

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

APPEAL NUMBER # 30661

STATE OF SOUTH DAKOTA

Plaintiff/Appellee

Vs.

#30661

VERNON WHITE

Defendant/Appellant

APPEAL FROM THE CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

ROBERTS COUNTY, SOUTH DAKOTA

THE HONORABLE MARSHALL LOVRIEN

CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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NOTICE OF APPEAL FILED ON MARCH 20, 2024

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PRELIMINARY STATEMENT

Throughout this brief, Defendant/Appellant White will be referred to as “White” and Plaintiff/Appellee state of South Dakota will be referred to as “State”. All references to the Settled Record for this action will be as “SR” followed by the page number.

References to transcripts will be as follows Initial Appearance IP with page number; line number, Arraignment “AR” with page number; line number, Motions Hearing “MH” with page number ; line number. Change of Plea Hearing “CP” with page number ; linenumber. Sentencing Hearing “SH” with page number ; line number. “Appendix” will refer to the Judgment of Conviction and transcripts used in the appeal

JURISDICTIONAL STATEMENT

On September 29th, 2022, a criminal complaint was filed by the Roberts County State’s Attorney alleging that on the 26th day of June, 2022, White did commit the act of Aggravated Assault SDCL 22-18-1.1(8) “in that he attempted to induce a fear of death or

imminent serious bodily harm by impeding the normal breathing or circulation of blood of another person, to wit” Alison Eastman,...” SR 1. In the alternative the State charged that on the same day White did commit the crime of Aggravated Assault SDCL 22-18-1.1(1), “in that he attempted to cause serious bodily injury to another, to wit” Alison Eastman,...” SR 1. On February 30, 2022, an indictment was issued for White. SR 9.

At arraignment on June 12, 2023 an arraignment was held where White plead not guilty and requested a jury trial. A change of plea hearing was then held and White entered a guilty plea to Count 1A of the indictment. CP 10;18. The Court then order a Pre-Sentence Investigation to take place and set sentencing for March 7th, 2023. CP 11;6-25. At sentencing White was sentenced to (15) fifteen years with (7) years suspended. SH 17:13-18.

White appeals his sentence and Judgment of Conviction to the South Dakota Supreme Court with Notice of Appeal being filed on March 20, 2024. White argues that his sentence was an abuse of discretion as it did not equally weigh all of the factors the court took into consideration. White seeks appeal by right in accordance with SDCL 15-26A-3 as a final judgment has been entered in this case and in accordance with SDCL 15-26A-4.

STATEMENT OF THE ISSUES AND RELEVANT CASES

I. DID THE CIRCUIT COURT ABUSE ITS DISCRETION WHEN SENTENCING WHITE TO (15) FIFTEEN YEARS WITH (7) SEVEN YEARS.

Did Judge Lovrien error in sentencing White to (15) fifteen years with seven (7) suspended by not considering the rehabilitation of White, his extensive work experience and the fact he was in school.

Most relevant cases:

State v. Yeager, 2019 S.D. 12, 925 N.W.2d 105

State v. Rice, 2016 S.D. 18, 877 N.W.2d 75

State v. Bruce, 2011 S.D. 14, 796 N.W.2d 397

STATEMENT OF THE CASE AND FACTS

On January 3, 2022, a complaint was filed against white that included two counts one in the alternative. SR 1. The complaint Aggravated Assault in violation of SDCL 22-18-1.1. SR 1. Specifically, Count 1 "...Aggravated Assault, SDCL 22-18-1.1(8), in that he attempted to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person, to wit: Alison Eastman..." and Count 1A "...Aggravated Assault, SDCL 22-18-1.1(8), in that he attempted to cause serious bodily injury to another, to wit: Alison Eastman..." SR 1. A Warrant of Arrest was issued for White. SR 4.

On February 30, 2022, a subsequent Indictment was issued against White accusing him of the same things as the earlier complaint. SR 9-10. At arraignment White plead not guilty to all charges. A pre-trial order was entered, and subsequent motions were filed by the State and the defense. SR 24-25. Motions that were filed by the state are as follows: State Reciprocal Discovery Request SR 20; Motion to Sequester Witnesses SR 22; Motion: For Notice and Discovery of From Defense of 404(b) Evidence SR 23. The defense filed the following motions: Motion for State's Witnesses SR 19; Motion for Funds for a Private Investigator SR 27. All filed Motions were granted by the Court or by Stipulation between the parties. SR 118-119. A Motion for Continuance was also filed by the defense that was granted by the court on September 28, 2023. SR 121-122. Pursuant

to the Pre-Trial Order both sides filed Proposed Jury Instructions. The State filed theirs on July 21, 2023 with the defense filing theirs on July 24, 2023. SR 28,74 (respectively). Pursuant to the Motion for Funds For a Private Investigator Mitch Vilhauer was retained and conducted a thorough investigation into the case. SR 128.

On January 29, 2024, a change of plea hearing was held before the Honorable Marshall Lovrien. CP 2;1-22. White, at the change of plea hearing, was sworn in before by the court. CP 2-3;23-9. The court asked of White, “Do you understand, Mr. White, that you are now under oath and if you answer any of my questions falsely, that may then later subject you to further prosecution for perjury or for having made a false statement. CP 3;5-9. White answered in the affirmative. CP 3;10.

The court then went and canvased White with a series of questions. CP 3-4;11-10. White was asked “Would you state for the record, please, your full name, your age, and the extent of your formal education. CP 3;11-13. White answered accordingly providing the information the court requested. CP 3;14-20. The court went on to question White if he was under any intoxicating beverage, medicine, or drug. CP 3;21-13. White answered that no he was not under any intoxicant. CP 3;24. The court then proceeded to explain White all his rights. CP 4-6;10-14. White indicated that he understood his rights as read out by the court. CP 6;15. Furthermore, that White had no question regarding his rights. CP 6;18.

White was then asked by the court if new what the consequences were if he entered a plea of guilty. CP 6;19-22. White indicated that he understood the ramifications if he entered a plea of guilty. CP 6;22. The Court then had the State read out the relevant portions of the indictment which was the read out by the State. CP 6-7;23-1. White was

provided a copy of the indictment and was questioned if he understood the document. CP 7;1-7. White informed he understood the document and had no questions regarding the document. CP 7;8. Specifically, the court asked if he understood Count 1A of the indictment which White indicated to the court that he did understand. CP 7;12-14. The court then proceeded to inform White of the maximum penalty for a Class 3 Felony and that he could also order restitution, court costs and testing costs. CP 7;15-24. White indicated he understood. 7;25.

The court then went on to outline the plea agreement on the record. "Now, the plea agreement, as I understand it, is that you are going to enter a plea of guilty to count 1A. In exchange for that plea, any other charges will be dismissed and that it's an open sentence. Is that your understanding as well?" CP 8;4-8. White indicated that was the plea agreement and he understood it. CP 8;9-14. Furthermore, the court questioned White "Is there anything left out of that plea agreement that you thought would be part of it." White informed the court that nothing was left out. CP 8;15-17. The court went on to inform White that no sentencing was binding upon him and that he could sentence White to something different even more severe than what was recommended. CP 8;19-25 White indicated he understood. CP 8;19-25.

The court further questioned White about additional issues, such as if he was threatened in any way into taking this plea offer. Which White respond no. CP 9;2-10. The court further asked, "if you were to enter a plea to this charge here today, would that plea be made voluntarily on your own and of your own free will?" CP 9;12-14. White responded "Yes, Sir" indicating that he was acting under his own free will in pleading. CP

9;15. In addition, the court queried White as to his to the effectiveness of his counsel Robert J. Doody (hereinafter refer “Doody”). Specifically asking the following;

THE COURT: Have you had enough time to talk to your Mr. Doody about your case and about what you should do here today? CP 9;16-18.

THE DEFENDANT: Yes, sir. CP 9;19

THE COURT: Have you been fully satisfied with the advice and representation Mr. Doody has given you in this case. CP 9;20-21.

THE DEFENDANT: Yes, sir. CP 9;19

The Court went on to find that White, “...you have been regularly held to answer to the charge contained in Count 1A of the indictment, that you have been and are presently represented by competent counsel, that you have been informed by counsel and the Court of your constitutional and statutory rights, and that you understand those rights.” CP 9-10;24-4. The Court found White understands the nature of the accusations, the possible penalties. That White was competent to enter the plea and it was not under duress. CP10;5-11 The Court then had White stand and he entered a plea of guilty to Count1A of the indictment. CP 10;13-18.

The Court next asked to lay the factual foundation basis for the plea. CP 10;20. The State did so by stating, “On June 26, 2022, here in Roberts County, Vernon White, Junior, had contact with Allison Eastman. And during that contact, Mr. White placed both of his hands around Ms. Eastman’s throat and began to choke her. Ms. Eastman indicated that she was scared for her life and that she had lost consciousness when that –when his hands were around her throat. CH 10-11;21-2. When the Court asked counsel for White

no disagreement was given as to the factual basis. CH 11;3-4. The Court find that a factual basis for the plea existed and order a presentence investigation report be done with sentencing to be held March 7, 2023.¹

The sentencing hearing was held on "Marc' 14, 2024 at 1 pm In front of the Honorable Marshall Lovrien SH 2. The Court enquired to White and to the State and defense counsel if they had all received a copy of the presentence investigation. SH 2;1-22. White also indicated that he had received a copy of the report. SH 2;12. In addition, the Court noted that additional letters of support had been provided by Doody for the review of the Court. SH 2;17-22. The Court asked if there were any objections to the addition of the letters to the report to which Doody and the State stated no. SH 2-3;23-4. It was also noted that a letter to the victim from White was provided to the Court by Doody and that it would be filed. SH 3;2-8. The court asked if any changed needed to be made to the presentence investigation report and Doody noted that a change in the sentencing date needed to be amended. SH 3;14-17. The Court asked for comments based upon the presentence investigation report with the State going first. SH 4;12.

The State begin to argue that the act that White plead guilty to was of a random nature. That the victim had no prior knowledge of White. SH 4;13-20. The State describes the event that at a party White grabbed the victim by the throat to point she could not breath and she could not scream for help. SH 4;21-3. That she was left a bloody mess after the encounter with White. SH 5;2-3. The State went on to point out the photos that accompanied the police report showing the condition of the victim. SH 5;4-8. The

¹ The sentencing hearing was continued to March 14, 2024 at the request of White.

State also makes the comment that this could have been charged out for attempted murder based upon the facts of the case. SH 5:9-18. The State argued that because this was a random act of violence, that no prior relationship existed with White, the way the assault took place and how it was perpetrated and White's criminal history that a sentence of fifteen years with three years suspended was appropriate. SH 5-6;14-17.

Next, the Court turned to White's defense counsel Doody. Doody stated that they were requesting a suspended execution of sentence. SH 6;20-23. That the Court should take into consideration several things. SH 6;22-23. First, Doody argued that the Court should consider the fact that in over a year White has followed through with all bond conditions. SH 6;24-25. That he has shown up for all court appearances and that he has done nothing wrong while on bond showing that he can abide by the law. SH 7;1-7

Second, Doody argued that White had taken responsibility. SH 7;8-9. Third, that White has an exceptional work history as shown by his letters of support and the PSI. It was noted that White, "...is rapidly moving up in work. And he is doing a very good job of that." SH 7;12-14. Another consideration is the court should take into consideration is that he is in school. SH7;15-17. That receiving this education White, "...will only benefit him and the community". SH 7;16-17. White is a home owner and a loving father as noted in the PSI. SH 7;18-21. He wants to become a business owner. SH 7;22. Doody went on further to argue that a suspended sentence is appropriate because of all of the argued items. SH 8;2-11.

White then addressed the court. SH 8;16. White took responsibility for his actions and accepted them. SH 8;17-18. White addressed his alcohol issues with the court, "...with the past year, I haven't touched a single drop of alcohol. You know, I know it's

bad. You know, and it affects me in a negative way.” SH 8;18-21. White on to highlight his education and his goals for the community. SH 9;7-13. White went on at great length about his work, goals and future plans. SH 9-13.

