officer Bruzelius on June 26, 2022, about the events of June 19. SR 2, 130. She admitted she drank alcohol with S.B. and got into an argument with her. SR 2, 130. However, she denied stabbing S.B. and stated that S.B. fell on the knife, which was in the bathroom. SR 2, 130-31. Officer Bruzelius then arrested Janis for Aggravated Assault, Domestic. SR 1, 2, 131.

On June 27, 2022, the State filed a Complaint charging Janis with one count of Aggravated Assault – Domestic Violence under

SDCL 22-18-1.1(2). SR 9. On July 5, 2022, a Hughes County Grand Jury issued an Indictment against Janis for the same charge. SR 13.

On December 20, 2022, Janis entered into a plea agreement with the State, whereby she agreed to plead guilty to a reduced charge for Attempted Aggravated Assault in exchange for the State's dismissal of other charges and recommendation for probation at sentencing. SR 72. Pursuant to the plea agreement, the State filed an Amended Information for one count of Attempted Aggravated Assault – Domestic Violence pursuant to SDCL 22-4-1 and SDCL 22-18-1.1(2), 1/2 of a Class 3 Felony. SR 76-77. Janis pleaded guilty to that charge on December 21, 2022. SR 251, 265; COP 1, 15. Janis requested a suspended imposition of sentence, so the circuit court withheld a finding of guilt and ordered a pre-sentence investigation. SR 268; COP 18.

At the sentencing hearing on February 7, 2023, the circuit court declined to order a suspended imposition of sentence. SR 280; COP 7. Instead, the circuit court sentenced Janis to seven years in the state penitentiary, with all seven years suspended, and five years of probation with conditions. SR 274, 281-83; SENT1 1, 8-10. A Judgment of Conviction and Order Suspending Execution of Sentence was entered on February 14, 2023, and filed on February 15, 2023. SR 167-70. Janis also signed Conditions of Adult Probation on February 9, 2023, which were entered by the circuit court on February 10, 2023. SR 163-66.

A Petition to Modify or Revoke Probation was filed on May 1, 2024. SR 172. The petition alleged that Janis had violated the terms of probation in several ways, including smoking marijuana, using THC and methamphetamine, providing urine samples that field-tested positive for THC, not providing her current address or phone number to her Court Services Officer (“CSO”), missing scheduled meetings with her CSO, and failing to comply with testing at 24/7. SR 172-73.

At a hearing on June 25, 2024, Janis admitted to all of the allegations in the petition in exchange for the State remaining quiet during sentencing. SR 228, 232-33; SENT2 1, 5-6. She waived her right to wait 48 hours before sentencing. SR 233-34; SENT2 6-7. The circuit court placed Janis back on probation for five years, to start again as of that date, with all prior terms and conditions. SR 236; SENT2 9. The circuit court also reimposed the seven years in the state penitentiary, all suspended. SR 236; SENT2 9. An Order Revoking Probation and Order Re-Suspending Execution of Sentence was entered by the circuit court on June 28, 2024. SR 197-98.

A Second Petition to Modify or Revoke Probation was filed on July 15, 2024. SR 200-01. The petition alleged that since being placed back on probation, Janis failed to respond to communication attempts made by her CSO and her current whereabouts were unknown. SR 200. It also alleged that Janis failed to report for a scheduled probation meeting and failed to comply with testing at 24/7. SR 200.

A hearing was held on the second petition on August 13, 2024. SR 239; SENT3 1. Janis admitted to the allegations in the second petition that she missed a scheduled probation meeting and failed to comply with 24/7 testing. SR 243-44; SENT3 5-6. She did not admit to the allegations that she failed to respond to communication attempts from her CSO, claiming that she tried to contact her CSO but was unsuccessful. SR 245; SENT3 7.

Janis again waived the 48-hour period prior to sentencing. SR 245; SENT3 7. She requested another opportunity on probation. SR 246; SENT3 8. The State requested that the circuit court impose the previously suspended penitentiary sentence. SR 247; SENT3 9. The circuit court noted that it just saw Janis on June 25 for the first probation violation, and she made no attempts to comply with the orders of the court. SR 248; SENT3 10. The circuit court imposed seven years in the state penitentiary, with two years suspended. SR 249; SENT3 11. A Second Order Revoking Probation and Judgment of Conviction was entered on August 17, 2024, and filed on August 19, 2024.⁵ SR 212-13.

⁵ “Any court granting probation, or a suspended execution of sentence retains jurisdiction to revoke the probation or suspended execution of sentence for a violation of its terms and conditions.” SDCL 23A-27-18.5.

