

TUESDAY, APRIL 28, 2009  
10:00 A.M.

NO. 2

#24868

BRILEY PIPER,  
Petitioner and Appellant,

vs.

DOUGLAS WEBER, Warden, SOUTH DAKOTA  
STATE PENITENTIARY,  
Respondent and Appellee.

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(FOR APPELLANT)

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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable John W. Bastian  
Fourth Judicial Circuit  
Lawrence County

(CIV 06-222)

## LEGAL ISSUES PRESENTED

**Issue One:** Piper's purported waiver of his right to jury sentencing is constitutionally invalid.

-- The habeas trial court ruled against Piper on this claim.

Blakely v. Washington, 542 US 296, 124 SCt 2531, 159 LEd2d 403 (2004)

Patton v. United States, 281 US 276, 50 SCt 253, 74 LEd 854 (1930)

Schneckloth v. Bustamonte, 412 US 218, 93 SCt 2041, 36 LEd2d 854 (1973)

United States v. Mitchell, 526 US 314, 119 SCt 1307, 143 LEd2d 424 (1999)

**Issue Two:** Piper's appellate counsel rendered ineffective assistance.

-- The habeas trial court ruled against Piper on this claim.

Hofman v. Weber, 2002 SD 11, 639 NW2d 523

Strickland v. Washington, 466 US 668, 104 SCt 2052, 80 LEd2d 674 (1984)

Wiggins v. Smith, 539 US 510, 123 SCt 2527, 156 LEd2d 471 (2003)