The court then began its analysis of the presentence Investigation report setting forth the standards it was looking at in determining a sentence. SH 13;18-25. The court noted that White is 44 years old and received his GED in 2010. SH 14;1-8. The court went on to discuss White’s work ethic in detail referring to it as “exceptional”. 14;8-17.

The court addressed White’s alcohol problem. SH 14;18-25. The court stated that, “...the presentence investigation report indicates that you have never attended treatment. That is perplexing to me, sir, because based on your criminal history, which is extensive...” SH 14;19-23. The court went on to recognize that White had been on bond for quite sometime, of special note the court stated,

“Mr. Doody did an excellent job, as far as I’m concerned, advocating on your behalf for all the good things that you’ve done. You have followed bond conditions. You have shown up for court. You have met with Mr. Doody as requested.” SH 15;2-7

The court then began its analysis of the crime. SH 15;8-12. The court stated, “What you did was commit a serious act of violence towards another individual.” SH 15;10-12. The court further went on to say, “...I agree with Mr. Kirchmeier when he notes the randomness of this act.” SH 15;13-14. As stated by the court, “Mr. Kirchmeier’s exactly correct that it is a miracle, quite frankly, that Ms. Eastman didn’t suffer more severe injuries” SH 15;23-25. In further discussing the action the court stated, “I am very troubled by randomness of this act.” SH 16;8-9.

The court address White's alcohol problem and criminal background next. SH 16. The court noted that, "You also told me that you haven't consumed any alcohol in the last 12 years. But when I look at your criminal history, you have a driving under the influence conviction from 2022. It's 2024. Again, sir, you're 44 years old. You have an extensive criminal history." 16;10-14. Again, the court highlighted the randomness of the attack. SH 17. The court stated, "...as far as I'm concerned, you had a history alcohol-related crime and assaultive-type behavior that has now escalated to an aggravated assault, completely random and completely unprovoked and without justification." SH 17;.

The court, having considered all the factors, sentenced White to 15 years of custody with seven years suspended. SH 17;13-18 In addition, the court ordered a fine of \$500 court costs of \$116.50 and \$100 restitution to the victim in the amount of \$100.00. SH 17;13-20. White would also have to provide a sample of his DNA, repay the county for court appointed attorney fees and have no contact with the victim. SH 17-18;22-5.

MOTION STATEMENT

Several motions were filed by both the State and by White in this case all of which were granted. The State filed the following Motions; State's Reciprocal Discovery Request. SR 20-21. Motion to Sequester Witnesses. SR 22. Motion: for Notice and Discovery from Defense of Rule 404(b) Evidence SR 23. White filed the following Motions; Motion for State's Witnesses. SR 19. Motion: For Funds for a Private Investigator. SR 27. A Motion to Continue was also filed in the case by White. SR 121.

ARGUMENT

I. The Court Abused its Discretion in Sentencing Genia to a Term of Fifteen Years with Seven Suspended.

It is well established that “[c]ircuit courts exercise broad discretion in imposing sentences...*State v. Yeager*, 2019 S.D. 12, ¶ 11, 925 N.W.2d at 110. The court abuses its discretion when it makes a “fundamental error of judgment, a choice outside the range of permissible choices...” *State v. Rice*, 2016 S.D. ¶ 23, 877 N.W.2d at 83. “[A] sentence within the statutory maximum [generally] will not [be] disturbed on appeal.” *State v. Bruce*, 2011 S.D. 14 ¶ 28, 796 N.W.2d at 406. Before imposing a sentence, however, the court must become thoroughly acquainted with the character and history of the defendant by considering the “general moral character, mentality, habits social environment, tendencies, age, aversion or inclination to commit crime, life family, occupation, and previous criminal record [,] as well as the rehabilitative prospects of the defendant.” *State. v. Yeager*, 2019 S.D. 12, ¶ 12, 925 N.W.2d at 110.

In the instant case, the court failed to weigh the over whelming evidence that White was capable of being supervised in the community. First, although the court acknowledged White had been out on bond without any violations it did not appropriately take that matter into its decision making process. White had not violated any provisions of bond for over a year showing that he is capable of community supervision.

White also had an impressive work history and educational background. White is pursuing a degree in the culinary arts and desires to start his own business. All of these

ventures are to give back to the community. Because the Court did not weigh everything accordingly it abused it's discretion in sentencing White.

CONCLUSION

Wherefore, the plaintiff requests that his case be remanded to Circuit Court for re-sentencing.

Dated this 22nd Day of August, 2024

/s/Robert J. Doody

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CERTIFICATE OF SERVICE

I, Robert J. Doody, hereby state that I filed the above brief via UJS File & Serve to the following individuals:

Marty Jackley

Dylan Kirchmeier

Attorney General for South Dakota

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atgservice@state.sd.us

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Dated this 22nd Day of August, 2024

/s/Robert J. Doody

CERTIFICATE OF COMPLIANCE

Robert J. Doody, one of the attorneys for Appellant, hereby certifies that the foregoing brief meets the requirements for proportionately spaced typeface in accordance with SDCL 15-26A-66(b) as follows:

- a. Appellant's brief does not exceed 32 pages;
- b. The body of Appellant's brief was typed in Times New Roman 12 point typeface;
and
- c. Appellant's brief contains 3622 words, according to the word and character counting system in Microsoft Word used by the undersigned.

Dated this 22nd day of August, 2024.

/s/Robert J. Doody

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

APPEAL NUMBER # 30661

STATE OF SOUTH DAKOTA

Plaintiff/Appellee

Vs.

#30661

VERNON WHITE

Defendant/Appellant

APPEAL FROM THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
ROBERTS COUNTY, SOUTH DAKOTA

APELLANTS APPENDIX

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NOTICE OF APPEAL FILED ON MARCH 20, 2024

Exhibit 1. The Judgment of Conviction and Sentence of the Court of White

Exhibit 2. Initial Appearance Transcript

Exhibit 3. Arraignment

Exhibit 4. Motions Hearing

Exhibit 5. Change of Plea Hearing

Exhibit 6. Sentencing Hearing.

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF ROBERTS)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
Plaintiff,)

54 CRI 22-000657

Vs.)

JUDGMENT OF CONVICTION AND
SENTENCE OF THE COURT

VERNON LEE WHITE, JR.,)
Defendant.)
_____)

The Defendant herein, Vernon Lee White, Jr., having been charged with the commission of a public offense, to-wit: Aggravated Assault—Choking, SDCL 22-18-1.1(8) (class 3 felony), which offense is alleged to have occurred on June 26, 2022, by an Indictment filed with the Court on December 30, 2022, charging Defendant with the commission of said offense. Defendant was produced before the Honorable Marshall C. Lovrien, Circuit Court Judge of the Fifth Judicial Circuit, Roberts County, South Dakota, at the Courthouse in Sisseton, Roberts County, South Dakota on June 12, 2023, at which time Defendant received a copy of the Indictment. Defendant was duly arraigned on said Indictment on June 12, 2023. The Defendant, Defendant's attorney Robert Doody, and Roberts County State's Attorney Dylan D. Kirchmeier appeared personally before the Court.

The Court advised Defendant of all constitutional and statutory rights pertaining to the charge that had been filed against Defendant, including but not limited to the right against self-incrimination, the right to confrontation of witnesses against Defendant, and the right to a jury trial. The Court further advised Defendant of the maximum penalty allowed by law. The Court found that Defendant understood these rights prior to the entry of a plea. Defendant entered a plea of not guilty to the Indictment charging the offense of Aggravated Assault—Choking, SDCL 22-18-1.1(8).

Defendant requested to enter a change of plea. On January 29, 2024, the Defendant Vernon Lee White, Jr., the Defendant's attorney Robert Doody, and Roberts County State's Attorney Dylan D. Kirchmeier appeared before the Honorable Marshall C. Lovrien, Circuit Court Judge of the Fifth Judicial Circuit, Roberts County, South Dakota. Defendant entered a plea of guilty to the charge of Aggravated Assault—Choking, SDCL 22-18-1.1(8). Sentencing was moved to a later date.

It is the determination of the Court that the Defendant has been regularly held for said offense, that the plea was voluntarily, knowingly and intelligently entered; that the Defendant was represented by competent counsel; that the Defendant understood the nature and consequences of the plea at the time the plea was entered, and that a factual basis existed for the plea.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED That Defendant Vernon Lee White, Jr. is guilty of Aggravated Assault—Choking, SDCL 22-18-1.1(8).

On March 14, 2024, the Defendant Vernon Lee White, Jr., the Defendant's attorney Robert Doody, and Roberts County State's Attorney Dylan D. Kirchmeier appeared before the Honorable Marshall C. Lovrien, Circuit Court Judge of the Fifth Judicial Circuit, Roberts County, South Dakota, to receive the sentence. The Court asked Defendant if any legal cause existed to show why Judgment should not be pronounced.

There being no cause offered, the Court pronounced the following sentence:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED That Vernon Lee White, Jr. pay the fine of \$500.00, the statutory court costs of \$116.50, that he repay Roberts County for the cost of his court-appointed attorney's fees, and that he be incarcerated in the South Dakota State Penitentiary for a period of fifteen (15) years.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that seven (7) years of the penitentiary sentence be suspended on conditions that Defendant:

1. Provide a DNA sample to law enforcement as required by law, if the same has not already been done.
2. Pay the costs, assessments, and testing costs that were imposed herein while he is under the supervision of the South Dakota Department of Corrections.
3. Repay Roberts County for the cost of his court-appointed attorney's fees while he is under supervision of the South Dakota Department of Corrections.
4. Abide by and follow all rules and regulations of the South Dakota Department of Corrections while incarcerated, or under its supervision on parole or suspended sentence.
5. Make restitution to Allison Eastman in the amount of \$100.00.
6. Have no contact with Allison Eastman while under the supervision of the South Dakota Department of Corrections.

The Court recommends that the Department of Corrections afford Defendant opportunities for chemical dependency evaluations, treatment and aftercare during the time Defendant is under the supervision of the Department of Corrections.

IT IS FURTHER ORDERED that the Defendant be granted credit for the three (3) days served in the county jail in this matter through March 14, 2024, as well as credit for time spent awaiting transport to the penitentiary.

IT IS FURTHER ORDERED that the charge of Aggravated Assault (count 1), SDCL 22-18-1.1, in the case be dismissed pursuant to an agreement between the Defendant and the State.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant stand committed to the custody of the Roberts County Sheriff pending transportation to the Penitentiary and execution of the Judgment and sentence.

BY THE COURT:

3/18/2024 12:59:21 PM

Attest:
Guy, Brenda
Clerk/Deputy




CIRCUIT COURT JUDGE

1 STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

2 COUNTY OF ROBERTS)

FIFTH JUDICIAL CIRCUIT

4 _____)
5 State of South Dakota,)

6 Plaintiff,)

7 vs.)

Initial Appearance

8 Vernon Lee White, Junior,)

9 Defendant.)

54CRI22-000657

11 BEFORE: **THE HONORABLE CULLEN MCNEECE**

Magistrate Judge

12 Sisseton, South Dakota

November 22, 2022, at 10:00 a.m.

15 APPEARANCES:

16 For the Plaintiff: **DYLAN D. KIRCHMEIER**

Robert's County State's Attorney

17 414 3rd Avenue East

18 Sisseton, South Dakota 57262

19 For the Defendant: **VERNON LEE WHITE, JUNIOR**

Appearing Pro Se

1 THE DEFENDANT: Yes, sir.

2 MR. KIRCHMEIER: Your Honor, Mr. White does have Mr. Doody
3 appointed on another matter. The State would stipulate to
4 the appointment in this case as well.

5 THE COURT: All right. So, Mr. White, what I'm going to
6 do is waive your application, that way you don't have to
7 fill out another piece of paperwork.

8 THE DEFENDANT: All right.

9 THE COURT: And I'm going to appoint Mr. Doody to help you
10 out in this case. As you heard me say multiple times this
11 morning, very important that you stay in contact with him.
12 So if you need his card, please take it. And then make
13 sure to keep your appointments with him so he can help you
14 out.