ARGUMENTS

PART A

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

Janis' counsel filed a brief in accordance with the procedure this Court adopted in *State v. Korth*, 2002 S.D. 101, 650 N.W.2d 528. Janis' counsel certified that he reviewed the Settled Record and discussed the case with Janis. AB 9-10. Based upon that review and those discussions, Janis' counsel concluded there were no meritorious legal issues existed for appeal. AB 10. The State has also reviewed the Settled Record and agrees no meritorious issue exists for appeal. The State therefore respectfully requests that this Court affirm the circuit court's Second Order Revoking Probation and Judgment of Conviction.

PART B

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT REVOKED JANIS' PROBATION AND SENTENCED HER TO SEVEN YEARS IN PRISON WITH TWO YEARS SUSPENDED.

This Court considers an appellant's Part B argument in the same manner as it considers and decides issues raised in any other direct criminal appeal. *State v. Arabie*, 2003 S.D. 57, ¶ 19, 663 N.W.2d 250, 256. Part B of Appellant's Brief does not appear to raise any error by the circuit court. Rather, Janis merely argues that she should be given another chance on probation. AB 11-13.

However, to the extent this Court considers Janis' statements to be an assertion of error by the circuit court in revoking Janis' probation and imposing a prison sentence, the State's response is set out below.

A. *Standard of Review.*

“[I]t is well settled that [this Court] review[s] a circuit court's decision to revoke a suspended sentence for an abuse of discretion[.]” *Dietz*, 2024 S.D. 70, ¶ 19, 14 N.W.3d at 634 (citing *State v. Kari*, 2021 S.D. 33, ¶ 24, 960 N.W.2d 614, 619). “An abuse of discretion ‘is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which on full consideration, is arbitrary or unreasonable.’” *State v. Delehoy*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 108. “For this court to sustain an order which revokes probation, a factual showing must exist which justifies the exercise of the trial court's discretion.” *State v. Short Horn*, 427 N.W.2d 361, 362 (S.D. 1988).

“[T]he trial courts of this state exercise broad discretion when deciding the extent and kind of punishment to be imposed.” *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (citing *State v. Grosh*, 387 N.W.2d 503, 508 (S.D. 1986)). “[A] sentence within the statutory maximum [generally] will not be disturbed on appeal.” *Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83 (citing *State v. Bruce*, 2011 S.D. 14, ¶ 28, 796 N.W.2d 397, 406). Also, “[a]bsent specific authority, it is not the role of an appellate court to substitute its judgment for that of the sentencing

court as to the appropriateness of a particular sentence.” *State v. Toaus*, 2017 S.D. 93, ¶ 14, 906 N.W.2d 354, 359 (citing *State v. Blair*, 2006 S.D. 75, ¶ 20, 721 N.W.2d 55, 61).

B. The trial court did not abuse its discretion when it sentenced Janis to seven years in prison with two years suspended.

Janis pleaded guilty to one count of Attempted Aggravated Assault – Domestic Violence, which is 1/2 of a Class 3 felony, with a maximum sentence of seven and a half years in prison and/or a \$15,000 fine. SDCL 22-4-1; SDCL 22-6-1(6); SDCL 22-18-1.1(2). The circuit court originally sentenced Janis to seven years in the state penitentiary, with all seven years suspended, and five years of probation. SR 167-70, 274, 281-83; SENT1 1, 8-10. After Janis admitted to her first probation violation, the circuit court reimposed the seven years in the state penitentiary, all suspended, and restarted Janis’ probation for five years. SR 197-98, 236; SENT2 9. Upon Janis’ second probation violation, the circuit court imposed a penitentiary sentence of seven years with two years suspended. SR 212-13, 249; SENT3 11.

In determining an appropriate sentence, a circuit court should “acquire a thorough acquaintance with the character and history of the man before it” which includes an examination of a defendant’s “general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record.” *State v. Whitfield*, 2015 S.D. 17, ¶ 23, 826 N.W.2d 133, 140 (citing *State v. Lemley*, 1996 S.D. 91, ¶ 12, 552 N.W.2d

409, 412). In this case, the circuit court became acquainted with Janis' character and history by ordering a pre-sentence investigation report. SR 268; COP 18. The pre-sentence investigation report became part of the court file and contained such information as law enforcement reports, Janis' statements regarding the incident, criminal history, family and relationships, education, employment history, drug/alcohol evaluation report and prior treatment, medical and mental health history, victim impact statement, and letters of support. *See, generally*, SR 91-156 (sealed document). The pre-sentence investigation also contained Janis' LSI-R score, which showed her to be in the high supervision level. SR 106, 156.

