IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30809

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

AIDAN BRADSHAW,

Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE SUSAN M. SABERS
Circuit Court Judge

APPELLANT'S BRIEF

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Notice of Appeal filed August 22, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30809

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

AIDAN BRADSHAW,

Defendant and Appellee.

PRELIMINARY STATEMENT

Aidan Bradshaw was arrested for possession of a controlled drug or substance after pleading to the same crime in a different case earlier that day. Within three days after his arrest, the county prosecutor sent the alleged drug to be tested at the State health lab. About six months later, the circuit court dismissed the case for unnecessary delay because the prosecutor did not have the drug test results back yet. The State appeals.

In this brief, the State of South Dakota is referred to as "the State." Because of the distinction in this case between the local county prosecutor and the State Department of Health's Public Health Laboratory, the Minnehaha County State's Attorney's office is called "Minnehaha County," and the Public Health Laboratory is referred to as the "State health lab." The Defendant and Appellee, Aidan Bradshaw, is referred to as "Bradshaw." The Honorable Susan M.

Sabers presided over Bradshaw's criminal proceedings and is known as "the circuit court." Relevant documents are known as follows:

Settled Record (Minnehaha County CRI24-298)..... SR

Plea Hearing Transcript (July 22, 2024)..... PH

Appendix to this Brief.....APP

Corresponding page numbers follow all document designations.

JURISDICTIONAL STATEMENT

The circuit court entered its Findings of Fact, Conclusions of Law, and Order Dismissing Indictment and MTR on August 16, 2024. SR:34, APP:001. Six days later, the State filed its Notice of Appeal. SR:39. This Court has jurisdiction to hear this appeal under SDCL 23A-32-4(2).

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ERRED WHEN IT DISMISSED BRADSHAW'S CRIMINAL INDICTMENT FOR UNNECESSARY DELAY UNDER SDCL 23A-44-3?

The circuit court dismissed the case on two bases under SDCL 23A-44-3. First, it held that Minnehaha County caused unnecessary delay in bringing Bradshaw to trial because "Minnehaha County must have the ability to secure timely testing of substances to support its felony charging decisions." SR:37. Second, it held unnecessary delay occurred because of Minnehaha County's failure to offer Bradshaw a plea deal before the circuit court's deadline. SR:37.

State v. Hoffman, 409 N.W.2d 373 (S.D. 1987)

State v. Langen, 2021 S.D. 36, 961 N.W.2d 585

State v. Two Hearts, 2019 S.D. 17, 925 N.W.2d 503

State v. Schladweiler, 436 N.W.2d 851 (S.D. 1989)

SDCL 23A-44-3

SDCL 23A-44-5.1

STATEMENT OF THE CASE AND FACTS[1]

In July 2023, Aidan Bradshaw was indicted for five counts of possession of methamphetamine, cocaine, and Delta-9 Tetrahydrocannabinol, all controlled drugs, or substances.[2] SR:23. He pled guilty to Possession of Methamphetamine, a Class 5 felony, on January 16, 2024. SR:23. The circuit court granted him a suspended imposition of sentence and placed him on probation. SR:4, 8.[3]

Less than two hours after entering his plea, Bradshaw was stopped for a traffic violation and was again found in possession of a felony-level controlled substance and drug paraphernalia used to

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[1] The Statement of the Case and Statement of the Facts are combined for brevity and clarity.

[2] The underlying criminal file number for this case is Minnehaha County CRI23-4626. The State requests that this Court take judicial notice of CRI23-4626 because of the overlapping reference to it and CRI24-298 in the underlying settled record for this appeal. The State maintains the dismissal of the Motion to Revoke in CRI23-4626 was improper, as Bradshaw violated the terms of his probation by violating the law and possessing a controlled substance when he pled to CRI23-4626.

[3] The circuit court in both cases is the same. The Honorable Susan M. Sabers granted Bradshaw his suspended imposition of sentence in file CRI23-4626 and also disposed of his charges in file CRI24-298.

consume the drug. SR:1.[4] Based on this, Minnehaha County filed a Complaint alleging Aidan Bradshaw knowingly possessed Delta-9 Tetrahydrocannabinol, a schedule I controlled drug or substance, in violation of SDCL 22-42-5, a Class 5 felony. SR:1. Minnehaha County also alleged Bradshaw used or possessed a vape pen to ingest the Delta-9, a Class 2 misdemeanor in violation of SDCL 22-42A-3. SR:1. Three days later, the substance Bradshaw possessed was sent to the State health lab.[5] PH:2.

The day after his traffic stop and arrest, Bradshaw made his initial appearance. SR:24. He was released on PR bond. SR:5. A Minnehaha County Grand Jury indicted Bradshaw on February 28, 2024, alleging the same counts as the Complaint. SR:6. Minnehaha County filed a Part II Information under SDCL 22-7-7, alleging Bradshaw was convicted of a prior felony drug offense. SR:8.

In March, the circuit court issued a scheduling order setting a plea offer deadline of April 5, 2024. SR:10. The same order stated that a "plea agreement reached after [May 22, 2024] . . . will result in

---

[4] This second case alleging possession, opened the day Bradshaw pled guilty in CRI23-4626, is the basis for this appeal, CRI24-298. SR:23. Based on Bradshaw's January 2024 felony drug arrest, Minnehaha County filed a Motion to Revoke Bradshaw's suspended sentence in file CRI23-4626. SR:23.

[5] A typographical error led the Deputy State's Attorney to say at the plea hearing that the substance was sent to the lab on January 9, 2024. PH:2. It was actually sent January 19, not January 9, 2024.

an Open Plea." SR:10. Trial was scheduled to begin June 17, 2024. SR:10.