15 As far as your next court date goes, that's going to
16 be about 45 days down the line, and it's going to be
17 January 3rd at 2:00 in the afternoon for a preliminary
18 hearing. Do you have any questions, Mr. White?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Have a good rest of your day.

21 THE DEFENDANT: Thank you. You too.

22 (WHEREUPON, the foregoing proceedings concluded.)
23
24
25

MR. KIRCHMEIER: [1] 3/2 THE COURT: [9] THE DEFENDANT: [9]	2/21 another [2] 3/3 3/7 any [1] 3/18 apologize [1] 2/7 appearance [2] 1/6 2/3 APPEARANCES [1] 1/15 Appearing [1] 1/19 appears [2] 2/3 2/4 application [1] 3/6 appoint [1] 3/9 appointed [1] 3/3 appointment [1] 3/4 appointments [1] 3/13 as [4] 3/4 3/10 3/15 3/16 assault [1] 2/18 attorney [3] 1/16 2/4 2/25 Avenue [1] 1/17	do [4] 2/22 2/25 3/6 3/18 does [1] 3/2 don't [1] 3/6 Doody [2] 3/2 3/9 down [1] 3/16 duly [1] 2/1 DYLAN [1] 1/16	K keep [1] 3/13 Kelli [3] 4/5 4/14 4/15 KIRCHMEIER [2] 1/16 2/4	R recording [1] 4/9 Reporter [1] 4/5 rest [1] 3/20 right [3] 3/5 3/8 3/20 rights [1] 2/12 Robert's [1] 1/16 ROBERTS [3] 1/2 2/16 4/3 RPR [1] 4/15
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1 STATE OF SOUTH DAKOTA FIFTH JUDICIAL CIRCUIT
2 COUNTY OF ROBERTS IN CIRCUIT COURT

3 STATE OF SOUTH DAKOTA, CRI22-657
4 Plaintiff, TRANSCRIPT OF
5 v. ARRAIGNMENT
6 VERNON LEE WHITE, JR.,
7 Defendant.

9
10 BEFORE: THE HONORABLE MARSHALL LOVRIEN,
11 Circuit Judge, at Sisseton,
12 South Dakota, June 12, 2023,
at 1:45 p.m.

13
14 APPEARANCES: For the State:
15 Mr. Dylan Kirchmeier
16 State's Attorney
414 3rd Ave. E.
Sisseton, South Dakota
17 For the Defendant:
18 Mr. Robert Doody
19 Court-appointed Attorney
P.O. Box 307
20 Sisseton, South Dakota
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1 THE COURT: All right, ladies and gentlemen,
2 what I'm going to do now is go over all your
3 constitutional and statutory rights, the pleas that
4 are available to you and the consequences of a guilty
5 plea. I'm going to talk about some other things with
6 you, as well. Now while I intend to give this advisory
7 to all of you as a group, I will be calling your cases
8 individually. So if there's something that you do not
9 hear or understand please tell me about it when I call
10 your case individually. Your rights are as follows.
11 You have the right to a speedy, public trial by an
12 impartial jury here in Roberts County. You have the
13 right to defend this case both in person and with the
14 assistance of an attorney. That right to be
15 represented by an attorney applies at every stage of
16 the proceedings against you. And if you cannot afford
17 an attorney one will be appointed to represent you. At
18 your trial if you want a trial you have the right to
19 meet all the witnesses against you face to face right
20 here in this courtroom. You have the right to hear all
21 of the testimony of those witnesses, and you have the
22 right to cross-examine those witnesses. You have the
23 right to call witnesses on your own behalf. And you
24 have the right to have subpoenas issued by the Court
25 at public expense to compel the attendance in court of

1 your own witnesses. You also have the right to remain
2 silent. That means do you not have to give any
3 statement to the police or the sheriff or any other
4 law enforcement officer. But I would remind you that
5 anything do you say voluntarily here today or at a
6 later time could be used against you in connection
7 with this or some other proceeding. You also have the
8 right not to testify against yourself. In other words,
9 you can testify or not as you see fit, and you cannot
10 be forced to testify against yourself. You also do not
11 have to prove yourself innocent. You have the right to
12 require that the State prove any charge against you
13 beyond a reasonable doubt. Which means, of course,
14 that each of the 12 jurors would have to be convinced
15 beyond a reasonable doubt of your guilt before they
16 could find you guilty as to any charge against you.
17 You also have a right to have a reasonable bond set
18 and once it is posted be at liberty on that bond while
19 your case is pending. Now if you're charged with a
20 felony that has not yet been indicted you also have
21 the right to a preliminary hearing if you have not had
22 one yet. To any charges there are five possible pleas
23 that you can enter: Not guilty, not guilty and not
24 guilty by reason of insanity, guilty, guilty but
25 mentally ill, or only with special permission of the

1 Court, no contest. If you plead not guilty you will
2 keep that presumption of innocence. By entering a plea
3 of not guilty the burden to prove all the essential
4 elements of the charge or charges against you beyond a
5 reasonable doubt will remain with the State. On the
6 other hand, if you enter a plea of guilty or no
7 contest you would be admitting the offense and by
8 doing that you would thereby waive or give up the
9 right to trial, the right to confront and
10 cross-examine witnesses and the right not to be
11 compelled to incriminate yourself. And if you plead
12 guilty or no contest I may ask you questions about the
13 offense to which you have plead guilty or no contest
14 to. And if you were to falsely answer those questions
15 under oath on the record and in the presence of your
16 attorney those answers could later be used against you
17 in a further prosecution for perjury. By entering a
18 plea of guilty or no contest, all that would then
19 remain would be for the Court to impose sentence upon
20 you. Finally, some of you may be here today on a
21 petition to modify or revoke your probation. If that's
22 the case you have many of the same rights that I just
23 talked about including the right to know what the
24 State says you have done wrong, of the right to a
25 speedy hearing before the Court, the right to counsel,

1 the right to subpoena witnesses, the right to
2 cross-examine witnesses, and the right not to testify.
3 There are some differences, however, including the
4 burden of proof. In a petition to modify or revoke
5 your probation the State does not have to prove that
6 you violated the terms of your probation beyond a
7 reasonable doubt, but only to my reasonable
8 satisfaction which is a much lower hurdle the State to
9 clear. In addition, if you want a hearing that hearing
10 would be to the Court and not to a jury.

11 (A number of other cases were heard before
12 continuing with the following.)

13 THE COURT: Vernon White. This is a hearing in
14 the case of the State of South Dakota v. Vernon White,
15 File 22-657. The defendant is personally present in
16 court this afternoon along with his attorney Robert
17 Doody. And the State is represented by Roberts County
18 State's Attorney Dylan Kirchmeier. This is the time
19 and place that's been set for arraignment in this
20 matter. Mr. Doody, what's the plan for today?

21 MR. DOODY: My client intends to plead not
22 guilty and request a jury trial.

23 THE COURT: So Mr. White, you are charged by
24 way of indictment with Aggravated Assault, do you have
25 a copy of that indictment in front of you?

1 MR. WHITE: Yes, sir.

2 THE COURT: For purposes of today's hearing,
3 did you want that document read out loud to you?

4 MR. WHITE: No, sir.

5 THE COURT: And were you here in court when I
6 went over everybody's constitutional and statutory
7 rights with them?

8 MR. WHITE: Yes, sir.

9 THE COURT: And did you understand those rights
10 and how those rights may apply to you?

11 MR. WHITE: Yes, sir.

12 THE COURT: So as to Count I what plea did you
13 wish to enter?

14 MR. WHITE: Not guilty.

15 THE COURT: And as to Count IA, what plea did
16 you wish to enter?

17 MR. WHITE: Not guilty.

18 THE COURT: The not guilty pleas are received.
19 In terms of type of trial that you want to have, sir,
20 do you have want a trial to the Court or a jury trial?

21 MR. WHITE: Jury.

22 THE COURT: So it will be placed on the jury
23 trial calendar. Other matters we need to address
24 today, Mr. Kirchmeier?

25 MR. KIRCHMEIER: The Court's standard

1 modification of bond conditions?

2 THE COURT: Anything else besides that, Mr.
3 Kirchmeier?

4 MR. KIRCHMEIER: No, Your Honor.

5 THE COURT: Mr. Doody, anything else we need to
6 address on the record today?

7 MR. DOODY: No, Your Honor.

8 THE COURT: So Mr. White, you'll be allowed to
9 remain out on bond on the same terms and conditions as
10 previously ordered. Your bond will be modified,
11 however, to include the requirement that you stay in
12 contact with Mr. Doody no less than every two weeks.
13 Mr. Doody may want to talk to you more frequently than
14 that and if he does you need to return those calls or
15 make contact with his office. At a minimum you will
16 need to contact Mr. Doody's office at least every two
17 weeks. If you don't do that or if you fail to do that
18 you put Mr. Doody in a very uncomfortable and awkward
19 position of having to come to me tell me he's had no
20 contact with you. If that happens it's a very high
21 likelihood that there will be a bench warrant for your
22 arrest. Do you have any problem with keeping in
23 contact with Mr. Doody between now and the beginning
24 of your case?

25 MR. WHITE: No, sir.

1 THE COURT: We're in recess in this matter.

2 (End of proceedings.)

3 STATE OF SOUTH DAKOTA)
4 COUNTY OF ROBERTS) SS CERTIFICATE

5 I, Calleen Thorn Misterek, RPR, do hereby
6 certify that I acted as such reporter for this hearing
7 and that the preceding 7 pages constitute a full, true
8 and correct transcript of all of the proceedings held
9 thereon.

10 Dated at Sisseton, South Dakota, this 26th day
11 of June, 2024.

12
13 /s/ _____ RPR

14 Court Reporter
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STATE OF SOUTH DAKOTA

FIFTH JUDICIAL CIRCUIT

COUNTY OF ROBERTS

IN CIRCUIT COURT

STATE OF SOUTH DAKOTA,

CRI22-657

Plaintiff,

TRANSCRIPT OF

v.

MOTIONS

VERNON LEE WHITE,

Defendant.

BEFORE: THE HONORABLE MARSHALL LOVRIEN,
Circuit Judge, at Sisseton,
South Dakota, July 24, 2023,
at 9:10 A.M.

APPEARANCES: For the State:

Mr. Dylan Kirchmeier
State's Attorney
414 3rd Ave. E.
Sisseton, South Dakota

For the Defendant:

Mr. Robert Doody
Court-appointed Attorney
P.O. Box 307
Sisseton, South Dakota

1 have a private investigator investigate this matter.
2 You understand, sir, that if I were to grant that
3 request the time would be tolled against you for
4 purposes of the 180-day calculation?

5 MR. WHITE: Yes.

6 THE COURT: And are you joining in the request
7 for a continuance?

8 MR. WHITE: Yes.

9 THE COURT: So that motion for a continuance
10 would be granted. What I'm going to do, sir, is I'm
11 going to set your trial date then for our October
12 stack date which is October 26th. I will enter an
13 amended scheduling order today that sets forth various
14 dates and deadlines regarding pre-trial motions.
15 Anything else we need to address with respect to the
16 motion for continuance, Mr. Doody?

17 MR. DOODY: Not for the motion for continuance
18 but motion for private investigator.

19 THE COURT: Before we get to that, Mr. Doody,
20 Mr. Kirchmeier, anything else on the motion for
21 continuance?

22 MR. KIRCHMEIER: Just I think we can cancel
23 the pre-trial conference that was originally
24 scheduled, I believe, for 9:00 A.M. this coming
25 Thursday since the continuance has been granted.

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF ROBERTS) SS CERTIFICATE

3 I, Calleen Thorn Misterek, RPR, do hereby
4 certify that I acted as such reporter for this hearing
5 and that the preceding 5 pages constitute a full, true
6 and correct transcript of all of the proceedings held
7 thereon.