At the original sentencing hearing on February 7, 2023, the circuit court carried out its duty by reviewing the pre-sentence investigation and asking the parties for any additions or corrections. SR 275-76; SENT1 2-3. Although the circuit court considered the severity of Janis' actions in this case (which involved a stabbing), it also noted Janis' age, lack of criminal history, and acceptance of responsibility and remorse in imposing a probationary sentence. SR 280; SENT1 7.

The circuit court likewise complied with its duty to become acquainted with Janis, her character, and her history in the two probation violation proceedings. Although Judge Klinger presided over the two probation violations instead of Judge Mayer, this Court

presumes that the circuit court is familiar with the file and relevant facts. *State v. Janklow*, 2004 S.D. 36, ¶ 14, 678 N.W.2d 189.

At the hearing on the first probation violation on June 25, 2024, the circuit court heard arguments from Janis' counsel about Janis' acknowledgement of her drug and alcohol issues, as well as her plans for living arrangements, employment, and treatment if given another opportunity for probation. SR 234-35; SENT2 7-8. With the information in front of it, the circuit court granted Janis another chance on probation under the same terms and conditions. SR 197-98, 235-36; SENT2 8-9.

Janis was back in front of the circuit court on August 13, 2024, for the second probation violation. Janis' counsel made the same arguments about her plans if she were to be placed back on probation again, but also made excuses for her unsuccessful attempts to contact her CSO. SR 245-46; SENT3 7-8. The State requested that the circuit court impose a penitentiary sentence, noting Janis' minimal progress on probation and that "she has made it very clear that she's not interested in following any of the conditions of her probation." SR 247; SENT3 9.

The circuit court, already familiar with Janis from the first probation violation, revoked Janis' probation and imposed a penitentiary sentence of seven years, with two years suspended. SR 212-13, 249; SENT3 11. The circuit court noted Janis' unwillingness to comply with court orders and her CSO, citing several instances of Janis' failure to follow the conditions of probation. SR 249; SENT3 11. She did not go to

24/7 as directed. SR 248; SENT3 10. She claimed to have been unsuccessful in contacting her CSO but could have gone to see her CSO at the courthouse any time. SR 248; SENT3 10. She could have shown up to her probation meeting but chose not to. SR 248; SENT3 10. She absconded from supervision and had a very significant PBT when located, even though she was not supposed to be drinking. SR 248; SENT3 10. As stated by the circuit court, Janis “made no attempts whatsoever to try to comply with the orders of this Court.” SR 248; SENT3 10.

Janis now argues that she does not get along with her CSO, who she claims was “unfair” and would not return her texts or calls in a timely manner. AB 11. She also argues that she has reading comprehension issues and difficulty understanding others, which she believes caused communication problems with her CSO. AB 11. She claims that she is needed to provide support to her parents for her father’s medical issues and taking care of three children in the home. AB 11-12. Finally, she sets out the positive steps she has taken in prison for her drug and alcohol issues and to further her education. AB 12-13. However, other than the lack of communication with her CSO, Janis never brought up any of these issues in the pre-sentence investigation or at any of the sentencing hearings.

There is no evidence in the record suggesting that the circuit court abused its discretion when it revoked Janis’ probation and sentenced her

to seven years in the state penitentiary, with two years suspended. Janis has not shown such abuse of discretion. As in *State v. Underwood*, 2017 S.D. 3, ¶ 9, 890 N.W.2d 240, 243, Janis has “demonstrated a complete disdain for court orders” and it is clear that sentencing her to more probation would be futile. Therefore, because the circuit court used its sentencing discretion and fulfilled its duty to become acquainted with Janis, her character, and her history, any claim of abuse of discretion fails.

CONCLUSION

For the reasons stated above, the State respectfully requests that Janis’ 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 2,907 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 365.

Dated this 26th day of February, 2025.

/s/ Angela R. Shute

Angela R. Shute
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of February, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Jessica Erin Janis* was served via electronic mail upon David W. Siebrasse at siebrasse@pie.midco.net.

/s/ Angela R. Shute

Angela R. Shute
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SUPREME COURT
STATE OF SOUTH DAKOTA
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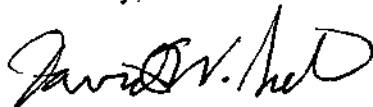
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RE: Appeal 30839: State of South Dakota v. Jessica Janis

Dear Clerk:

I am writing to inform you that I will not be filing a Reply Brief on behalf of the Appellant as the original brief was a Korth brief and my client has not identified any new issues outside what was contained in Appellant's Brief.

Sincerely,



David W. Siebrasse
Attorney at Law

Enclosures

Cc: Angela Shute – Assistant Attorney General
Jessica Janis – Appellant