8 Dated at Sisseton, South Dakota, this 24th day
9 of June, 2024.

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/ss/_____RPR

Court Reporter

<p>MR. DOODY: [6] 2/10 2/17 4/6 4/9 11/5 12/5</p> <p>MR. KIRCHMEIER: [5] 2/18 10/21 11/12 11/15 12/3</p> <p>THE COURT: [43] THE DEFENDANT: [29]</p> <p>\$</p> <p>\$30,000 [1] 7/18</p> <p>/</p> <p>/s [1] 13/19</p> <p>0</p> <p>000657 [1] 1/8</p> <p>1</p> <p>1 p.m [2] 11/21 12/10 10/21/28 [1] 13/20 12 [1] 5/15 13 [1] 13/9 15 [1] 7/17 1A [7] 2/12 2/15 7/12 8/6 9/3 9/25 10/14</p> <p>2</p> <p>2022 [2] 10/15 10/21 2024 [2] 1/12 13/14 22-657 [1] 2/4 26 [2] 10/15 10/21 28 [1] 13/20 29 [1] 1/12</p> <p>3</p> <p>307 [1] 1/20 3:14 [1] 1/12 3rd [1] 1/17</p> <p>4</p> <p>414 [1] 1/17 43 [1] 3/14</p> <p>5</p> <p>54CR122-000657 [1] 1/8 57262 [2] 1/17 1/20</p> <p>6</p> <p>657 [1] 2/4 6th [1] 13/13</p> <p>7</p> <p>7th [3] 11/11 11/21 12/10</p> <p>A</p> <p>ability [1] 13/10 about [11] 2/9 4/11 4/11 6/21 7/15 7/22 8/1 9/17 9/17 10/14 12/1 above [1] 13/8 above-entitled [1] 13/8</p>	<p>accepted [1] 11/7 accusations [1] 10/6 acting [2] 10/9 10/9 addition [1] 7/21 admitting [1] 6/7 advice [1] 9/20 afford [1] 4/17 afternoon [1] 2/5 against [11] 4/17 4/20 5/7 5/9 5/11 5/14 5/18 6/4 7/3 8/2 10/6 age [2] 3/12 3/14 aggravated [2] 2/12 10/17 agreement [5] 2/11 8/4 8/10 8/16 9/6 all [10] 2/2 4/7 4/20 4/22 8/3 8/11 11/8 12/8 12/10 12/12 Allison [1] 10/23 almost [1] 11/18 along [1] 2/5 also [11] 2/18 2/20 4/11 4/14 4/23 5/3 5/9 5/12 5/19 7/22 10/5 am [2] 4/11 7/15 answer [3] 2/25 3/6 9/24 any [15] anyone [5] 8/20 9/2 9/2 9/8 9/9 anything [4] 5/6 8/15 8/24 9/7 apology [1] 2/17 APPEARANCES [1] 1/15 apples [1] 4/16 apply [1] 6/17 appointed [1] 4/18 are [15] around [2] 10/24 11/2 arts [1] 3/16 as [14] assault [2] 2/12 10/17 assistance [1] 4/15 attendance [1] 5/1 attorney [9] 1/16 2/5 2/6 4/15 4/16 4/18 7/1 8/20 8/20 Avenue [1] 1/17</p> <p>B</p> <p>back [1] 12/9 basis [3] 10/20 11/4 11/6 be [20] become [1] 3/16 been [6] 2/7 7/3 9/20 9/24 10/1 10/2 before [4] 1/11 5/17 8/11 13/11 began [1] 10/25 behalf [1] 4/24 being [2] 3/3 8/24 best [1] 13/10</p>	<p>beverage [1] 3/23 beyond [3] 5/14 5/16 6/4 Billy [1] 11/11 binding [1] 8/21 bond [4] 5/19 5/20 12/8 12/9 both [2] 4/14 10/24 Box [1] 1/20 burden [1] 6/2</p> <p>C</p> <p>calender [1] 11/25 call [2] 4/24 6/24 called [1] 3/3 can [4] 5/10 5/22 10/20 11/24 cannot [2] 4/17 5/11 carefully [1] 7/6 carries [1] 7/17 case [5] 2/2 4/14 5/21 9/17 9/21 caterer [1] 3/16 catering [1] 3/19 cause [1] 10/6 CERTIFICATE [1] 13/1 certify [1] 13/7 change [2] 1/6 2/10 charge [7] 5/14 5/17 6/3 9/12 9/25 10/8 10/13 charged [1] 6/23 charges [5] 5/22 6/3 7/13 8/1 8/6 chef [3] 3/16 3/17 3/19 choke [1] 10/25 CIRCUIT [5] 1/1 1/2 1/11 13/7 13/12 Class [1] 7/16 classes [1] 3/20 client [2] 2/11 4/3 combination [1] 7/18 come [1] 2/11 Commission [1] 13/20 commit [1] 10/16 compel [1] 5/1 competent [2] 10/1 10/7 concluded [1] 12/13 condition [1] 12/9 conference [1] 2/8 confront [1] 6/9 connection [1] 5/7 consciousness [1] 11/1 constitutional [2] 4/4 10/3 contact [2] 10/22 10/23 contained [2] 9/25 10/13 contest [2] 5/25 6/11 continue [1] 12/7 convinced [1] 5/16 copy [3] 7/2 7/4 13/10 correct [1] 13/9</p>	<p>correctly [1] 7/9 costs [2] 7/23 7/23 could [3] 5/7 5/17 8/23 counsel [2] 10/2 10/2 Count [5] 2/12 7/12 8/6 9/3 9/25 10/14 Count 1A [1] 8/6 COUNTY [7] 1/2 1/16 2/6 4/13 10/15 10/22 13/2 course [2] 2/23 5/15 court [19] courtroom [2] 4/21 12/10 criminal [1] 2/3 cross [2] 4/23 6/9 cross-examine [2] 4/23 6/9 culinary [1] 3/16</p> <p>D</p> <p>DAKOTA [10] 1/1 1/5 1/12 1/17 1/20 2/3 10/15 13/1 13/6 13/13 date [1] 11/18 Dated [1] 13/13 day [2] 13/2 13/13 defend [1] 4/14 defendant [5] 1/8 1/19 2/4 10/5 10/9 defendant's [1] 10/11 denied [1] 11/8 did [8] 2/16 6/13 7/3 7/6 8/10 8/13 10/16 10/17 different [1] 8/24 disagreement [1] 11/3 dismissed [1] 8/7 do [17] document [2] 7/6 7/10 doing [1] 6/7 don't [2] 11/12 11/15 done [2] 7/13 11/23 DOODY [11] 1/19 1/19 2/5 2/9 2/14 4/3 8/11 9/17 9/21 11/3 12/4 doubt [3] 5/14 5/16 6/4 drug [1] 3/23 duly [2] 2/1 3/3 durees [1] 10/9 during [1] 10/23 DYLAN [3] 1/16 2/7 7/1</p> <p>E</p> <p>each [2] 5/15 6/21 East [1] 1/17 Eastman [2] 10/23 10/25 Eastman's [1] 10/24 education [2] 3/13 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3/20 3/25 4/11 7/15 8/5 11/9 12/6 got [1] 3/15 guess [1] 11/17 guilt [1] 5/17 guilty [17]</p> <p>H</p> <p>had [5] 2/1 9/16 10/22</p>
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<p>T</p> <p>talk [3] 2/9 9/16 12/1 tell [2] 4/11 7/15 testified [1] 3/4 testify [3] 5/9 5/10 5/11 testimony [1] 4/22 testing [1] 7/23 than [3] 8/24 8/6 11/23 that [60] that's [3] 2/7 7/3 7/16 them [1] 6/14 then [2] 3/7 6/11 there [4] 5/22 8/15 11/7 11/15 there's [1] 11/6 thereby [2] 6/8 6/20 therefore [1] 10/10 they [3] 5/17 11/12 11/20 think [2] 11/12 11/15 this [18] those [11] 2/25 3/17 4/8 4/22 4/23 6/13 6/16 6/17 6/21 10/4 11/8 though [1] 4/10 thought [1] 8/18 threatened [1] 9/2 throat [2] 10/24 11/2 through [2] 6/14 13/9 time [6] 2/7 5/7 6/24 9/16 11/11 11/19 today [9] 2/9 3/21 4/1 5/6 6/20 9/7 9/13 9/18 12/1 told [3] 4/10 6/21 7/22 trial [4] 4/12 4/19 4/19 6/8 true [1] 13/8 two [1] 7/19</p>	<p>V</p> <p>Vernon [8] 1/8 2/3 3/2 3/14 9/23 10/13 10/16 10/22 versus [1] 2/3 voluntarily [2] 5/6 9/13 vs [1] 1/7</p> <p>W</p> <p>waive [2] 6/8 6/20 want [6] 2/14 2/24 2/25 4/19 11/19 11/23 was [4] 3/3 3/4 8/15 10/25 way [2] 8/23 9/3 we [4] 2/9 2/10 11/24 12/1 we'd [1] 2/13 we're [2] 11/18 12/12 well [2] 8/8 10/6 went [1] 6/13 were [4] 2/1 9/12 11/2 12/13 what [5] 2/9 7/12 9/9 9/17 10/17 what's [1] 3/25 when [2] 11/2 11/2 where [1] 2/11 WHEREUPON [2] 2/1 12/13 which [2] 5/15 6/21 while [1] 5/21 White [18] will [8] 4/18 5/5 6/4 9/14 10/10 11/7 11/21 12/9 wish [1] 10/17 witness [1] 3/3 witnesses [6] 4/20 4/22 4/23 4/24 5/2 6/9 words [1] 5/10 would [15]</p>			
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1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2 COUNTY OF ROBERTS) FIFTH JUDICIAL CIRCUIT
3
4

5 _____)
6 State of South Dakota,)
7)
8 Plaintiff,)
9 vs.) Change of Plea
10) Hearing
11 Vernon Lee While, Jr.,)
12)
13 Defendant.) 54CRI22-000657
14)
15 _____)

11 BEFORE: **THE HONORABLE MARSHALL LOVRIEN**
12 Circuit Court Judge
13 Sisseton, South Dakota
14 January 29, 2024, at 3:14 p.m.

15 APPEARANCES:

16 For the Plaintiff: **DYLAN D. KIRCHMEIER**
17 Roberts County State's Attorney
18 414 3rd Avenue East
19 Sisseton, South Dakota 57262

19 For the Defendant: **ROBERT DOODY**
20 Doody Law Office
21 P.O. Box 307
22 Sisseton, South Dakota 57262
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24
25

1 (WHEREUPON, the following proceedings were duly had:)

2 THE COURT: Mr. White. All right. This is a case in the
3 State of South Dakota versus Vernon White, criminal file
4 22-657. The defendant is personally present in court this
5 afternoon along with his attorney Robert Doody. And the
6 State is represented by Roberts County State's Attorney
7 Dylan Kirchmeier. This is the time and place that's been
8 set for a pretrial conference in this matter.

9 Mr. Doody, what do we need to talk about today?

10 MR. DOODY: Judge, this would be a change of plea. We
11 have come to an agreement where my client would plead
12 guilty to Count 1A of the information aggravated assault.
13 The sentencing would be open and we'd be requesting a PSI.

14 THE COURT: And, Mr. Doody, I want to make sure that I'm
15 on the same page as you. You said 1A of the information.
16 Did you mean the indictment?

17 MR. DOODY: Yes. I meant the indictment. My apology.

18 THE COURT: And is that also the State's understanding?

19 MR. KIRCHMEIER: Yep.

20 THE COURT: And, Mr. White, is that also your
21 understanding?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, Mr. White, in the course of this hearing,
24 I'm going to have some questions for you, and I want you
25 to answer those under oath. So I want you to stand up,

1 please, raise your right hand, and be sworn.

2 VERNON LEE WHITE, JR,

3 was called as a witness and, being first duly

4 sworn, was examined and testified as follows:

5 THE COURT: You may be seated, sir. Do you understand,
6 Mr. White, that you are now under oath and if you answer
7 any of my questions falsely, that may then later subject
8 you to a further prosecution for perjury or for having
9 made a false statement?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Would you state for the record, please, your
12 full name, your age, and the extent of your formal
13 education.

14 THE DEFENDANT: Vernon White, Junior, age 43, and my
15 education is I got my GED. And I'm going to school right
16 now for culinary arts to become a chef and caterer and
17 personal chef. Those are my major -- my major is
18 hospitality and restaurant operations and management. And
19 my minors are catering and personal chef that I'm going to
20 right now. I'm going to classes.

21 THE COURT: And as you sit here today, Mr. White, are you
22 under even the slightest influence of any intoxicating
23 beverage, medicine, or drug of any kind?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand fully what's going on here

1 today?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Doody, have you explained to your client
4 his statutory and constitutional rights as it relates to
5 this matter?

6 MR. DOODY: Yes, Your Honor.

7 THE COURT: And are you satisfied that he understands all
8 those rights?

9 MR. DOODY: Yes, Your Honor.

10 THE COURT: Mr. White, even though your lawyer has told
11 you about your rights, I am also going to tell you about
12 your rights. You have the right to a speedy, public trial
13 by an impartial jury here in Roberts County.

14 You also have the right to defend this case, both in
15 person and with the assistance of an attorney. That right
16 to be represented by an attorney applies at every stage of
17 the proceedings against you. And if you cannot afford an
18 attorney, one will be appointed to represent you.

19 At your trial, if you want a trial, you have the
20 right to meet all of the witnesses against you face to
21 face right here in the courtroom. You have the right to
22 hear all of the testimony of those witnesses and you have
23 the right to cross-examine those witnesses. You also have
24 the right to call witnesses on your own behalf. And you
25 have the right to have subpoenas issued by the Court at

1 public expense to compel the attendance in court of your
2 own witnesses.

3 You also have the right to remain silent. That means
4 you do not have to give any statement to the police or the
5 sheriff or any other law enforcement officer. But I will
6 remind you that anything you do say voluntarily today or
7 at a later time could be used against you in connection
8 with this or some other proceeding.

9 You also have the right not to testify against
10 yourself. In other words, you can testify or not as you
11 see fit and you cannot be forced to testify against
12 yourself. You also do not have to prove yourself
13 innocent. You have the right to require that the State
14 prove any charge against you beyond a reasonable doubt,
15 which means, of course, that each of the 12 jurors would
16 have to be convinced beyond a reasonable doubt of your
17 guilt before they could find you guilty as to any charge
18 against you.

19 You also have the right to have a reasonable bond set
20 and, once it is posted, to be at liberty on that bond
21 while your case is pending.

22 To any charges there are five possible pleas you can
23 enter: Not guilty; not guilty and not guilty by reason of
24 insanity; guilty; guilty but mentally ill; or only with
25 special permission of the Court, no contest.

1 By pleading not guilty, you keep that presumption of
2 innocence. By pleading not guilty, the burden to prove
3 all the essential elements of the charge or charges
4 against you beyond a reasonable doubt will remain with the
5 State.

6 On the other hand, if you enter a plea of guilty, you
7 would be admitting the offense. And, in doing that, you
8 would thereby waive or give up the right to trial, the
9 right to confront, cross-examine witnesses, and the right
10 not to incriminate yourself. By entering a plea of guilty
11 or no contest, all that would then remain would be for the
12 Court to impose sentence upon you.

13 Mr. White, did you understand those rights as I went
14 through them with you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any questions on those rights or
17 how those rights may apply to you?

18 THE DEFENDANT: No, sir.

19 THE COURT: And do you understand that if you enter a plea
20 of guilty here today that you would thereby waive or give
21 up each of those rights which I previously told you about?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, you are charged by way of indictment.
24 And so at this time I'd call upon the State to read the
25 relevant portions of the indictment.

1 (Indictment read by State's Attorney Dylan Kirchmeier.)

2 THE COURT: Mr. While, you have a right to a copy of the
3 indictment that's been filed against you. Did you receive
4 a copy of that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you the read that document carefully and
7 understand it fully?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is your name spelled correctly in that
10 document?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand what Count 1A of the
13 indictment charges you with having done?

14 THE DEFENDANT: Yes.

15 THE COURT: I am going to tell you now about the maximum
16 penalties for that offense. That's a Class 3 Felony, so
17 it carries up to 15 years' imprisonment in the state
18 penitentiary, a fine of \$30,000, or a combination of the
19 two. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: In addition to the maximum penalties that I
22 just told you about, you may also be required to pay
23 restitution, including court costs and testing costs. Do
24 you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions about the charges
2 pending against you or the maximum penalties?

3 THE DEFENDANT: No, sir.

4 THE COURT: Now, the plea agreement, as I understand it,
5 is that you are going to enter a plea of guilty to
6 Count 1A. In exchange for that plea, any other charges
7 would be dismissed and that it's an open sentence. Is
8 that your understanding as well?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you go over that plea agreement with
11 Mr. Doody before court?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you understand it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is there anything that was left out of that
16 plea agreement that you thought would be part of it?

17 THE DEFENDANT: No, sir.

18 THE COURT: Now, do you understand that any
19 recommendations at your sentencing made to me by your
20 attorney or by the state's attorney or by anyone else for
21 that matter are not binding on me?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that I could sentence you to
24 something different even more severe than anything being
25 recommended to me?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anyone threatened you or anyone else in
3 any way to get you to plead guilty to Count 1A of the
4 indictment?

5 THE DEFENDANT: No, sir.

6 THE COURT: Other than the plea agreement, has anyone
7 promised you anything to get you to plead guilty today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anyone promised you what sentence you
10 would receive if you plead guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: If you were to enter a plea to this charge
13 here today, would that plea be made voluntarily on your
14 part and of your own free will?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you had enough time to talk with
17 Mr. Doody about your case and about what you should do
18 here today?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you been fully satisfied with the advice
21 and representation Mr. Doody has given you in this case?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Vernon Lee White, Junior, it is the finding of
24 this Court that you have been regularly held to answer to
25 the charge contained in Count 1A of the indictment, that

1 you have been and are presently represented by competent
2 counsel, that you have been informed by counsel and the
3 Court of your constitutional and statutory rights, and
4 that you understand those rights.

5 I find also that the defendant understands the nature
6 and cause of the accusations against him, as well as the
7 possible penalties, and that he is competent to enter a
8 plea to this charge in this court. I find that the
9 defendant is not acting under duress, but is acting under
10 his own free will. And the Court therefore is ready to
11 receive the defendant's plea.

12 Would you stand, sir?

13 Vernon Lee White, Junior, to the charge contained in
14 Count 1A of the indictment, namely that on or about
15 June 26, 2022, here in Roberts County, South Dakota, you,
16 Vernon Lee White, Junior, did commit the public offense of
17 aggravated assault, what plea did you wish to enter?

18 THE DEFENDANT: Guilty.

19 THE COURT: You may be seated, sir.

20 Can the state provide a factual basis?

21 MR. KIRCHMEIER: Yes, Your Honor. On June 26, 2022, here
22 in Roberts County, Vernon White, Junior, had contact with
23 Allison Eastman. And during that contact, Mr. White
24 placed both of his hands around Ms. Eastman's throat and
25 began to choke her. Ms. Eastman indicated that she was

1 scared for her life and that she had lost consciousness
2 when that -- when his hands were around her throat.

3 THE COURT: Mr. Doody, any disagreement with that factual
4 basis?

5 MR. DOODY: No, Your Honor.

6 THE COURT: I find that there's a factual basis for the
7 plea and the plea will be accepted. If there are any
8 pending motions, those are all now denied as moot. The
9 Court is going to order the preparation of a presentence
10 investigation report.

11 March 7th, Billy, is that enough time?

12 MR. KIRCHMEIER: I don't think they really have many
13 pending right now.

14 THE COURT: I'm sorry?

15 MR. KIRCHMEIER: I don't think there are many pending PSIs
16 with Court Services, right now, so --

17 THE COURT: I guess, Mr. Kirchmeier, the reason I
18 suggested that date is we're almost into February and I
19 want to make sure that everybody has enough time to get
20 the information to me that they feel is necessary. So I
21 will set it for March 7th at 1 p.m.

22 If Court Services gets the presentence investigation
23 report done sooner than that and you folks want to move up
24 the sentencing, we can do that. But at least it's on the
25 calendar.

1 Other matters we need to talk about today,

2 Mr. Kirchmeier?

3 MR. KIRCHMEIER: No, Your Honor.

4 THE COURT: Mr. Doody?

5 MR. DOODY: No, Your Honor.

6 THE COURT: Mr. White, you are going to remain out on bond
7 pending your sentencing. Make sure you continue to follow
8 all the rules that the Court previously ordered as a
9 condition of your bond. And you will need to be back in
10 this courtroom on March 7th at 1 p.m. All right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. We're in recess in this matter.

13 (WHEREUPON, the foregoing proceedings were concluded.)

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1 STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
2 COUNTY OF DAY)

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4
5 I, KELLI LARDY, RPR, an Official Court Reporter and
6 Notary Public in the State of South Dakota, Fifth Judicial
7 Circuit, do hereby certify that I reported in machine
8 shorthand the proceedings in the above-entitled matter and
9 that Pages 1 through 13, inclusive, are a true and correct
10 copy, to the best of my ability, of my stenotype notes of
11 said proceedings had before the HONORABLE MARSHALL LOVRIEN,
12 Circuit Court Judge.

13 Dated at Sisseton, South Dakota, this 6th day of
14 May, 2024.

15
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17
18
19 /s/ Kelli Lardy
20 KELLI LARDY, RPR
 My Commission Expires: 10/21/28

21
22
23
24
25

MR. DOODY: [6] 2/10 2/17 4/8 4/9 11/5 12/5 MR. KIRCHMEIER: [6] 2/19 10/21 11/12 11/15 12/3 THE COURT: [43] THE DEFENDANT: [29]	13/8 accepted [1] 11/7 accusations [1] 10/6 acting [2] 10/9 10/9 addition [1] 7/21 admitting [1] 6/7 advice [1] 9/20 afford [1] 4/17 afternoon [1] 2/5 against [11] 4/17 4/20 5/7 5/9 5/11 5/14 5/18 6/4 7/3 8/2 10/6 age [2] 3/12 3/14 aggravated [2] 2/12 10/17 agreement [5] 2/11 8/4 8/10 8/16 9/6 all [10] 2/2 4/7 4/20 4/22 6/3 6/11 11/8 12/8 12/10 12/12 Allison [1] 10/23 almost [1] 11/18 along [1] 2/5 also [11] 2/18 2/20 4/11 4/14 4/23 5/3 5/9 5/12 5/19 7/22 10/5 am [2] 4/11 7/15 answer [3] 2/25 3/6 9/24 any [15] anyone [5] 8/20 9/2 9/2 9/6 9/9 anything [4] 5/8 8/15 8/24 9/7 apology [1] 2/17 APPEARANCES [1] 1/15 apples [1] 4/16 apply [1] 6/17 appointed [1] 4/18 are [15] around [2] 10/24 11/2 arts [1] 3/16 as [14] assault [2] 2/12 10/17 assistance [1] 4/15 attendance [1] 5/1 attorney [9] 1/18 2/5 2/6 4/15 4/16 4/18 7/1 8/20 8/20 Avenue [1] 1/17	best [1] 13/10 beverage [1] 3/23 beyond [3] 5/14 5/16 6/4 Billy [1] 11/11 binding [1] 8/21 bond [4] 5/19 5/20 12/6 12/9 both [2] 4/14 10/24 Box [1] 1/20 burden [1] 6/2 C calendar [1] 11/25 call [2] 4/24 6/24 called [1] 3/3 can [4] 5/10 5/22 10/20 11/24 cannot [2] 4/17 5/11 carefully [1] 7/6 carries [1] 7/17 case [5] 2/2 4/14 6/21 9/17 9/21 caterer [1] 3/16 catering [1] 3/19 cause [1] 10/6 CERTIFICATE [1] 13/1 certify [1] 13/7 change [2] 1/6 2/10 charge [7] 5/14 5/17 6/3 9/12 9/25 10/8 10/13 charged [1] 6/23 charges [5] 5/22 6/3 7/13 8/1 8/6 chef [3] 3/16 3/17 3/19 choke [1] 10/25 CIRCUIT [5] 1/1 1/2 1/11 13/7 13/12 Class [1] 7/18 classes [1] 3/20 client [2] 2/11 4/3 combination [1] 7/18 come [1] 2/11 Commission [1] 13/20 commit [1] 10/16 compel [1] 5/1 competent [2] 10/1 10/7 concluded [1] 12/13 condition [1] 12/9 conference [1] 2/8 confront [1] 6/9 connection [1] 5/7 consciousness [1] 11/1 constitutional [2] 4/4 10/3 contact [2] 10/22 10/23 contained [2] 9/25 10/13 contest [2] 5/25 6/11	continue [1] 12/7 convinced [1] 5/16 copy [3] 7/2 7/4 13/10 correct [1] 13/9 correctly [1] 7/9 costs [2] 7/23 7/23 could [3] 5/7 5/17 8/23 counsel [2] 10/2 10/2 Count [6] 2/12 7/12 8/6 9/3 9/25 10/14 Count 1A [1] 8/6 COUNTY [7] 1/2 1/16 2/6 4/13 10/15 10/22 13/2 course [2] 2/23 5/15 court [19] courtroom [2] 4/21 12/10 criminal [1] 2/3 cross [2] 4/23 6/9 cross-examine [2] 4/23 6/9 culinary [1] 3/16 D DAKOTA [10] 1/1 1/5 1/12 1/17 1/20 2/3 10/15 13/1 13/6 13/13 date [1] 11/18 Dated [1] 13/13 day [2] 13/2 13/13 defend [1] 4/14 defendant [5] 1/9 1/19 2/4 10/6 10/8 defendant's [1] 10/11 denied [1] 11/8 did [8] 2/16 6/13 7/3 7/6 8/10 8/13 10/18 10/17 different [1] 8/24 disagreement [1] 11/3 dismissed [1] 8/7 do [17] document [2] 7/6 7/10 doing [1] 6/7 don't [2] 11/12 11/15 done [2] 7/13 11/23 DOODY [11] 1/19 1/19 2/5 2/9 2/14 4/3 8/11 9/17 9/21 11/3 12/4 doubt [3] 5/14 5/16 6/4 drug [1] 3/23 duly [2] 2/1 3/3 duress [1] 10/9 during [1] 10/23 DYLAN [3] 1/16 2/7 7/1 E each [2] 5/15 8/21 East [1] 1/17 Eastman [2] 10/23 10/25	Eastman's [1] 10/24 education [2] 3/13 3/15 elements [1] 6/3 else [2] 8/20 8/2 enforcement [1] 5/5 enough [3] 9/16 11/11 11/19 enter [7] 5/23 6/6 6/19 8/5 9/12 10/7 10/17 entering [1] 6/10 entitled [1] 13/8 essential [1] 6/3 even [3] 3/22 4/10 8/24 every [1] 4/16 everybody [1] 11/19 examine [2] 4/23 6/9 examined [1] 3/4 exchange [1] 8/6 expense [1] 5/1 Expires [1] 13/20 explained [1] 4/3 extent [1] 3/12 F face [2] 4/20 4/21 factual [3] 10/20 11/3 11/6 false [1] 3/9 falsely [1] 3/7 February [1] 11/18 feel [1] 11/20 Felony [1] 7/16 FIFTH [2] 1/2 13/6 file [1] 2/3 filed [1] 7/3 find [4] 5/17 10/5 10/8 11/6 finding [1] 9/23 fine [1] 7/18 first [1] 3/3 fit [1] 5/11 five [1] 5/22 folks [1] 11/23 follow [1] 12/7 following [1] 2/1 follows [1] 3/4 forced [1] 5/11 foregoing [1] 12/13 formal [1] 3/12 free [2] 9/14 10/10 full [1] 3/12 fully [3] 3/25 7/7 9/20 further [1] 3/8 G GED [1] 3/15 get [3] 9/3 9/7 11/19 gets [1] 11/22 give [3] 5/4 6/8 6/20 given [1] 9/21 go [1] 8/10 going [10] 2/24 3/15 3/19 3/20 3/25 4/11
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STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF ROBERTS

FIFTH JUDICIAL CIRCUIT

State of South Dakota,

Plaintiff,

vs.

Vernon Lee White, Jr.,

Defendant.

Sentencing
Hearing

54CR122-000657

BEFORE: **THE HONORABLE MARSHALL LOVRIEN**
Circuit Court Judge
Sisseton, South Dakota
March 14, 2024, at 1:00 p.m.

APPEARANCES:

For the Plaintiff: **DYLAN D. KIRCHMEIER**
Roberts County State's Attorney
414 3rd Avenue East
Sisseton, South Dakota 57262

For the Defendant: **ROBERT DOODY**
Doody Law Office
P.O. Box 307
Sisseton, South Dakota 57262

1 (WHEREUPON, the following proceedings were duly had:)

2 THE COURT: All right. We are on the record. Our first
3 file this afternoon is criminal file 22-657. The State of
4 South Dakota versus Vernon White. Mr. White is personally
5 present in court this afternoon along with his attorney
6 Robert Doody. And the State is represented by Roberts
7 County States Attorney Dylan Kirchmeier. This is the time
8 and place that's been set for a sentencing in this matter.

9 Mr. White, have you received and read a copy of the
10 presentence investigation report that's been prepared in
11 this matter.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is that true for counsel for both sides?

14 MR. KIRCHMEIER: Yes.

15 MR. DOODY: Yes, Your Honor.

16 THE COURT: I, too, have received and read that document
17 along with the support letters that were not included with
18 the presentence investigation report that Mr. Doody
19 emailed to Mr. Kirchmeier as well as the Court. And,
20 counsel, just so you know, it's going to be my intention
21 to have those letters included as part of the presentence
22 investigation report for filing in this matter.

23 Do you have any objection to that, Mr. Kirchmeier?

24 MR. KIRCHMEIER: No, Your Honor.

25 THE COURT: Mr. Doody?

1 MR. DOODY: No, Your Honor.

2 THE COURT: And Mr. Doody also provided the Court prior to
3 the hearing with a letter written by Mr. White to
4 Ms. Eastman in this matter.

5 Mr. Kirchmeier, have you had an opportunity to look
6 at that?

7 MR. KIRCHMEIER: I have.

8 THE COURT: And that will also be filed.

9 In terms of corrections that need to be made to the
10 presentence investigation report, Mr. Kirchmeier, any from
11 the State?

12 MR. KIRCHMEIER: No.

13 THE COURT: Mr. Doody?

14 MR. DOODY: Just that the sentencing date needs to be
15 changed because we (inaudible) to March 14 of 2024.

16 THE COURT: That is noted, Mr. Doody. Does either side
17 have anything by way of evidence?

18 MR. KIRCHMEIER: No.

19 MR. DOODY: No, Your Honor.

20 THE COURT: Comments, Mr. Kirchmeier?

21 MR. KIRCHMEIER: Your Honor, before I get into that, can I
22 just take a minute to make a phone call to the jail to
23 make sure that somebody's coming?

24 THE COURT: Certainly.

25 Mr. Kirchmeier, did you want to proceed or did you

1 want to wait?

2 MR. KIRCHMEIER: Can we just give it a couple of minutes?
3 She's on her way.

4 THE COURT: You bet.

5 All right. We are back on the record in file 22-657.
6 The Court had asked counsel if either side had anything by
7 way of evidence. Mr. Kirchmeier, does the state have any
8 evidence it wishes to present?

9 MR. KIRCHMEIER: No, Your Honor.

10 THE COURT: Mr. Doody?

11 MR. DOODY: No, Your Honor.

12 THE COURT: Comments, Mr. Kirchmeier?

13 MR. KIRCHMEIER: Thank you, Your Honor. You know, Judge,
14 it's quite telling at the beginning of the presentence
15 investigation with the victim's comments regarding the
16 offense. The State would like to point out Ms. Eastman's
17 statement that while she was aware of Mr. White, she had
18 no prior contact or friendship or, frankly, any type of
19 relationship with him. To the State, that screams a
20 random act of violence.

21 She goes on to say she was at a party. Mr. White was
22 also there. They went outside. And Mr. White grabbed and
23 squeezed her neck with such force that she was unable to
24 breathe, nor was she able to scream for help. She says
25 she woke up next -- we corroborate that with the

1 information that she gave law enforcement in the police
2 report. She lost consciousness, woke up after being
3 choked by Mr. White a, frankly, bloody mess.

4 The Court can see the pictures of Ms. Eastman that
5 were taken by law enforcement. In the police report she's
6 got bloody elbows, a bloody forehead. You can see the
7 markings on her neck from where Mr. White's hands were
8 around her neck and squeezing her.

9 You know, in hindsight, Judge, the State has been
10 reviewing the police report in this matter and the
11 other -- all evidence in this matter leading up to today's
12 hearing. And, quite frankly, the State probably should
13 have charged this out as attempted murder.

14 Squeezing someone's neck to the point that they can't
15 breathe, they can't scream, that they black out, if
16 Mr. White would have held onto that grip for just a few
17 more seconds, it's, quite frankly Ms. Eastman, may not be
18 breathing today.

19 So the fact that Mr. White is standing convicted of
20 aggravated assault rather than attempted murder or murder
21 is a benefit to him as it stands.

22 Because of the random act of the violence here, them
23 having no prior relationship, the manner in which the
24 assault was perpetrated, and the prior history that
25 Mr. White has as noted in the criminal history that was

1 provided in the PSI, mostly being that this is not his
2 first go-around with felony offenses, I believe he has
3 prior felony DUIs as well as a -- litany might not be the
4 right word -- but the prior offenses including assault
5 against law enforcement, I believe that of a felony
6 nature, the State is requesting that the Court sentence
7 Mr. White to the South Dakota State Penitentiary for a
8 period of 15 years and suspending three of those years.

9 Your Honor, this was a random, senseless act of
10 violence that very easily could have taken the life of
11 Ms. Eastman had Mr. White continued his choke hold on her
12 for just a few more seconds.

13 In addition, the State would be requesting that
14 Mr. White be ordered to make restitution to Ms. Eastman in
15 the amount of \$100 for the clothes of hers that were
16 ruined as a result of Mr. White's random and senseless act
17 of violence upon her.

18 THE COURT: Thank you, Mr. Kirchmeier.

19 Comments, Mr. Doody?

20 MR. DOODY: Your Honor, we are requesting a suspended
21 execution of sentence in this case. As laid out in the
22 reports and in the letters, we'd like the Court to take
23 into consideration several different things.

24 First, that while out on bond, Mr. White, and it's
25 been over a year, has followed all bond conditions. There

1 have been no allegations of alcohol abuse. He has shown
2 up for every single court appearance. He has maintained
3 good contact with my office. He has always come in, come
4 in on time for all my meetings. So he can show that he
5 can abide by the law for the last year. He has done
6 nothing, nothing wrong. He's not broken any condition of
7 bond.

8 Second, he has accepted responsibility and he has
9 provided the Court with an apology letter to Ms. Eastman.

10 Third, Mr. White has an exceptional work history and
11 work experience which was testified to by the letters that
12 have been provided to the Court, in the PSI and from the
13 PSI itself. He is rapidly moving up in work. And he is
14 doing a very good job of that.

15 Meanwhile, another consideration is that he's going
16 to school. He is seeking to educate himself or receive an
17 education that will only benefit him and the community.
18 He does have a house here in town and takes care of one of
19 his children, which has been noted in the PSI. I have no
20 doubt that he's a good, loving father, and a kind man to
21 his son. Nothing indicates that to the contrary.

22 He is looking to one day start his own business. He
23 has goals and ambitions and dreams of things to do next
24 year. This was an unfortunate event due to alcohol abuse.
25 We can see that in Mr. White's past that there was

1 instances of felonies due to alcohol abuse.

2 We don't believe, though, that the removal of
3 Mr. White from the community for a penitentiary sentence
4 is appropriate in this case. We think that taking a look
5 at the past year and indeed the fact that he has been able
6 to bounce back from penitentiary sentences and is still an
7 exceptional worker and seeking schools and taking care of
8 his son and has a house and with all of those things,
9 paint a picture of someone who is capable of being under
10 community supervision. So we would ask for a suspended
11 execution of sentence in this matter.

12 THE COURT: Thank you, Mr. Doody.

13 Mr. White, is there anything you want to say on your
14 own behalf? You don't have to, of course, but you can if
15 you like.

16 THE DEFENDANT: Yeah. Well, you know, like, I took
17 responsibility of my actions, you know. Like, I accept
18 it, you know. And like I said, with the past year, I
19 haven't touched a single drop of alcohol. You know, I
20 know it's bad. You know, and it affects me in a negative
21 way. So I haven't touched it at all.

22 And even prior to that from when I got out of prison,
23 from before from the simple assault of law enforcement, I
24 haven't touched a drop since until this incident. So I
25 know that, you know, alcohol is bad for me. So I know now

1 that I could never touch it again, and I'm not planning
2 to.

3 As you know it shows, I've been out on bond and
4 abided everything because you know I can -- wanted to
5 prove to the community and to you guys, to my staff, my
6 workers, you know, I am a good person.

7 You know, and I do -- I am going to school online to
8 become a chef. You know, my degree, my associate's degree
9 is hospitality, restaurant operations management. And
10 that is my goal because my goal is to start a business
11 here in the community, to serve food to people, because
12 that's my passion, that's what I love doing is cooking.
13 And I want to do that, you know, for people.

14 You know, and then support my family, my son, you
15 know, he's my world, you know. I've been taking care of
16 him ever since he was a baby since he was born and his mom
17 left. So I've had him ever since.

18 You know, and with work, you know, I worked in the
19 restaurant at Dakota Magic Casino. And every -- every
20 night -- every task that I had in that restaurant or both
21 restaurants, I make it a point to make sure the customers
22 get their food plated and cooked right. And I'd train the
23 cooks to do it this way, the right way. And I'd expand my
24 knowledge from what I'm learning in school to the cooks
25 that work there.

1 So there's so many possibilities to when I graduate,
2 February 19th of 2025, that I could be a consultant, you
3 know. I can go to businesses and consult with and train
4 their staff and, you know, help their business thrive.
5 You know, because I was manager, restaurant manager for
6 Dakota Connection for four years. I started as a
7 dishwasher and moved up to prep cook, to line cook,
8 supervisor, you know, and the manager. And all the years
9 that the Connection has been open since '94, I was the
10 only manager that put that restaurant in the black, 80
11 grand for four consecutive months.

12 And at that time, Garret Renville was the GM, but
13 he's our the chairman now. So he vouched for me. You
14 know, he knows I know how to do my job and he knows my
15 work ethic. Everybody that I work with, they tell the
16 same story about me, you know, he's here on time, he's
17 consistent, you know, he goes beyond. Because that's what
18 I do, that's my job. That's what you guys are paying me
19 to do is to do this exceptional work for people.

20 And it's, you know, community. You know, like, say,
21 you guys come up there, you know, I see you guys, you guys
22 come up there and eat. I make sure your dish is cooked
23 and looks presentable that when you walk up and, like,
24 wow, I will enjoy this. And that's what I do every day in
25 life, you know, and that's what I've been doing, you know,

1 In my life.

2 I never thought, you know, I could go to college, you
3 know, because of my past, you know, I thought I'd never
4 succeed. You know, like, a lot of people doubt me, you
5 know, but I proved myself throughout the years, you know.

6 And it's -- it's been, like, almost 12 years since I
7 touched alcohol. And then so from the time I got out and
8 then from the time now, that's been over 12 years. I
9 haven't even thought about it, never drank it until this,
10 you know, this one time.

11 And now, I moved on, you know, like I accept
12 responsibility. I apologized to her. I can't do it in
13 person, you know, but I would. And I just want to move
14 on. And I wish her the best, you know. I hope good
15 things happen, you know, for her, you know, like I say,
16 but I also want to move on with my life. I want to
17 succeed too.

18 And that's what I am doing for the next year, two
19 years. I'm going to finish my schooling and then
20 hopefully start my business. You know, because I'm saving
21 up money for that too. You know, there's a lot of things
22 I'm doing to better myself.

23 And I just hope, you know, I get that chance, you
24 know. I said, you know, I can be a productive member in
25 this community, you know. And people can change. I said

1 I have changed since this incident. It made me really
2 open my eyes. I said prison is not the life for me.

3 I got too many people depending on me, you know, and
4 they see that and even at work they see that. You know,
5 when I'm on my days off, you know people calling back in.
6 He's the only one who knows what goes on in this kitchen.

7 And I just want to give it -- you know, prove that
8 chance to you guys that I can do this and grant my
9 suspended execution of sentence so I can prove to you guys
10 that I am a productive member. And I will abide by every
11 rule. And I am never going to touch alcohol again. And
12 that's a promise. You know, it's not for me. Like I
13 said, I was sober for those amount of years.

14 And this one time I drank and I have this happen. So
15 now I know for a fact it's never going to be a part of my
16 life and I haven't touched it since this incident.

17 And, you know, I just got too many things, positive
18 things that I got going for me now in the past year. And
19 I might even move up to restaurant manager here at the
20 Magic. The CEO is talking to me, you know, and said there
21 will be changes going on in this department, if you are
22 willing to step up, he said, will you be able to step up
23 if I give you that chance.

24 And I said, yes, sir, I will give you my best if you
25 give me the chance and opportunity to prove myself to you

1 as my boss. That's how I do my best for this restaurant,
2 both these restaurants. Because there is three
3 restaurants that I'd be over, the Clubhouse, Twin Buffalo,
4 and Seven Fires. Those will be the ones, that if I take
5 control of it, those are the ones that I will be managing.

6 And I'm just trying to do my best. You know, because
7 the customer is what matters when it comes to hospital
8 industry, so that's my goal. You know, and I just, you
9 know, want to be given the chance. You know, I know I
10 made one mistake and I'm sorry. I apologize, you know.
11 And it will never happen again, never happen again.

12 THE COURT: Thank you Mr. White. And, Mr. White, I was
13 jotting some notes down as you were making comments. I
14 want to make sure that I understood correctly. Did you
15 say you haven't had a drink in 12 years other than the
16 night that this incident happened?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So I am required to acquire a thorough
19 acquaintance with the character and history of the person
20 before me by considering the defendant's general moral
21 character, mentality, habits, social environment,
22 tendencies, age, aversion or inclination to commit crime,
23 life, family, occupation, and previous criminal record, as
24 well as the rehabilitative prospects of the defendant.
25 And I have done so here.

1 Mr. White is 44 years old. To his credit, he
2 received his GED back in 2010 when he was in the South
3 Dakota State Penitentiary. He is currently enrolled in
4 the culinary arts and hospitality and restaurant
5 management program and is scheduled to graduate next year.

6 And so, sir, I am proud of you for the GED that you
7 received and your desire and passion to continue your
8 education. That is not lost on me. I also think you are
9 an exceptionally hard worker as indicated by the letters
10 of support that were written on your behalf, all of which
11 I have reviewed.

12 I, frankly, think any employer would be lucky to have
13 you on their staff based on your work ethic. You are
14 currently employed at Dakota Magic Casino in the
15 restaurant. You've been there for nine months. You also
16 had previous employment for over five years, so you
17 certainly have the ability to work and a good work ethic.

18 You certainly recognize that you have a history of
19 alcohol abuse, but curiously to me, the presentence
20 investigation report indicates that you have never
21 attended treatment. That is perplexing to me, sir,
22 because based on your criminal history, which is
23 extensive, including a number of DUIs, I can't understand
24 why you would not have sought out treatment.
25 Nevertheless, that's what the presentence investigation

1 report indicates.

2 I certainly recognize that you've been on bond for a
3 considerable amount of time. Mr. Doody did an excellent
4 job, as far as I'm concerned, advocating on your behalf
5 for all of good things that you've done. You have
6 followed the bond conditions. You have shown up for
7 court. You have met with Mr. Doody as requested.

8 But I don't buy the argument that you simply made a
9 mistake in this case. Sir, as far as I'm concerned, a
10 mistake is picking up the wrong set of keys. What you did
11 was commit a serious act of violence towards another
12 individual.

13 And I completely agree with Mr. Kirchmeier when he
14 notes the randomness of this act. In fact, that is the
15 same term I wrote in the margins of the presentence
16 investigation report on page 2, where the victim in this
17 case was aware of you, but she had no prior contact or
18 friendship with you.

19 At some point you were both outside in the yard, at
20 which time you grabbed her neck and squeezed with such a
21 force that she was unable to breathe and she was also
22 unable to scream for help.

23 Mr. Kirchmeier's exactly correct that it is a
24 miracle, quite frankly, that Ms. Eastman didn't suffer
25 more severe injuries.

1 And the incident report that's also included with the
2 presentence investigation report corroborates what
3 Ms. Eastman told the presentence investigation officer,
4 where she stated that you came up to her, her being the
5 victim, placed both of your hands around her throat and
6 began to choke her. She tried to scream but was not able
7 to. She said she felt a punch in her head and when she --
8 and then she came to. I am very troubled by the
9 randomness of this act.

10 You also told me that you haven't consumed any
11 alcohol in the last 12 years. But when I look at your
12 criminal history, you have a driving under the influence
13 conviction from 2022. It's 2024. Again, sir, you're 44
14 years old. You have an extensive criminal history.

15 I certainly recognize the good things you've done in
16 your life and you have done good things. And I hope that
17 you continue to do good things and that you set goals for
18 yourself and you reach those goals.

19 But between the driving under the influence
20 convictions and then the simple assault on law enforcement
21 conviction where you spent a year and a half in the state
22 penitentiary and then get out, your criminal history is
23 going in the wrong direction.

24 The level and severity of the crimes that you commit
25 continue to go up. Because we've gone from a simple

1 assault against a law enforcement officer back in 2011 to
2 an aggravated assault in the most instant case. And,
3 again, the randomness of the attack on this woman is
4 beyond troubling.

5 Do you need rehabilitation? I think you do. I think
6 you need treatment without question. Along with the DUI
7 convictions, you have had multiple arrests for simple
8 assault. So as far as I'm concerned, you had a history of
9 alcohol-related crime and assaultive-type behavior that
10 has now escalated to an aggravated assault, completely
11 random and completely unprovoked and without
12 justification.

13 And so having considered the factors that I'm
14 required to consider that the Supreme Court has instructed
15 trial courts to consider, it's going to be the judgment
16 and sentence of the Court that you are sentenced to 15
17 years of custody in the state penitentiary. I am going to
18 suspend 7 of those years.

19 The conditions of the suspended time are going to be
20 that you pay a fine of \$500, court costs of \$116.50. You
21 will also need to make restitution to the victim in the
22 amount of \$100. You will need to provide a sample of your
23 DNA if you've not done so already. You will need to repay
24 Roberts County for the cost of any court-appointed
25 attorney fees. And you are to have no contact with the

1 victim in this matter.

2 The other conditions of the suspended time are going
3 to be that you follow the rules and regulations of the
4 Department of Corrections. I will give you credit for any
5 time you've been in custody on this matter up to today's
6 date.

7 Mr. Kirchmeier, anything I missed that you thought I
8 was going to cover?

9 MR. KIRCHMEIER: No, Your Honor.

10 THE COURT: Mr. Doody?

11 MR. DOODY: No, Your Honor.

12 THE COURT: Mr. White, you are remanded to custody at this
13 time. We're in recess in this matter.

14 (WHEREUPON, the foregoing proceedings were concluded.)
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1 IN CIRCUIT COURT)
2 :SS TRANSCRIBER'S CERTIFICATE
3 COUNTY OF ROBERTS)
4

5 I, Kelli Lardy, Official Court Reporter in the
6 Fifth Judicial Circuit of the State of South Dakota, hereby
7 certify that the transcript of proceedings in the
8 above-entitled action is a true and accurate transcript of
9 the electronic recording of the proceedings.

10 Dated this 6th day of May, 2024.
11
12
13

14 /s/ Kelli Lardy

15 KELLI LARDY, RPR
16 My Commission Expires: 10/21/28
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MR. DOODY: [7] 2/15 3/1 3/14 3/19 4/11 6/20 18/11	6th [1] 19/10	another [2] 7/15 15/11	15/4	choked [1] 5/3
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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30661

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

VERNON LEE WHITE, JR.,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
ROBERTS COUNTY, SOUTH DAKOTA

THE HONORABLE MARSHALL C. LOVRIEN
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed March 20, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30661

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

VERNON LEE WHITE, JR.,

Defendant and Appellant.

PRELIMINARY STATEMENT

Throughout this brief, Plaintiff/Appellee, State of South Dakota, is referred to as “State.” Defendant/Appellant, Vernon Lee White, Jr., is referred to as “Defendant.” The victim is referred to by her initials, “A.E.” The settled record in the underlying case is denoted as “SR.” Defendant’s Brief is denoted as “DB.” All references to documents will be followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

On March 18, 2024, the Honorable Marshall C. Lovrien, Circuit Court Judge, Fifth Judicial Circuit, entered a Judgment of Conviction in *State of South Dakota v. Vernon Lee White, Jr.*, Roberts County Criminal File Number 54CRI22-000657. SR:167-69. Defendant filed his Notice of Appeal on March 20, 2024. SR:172-73. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

I.

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION
WHEN WEIGHING THE SENTENCING FACTORS?

The circuit court did not rule on this issue.

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

State v. Deleon, 2022 S.D. 21, 973 N.W.2d 241

State v. Lanpher, 2024 S.D. 26, 7 N.W.3d 308

STATEMENT OF THE CASE AND FACTS¹

On October 3, 2022, in Roberts County Criminal File Number 54CRI22-000657, the State’s Attorney filed a Complaint charging Defendant with one count of Aggravated Assault in violation of SDCL 22-18-1.1(8), or in the alternative, in violation of SDCL 22-18-1.1(1). SR:1. The victim was alleged to be A.E. SR:1. On December 30, 2022, a Roberts County Grand Jury indicted Defendant with the alternative counts from the Complaint. SR:9.

On January 29, 2024, Defendant appeared before the Honorable Marshall C. Lovrien, Circuit Court Judge, Fifth Judicial Circuit, (“circuit court”) for a change of plea hearing. SR:195. Defendant sought to plead guilty to Aggravated Assault in violation of SDCL 22-18-1.1(8). SR:196.

¹ The Statement of the Case and Statement of the Facts sections are combined because of the intertwined nature of the facts and procedural history.

The circuit court informed Defendant of his rights. SR:198-200.

Defendant stated that he understood his rights and did not have any questions. SR:200. The circuit court further advised Defendant that Aggravated Assault in violation of SDCL 22-18-1.1(8) was a Class 3 felony. SR:201. The circuit court advised Defendant that the maximum sentence for a Class 3 felony was fifteen years in prison. SR:201.

Defendant stated he understood. SR:201. The circuit court found that Defendant was advised of his constitutional and statutory rights, understood the nature and the charges against him, understood the maximum possible punishment, was acting on his own free will, and was competent to enter a plea. SR:203-04. Defendant entered a plea of guilty. SR:204.

The State set forth the factual basis for the record. SR:204-05. The State said that on June 26, 2022, in Roberts County, Defendant placed both of his hands around A.E.'s throat and choked her. SR:204-05. A.E. was scared for her life and lost consciousness. SR:204-05. Defendant's counsel agreed with the factual basis statement. SR:205. The circuit court found there was a factual basis and accepted the plea. SR:205.

The circuit court ordered court services to prepare a Presentence Investigation Report ("PSI") and a PSI was prepared. SR:138-66, 205. Defendant's prior record, according to the information before the circuit court, included a criminal history with alcohol-related offenses beginning

when he was a juvenile. SR:141, 154-61. The information included, in part, a conviction for Simple Assault on Law Enforcement and multiple convictions for Driving Under the Influence. SR:141, 154-61. The information also showed Defendant had a history of alcohol abuse. SR:140, 154-61.

On March 14, 2024, Defendant appeared before the circuit court for sentencing. SR:168, 211. During the hearing, the circuit court gave the State, Defendant's counsel, and Defendant an opportunity to be heard. SR:214-23. The State argued that a fifteen-year penitentiary sentence with three years suspended was appropriate. SR:216. The State argued that Defendant engaged in a random, senseless, act of violence when he assaulted a person he had no prior relationship with. SR:214-16. Defendant squeezed A.E.'s neck with such force that she could not breathe or scream. SR:214-15. She lost consciousness and woke up covered in blood. SR:214-15. The State noted that, in hindsight, it should have charged Defendant with attempted murder. SR:215.

Defendant's counsel argued for a suspended execution of sentence. SR:216. Defendant's counsel noted that Defendant was out on bond over a year and followed all bond conditions. SR:216. Defendant's counsel also argued that a penitentiary sentence was inappropriate because of Defendant's acceptance of responsibility, work history, and continued education. SR:216-17.

Defendant had an opportunity to be heard and addressed the circuit court. SR:218-23. Defendant explained how alcohol was involved the night he assaulted A.E. SR:222. He stated that he had not “touched a single drop of alcohol” for almost twelve years aside from the night he assaulted A.E. SR:218, 221-22. He repeatedly referenced how he was sober for twelve years. *See* SR:221-23. Defendant pledged that alcohol would never be part of his life again. SR:218-19, 222. He also discussed his educational and work achievements. SR:219. Defendant concluded his statement by asking the circuit court for a chance after making “one mistake” he was sorry for. SR:223.

After hearing from counsel and Defendant, the circuit court sentenced Defendant to fifteen years in the South Dakota State Penitentiary with seven years suspended based on various conditions. SR:168. The circuit court entered its written Judgment of Conviction. SR:167-69. Defendant appealed. SR:172-73.

ARGUMENT

I.

DEFENDANT RECEIVED AN APPROPRIATE SENTENCE.

A. *Background.*

Defendant claims the circuit court abused its discretion when imposing a fifteen-year sentence with seven years suspended for Aggravated Assault. DB:13. He claims the circuit court abused its discretion because it “did not weigh everything,” specifically that he “was

capable of being supervised in the community” and had an “impressive work history and educational background.” DB:13-14. The circuit court properly weighed the ample evidence and fashioned an appropriate sentence.

B. *Standard of Review.*

A circuit court’s sentencing decision is generally reviewed under the abuse of discretion standard. *State v. Lanpher*, 2024 S.D. 26, ¶ 25, 7 N.W.3d 308, 317 (citing *State v. Caffee*, 2023 S.D. 51, ¶ 26, 996 N.W.2d 351, 359-60). “An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.” *Id.* (quotation omitted). A circuit court possesses broad discretion in crafting a sentence that falls “within constitutional and statutory limits.” *State v. Deleon*, 2022 S.D. 21, ¶ 17, 973 N.W.2d 241, 246 (quotation omitted). Consequently, “a sentence within the statutory maximum [generally] will not be disturbed on appeal.” *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (quoting *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. Toavs*, 2017 S.D. 93, ¶ 14, 906 N.W.2d 354, 359 (quotation omitted).

C. *The Circuit Court Appropriately Weighed the Sentencing Factors.*

In determining its sentence, a circuit court “should consider the traditional sentencing factors of retribution, deterrence—both individual and general—rehabilitation, and incapacitation.” *Lanpher*, 2024 S.D. 26, ¶ 26, 7 N.W.3d at 317 (quoting *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360). These factors are to be weighed “on a case-by-case basis” and a circuit court may determine “which theory is accorded priority” in a particular case. *Id.* (quoting *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360). “Additionally, ‘courts must consider sentencing evidence tending to mitigate or aggravate the severity of a defendant’s conduct and its impact on others. Sentencing courts are often required, in this regard, to accurately assess the true nature of the offense.’” *Id.* ¶ 26, 7 N.W.3d at 317-18 (quoting *State v. Mitchell*, 2021 S.D. 46, ¶ 30, 963 N.W.2d 326, 333).

As part of its consideration, the circuit court “should have access to the fullest information possible concerning the defendant’s life and characteristics.” *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360 (cleaned up). The circuit court should acquire a thorough acquaintance with the character and history of the defendant by studying the defendant’s “general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record.” *Id.* (quotation omitted).

The circuit court did not abuse its discretion when it imposed the sentence. At the beginning of the sentencing hearing, the circuit court said that it received and reviewed the PSI, along with support letters. SR:212. The circuit court added the support letters to the PSI. SR:212. Neither party objected. SR:212-13. The circuit court verified that the State, Defendant's counsel, and Defendant received and read the PSI. SR:212. Besides a correction to the sentencing date, neither party objected to the PSI. SR:213. The PSI contained, among other things, information about Defendant's criminal history, family history, education, employment history, social circumstances, and attitudes/orientation. SR:138-65. Before imposing its sentence, the circuit court also heard arguments of counsel and Defendant's statements. SR:214-23.

In making its decision, the circuit court acknowledged that Defendant had done good things in his life. SR:226. Defendant continued his education, even while previously incarcerated, and the circuit court noted, "any employer would be lucky to have [Defendant] on their staff based on [his] work ethic." SR:224. The circuit court recognized that Defendant did well on bond and Defendant's counsel did an excellent job advocating for the good Defendant has done. SR:225.

In contrast to the good Defendant had accomplished, when the circuit court delved into the facts of the case, it noted, "I am very troubled by the randomness of this act." SR:226. The victim knew of

Defendant, but she had no prior contact with him. SR:225. Defendant approached the victim and “grabbed [the victim’s] neck and squeezed with such a force that she was unable to breathe[.] . . . [S]he was also unable to scream for help.” SR:225. The circuit court considered it a “miracle” the victim did not suffer more severe injuries. SR:225.

The circuit court considered Defendant’s statements when imposing sentence. Defendant viewed his actions as “one mistake” that he was sorry for. SR:223. The circuit court noted, “I don’t buy the argument that you simply made a mistake in this case . . . [A] mistake is picking up the wrong set of keys. What you did was commit a serious act of violence towards another individual.” SR:225.

The circuit court also considered Defendant’s statement that he was sober for twelve years other than on the night of the assault. SR:223. The circuit court’s statements suggest that it believed Defendant was not truthful. *See* SR:226. The circuit court pointed out that Defendant had a DUI during this alleged period of sobriety. SR:226. The circuit court also considered that Defendant had a long history of alcohol abuse, but never sought treatment. SR:224.

The circuit court considered Defendant’s extensive criminal history. SR:226. The circuit court found that Defendant’s criminal history trended in the wrong direction. SR:226. The level and severity of the crimes continued to increase. SR:226. The circuit court reasoned that Defendant “had a history of alcohol-related crimes and assaultive-

type behavior that now has escalated to an aggravated assault, completely random and completely unprovoked and without justification.” SR:227.

Defendant argues the circuit court “did not weigh everything.” DB:13-14. He alleges the circuit court “failed to weigh the overwhelming evidence that [he] was capable of being supervised in the community” and notes his “impressive work history and educational background.” DB:13-14. But this evidence was explicitly considered by the circuit court. SR:224-26; *see generally Deleon*, 2022 S.D. 21, ¶ 24, 973 N.W.2d at 247 (holding that this Court believed the circuit court considered evidence presented to it when formulating a sentence).

Defendant essentially argues the circuit court should have placed more weight on certain sentencing factors to reach a different sentencing choice. However, a circuit court is “well within its purview” to “accord certain theories priority.” *Lanpher*, 2024 S.D. 26, ¶ 30, 7 N.W.3d at 318. How the circuit court weighed the mitigating factors against the aggravating factors “does not amount to a fundamentally wrong or impermissible choice.” *Id.* ¶ 30, 7 N.W.3d at 319.

The circuit court acquired a thorough acquaintance with the character and history of Defendant and fashioned an appropriate sentence. The circuit court’s fifteen-year sentence with seven years suspended for Aggravated Assault was not beyond the range of

permissible choices. The circuit court did not abuse its discretion in fashioning Defendant's sentence.

CONCLUSION

Based on the foregoing arguments and authorities, the State respectfully requests that Defendant'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 1,992 words.

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

Dated this 24th day of September 2024.

/s/ Jennifer M. Jorgenson
Jennifer M. Jorgenson
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 24, 2024, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Vernon Lee White, Jr.*, was served via Odyssey File and Serve on Robert J. Doody at robert@doodylawoffice.com.

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