No plea offer was made by the April 5 deadline. So on May 9, 2024, Bradshaw moved for a delay in the case and the circuit court granted his request. SR:11. An order was filed the same day, and a new scheduling order was issued. SR:11. Again, on June 20, 2024, Bradshaw moved for another delay and an order granting the motion was issued. SR:12. But that same day, Bradshaw filed a second request for delay because he had received a plea offer and wanted time to discuss it with his attorney and family. SR:13, 29. Trial was reset for September 9, 2024. SR:13.

The parties informed the circuit court they had reached a plea agreement. SR:24. Two days after the second order granting Bradshaw's delay request, a change of plea hearing was requested by Bradshaw. SR:15. It was set for July 22, 2024. SR:24.

The parties appeared that day so Bradshaw could enter a guilty plea. PH:2. The circuit court began the hearing by saying "I'm being told we don't have testing back yet from Pierre." PH:2. Minnehaha County confirmed it had "yet to receive the results of that testing and have been unable to provide it to the Defense." PH:2. In response, Bradshaw requested that the case be dismissed. PH:2.

The circuit court invited Bradshaw's counsel to discuss two things: where Bradshaw's mother flew in from to attend the hearing,

and how other counties are handling Delta-8 and Delta-9 cases. PH:2-3. The circuit court then stated, "And your predicament, Sonny, is that you don't know whether the – whatever your client possesses is actually a drug or not. I mean was [it] actually illegal or not because you don't know if it's Delta-8, -9, or some other subsection?" PH:4. Bradshaw's counsel responded that the drug's container was not labeled. PH:4.

The circuit court then dismissed the case. PH:4. It held, "I think six and a half months for testing on something as straight forward as one drug sample is too late, too slow." PH:4. It continued:

> I'm not saying in every case I would dismiss at six and a half months, but this is a defendant who has scholarship and college ramifications for whether he pleads or not. This has been delayed several times already giving the State's additional time in which to get the drugs taken care of and tested.
>
> The fact that mom did fly in from Chicago is important. I think that's a factor in support. We say that we have a 180-day rule and we enforce that in almost no cases because there is [sic] so many delays, but at the same time this is a young man who's been facing this felony charge and the State simply cannot prove that it's [a] felony and I think it's appropriate to dismiss it.

PH:4-5.

Finally, the circuit court noted that if Minnehaha County wants to prosecute these felony drug charges, "then Pierre needs to support them and get the testing done to show that it is actually an illegal and felony-level substance if they want kids to come in and plead to felonies." PH:5. The circuit court also dismissed Minnehaha County's

motion to revoke Bradshaw's suspended sentence in file CRI23-4626. PH:5.

After the hearing, Bradshaw filed proposed findings and conclusions. SR:30. Citing SDCL 23A-44-3, the proposed conclusions alleged "the court finds that over six months to complete drug testing of one substance amounts to unnecessary delay." SR:32.

Before those proposed findings and conclusions were signed, Minnehaha County filed Objections and a Motion to Reconsider. SR:20, 23. First, Minnehaha County pointed out that the circuit court never mentioned SDCL 23A-44-3 as its legal basis for dismissal at the hearing. SR:20. Second, Minnehaha County argued it has no power or authority to "get" or expedite drug testing by the State health lab, as each are separate government entities. SR:21.

As for its Motion to Reconsider, Minnehaha County argued four general issues. First, it argued against dismissal based on the 180 Day Rule, or SDCL 23A-44-5.1 – the only legal basis referenced by the circuit court at the hearing. SR:24. Minnehaha County noted that Bradshaw's initial appearance was on January 17, 2024, the case was dismissed on July 22, 2024, and Minnehaha County requested no delays in the interim. SR:24. Thus, without any time excluded, 187 days had elapsed since Bradshaw's initial appearance, and excluding the delays resulting from Bradshaw's requests, 113 days

had elapsed. SR:24. Consequently, Minnehaha County argued, no prejudice regarding delay is presumed. SR:25.

Next, Minnehaha County noted SDCL 23A-8-2 provides nine statutory, and exclusive, grounds for the dismissal of an indictment and none of those were present. SR:25.

Further, as to the circuit court's rebuke of Minnehaha County's delay in offering Bradshaw a plea offer, Minnehaha County argued SDCL 23A-44-3 contemplates dismissal is appropriate if there is delay in bringing a case to trial, not in presenting a plea offer. SR:25-26.

Lastly, as to the circuit court's conclusion that the county "simply cannot prove that it's felony and I think it's appropriate to dismiss it[,]" Minnehaha County argued no authority supports the proposition that a prosecutor is required to prove its case before trial. SR:26 (referencing PH:4-5). Rather, Minnehaha County argued, its burden is beyond a reasonable doubt at trial alone. SR:26. "The essence of a plea bargain is the defendant accepting responsibility for the crime and thereby relieving the State of its burden of proof at trial." SR:26.

The circuit court responded by authoring its own findings, conclusions, and order. SR:34, APP:001. It clarified that it did not base its ruling on the 180 Day Rule, but rather, on SDCL 23A-44-3. SR:37. Even if the 180 Day Rule were in play, the circuit court said,

the reason for Bradshaw's delay requests was Minnehaha County's failure to make a timely plea offer. SR:27.

The circuit court also held that Minnehaha County "could neither offer a factual basis to support a plea nor proceed to trial without confirmation that the substance possessed by Defendant was in fact a controlled drug or substance. These facts constitute unnecessary delay under SDCL 23A-44-3." SR:37.

And again, citing Minnehaha County's "choice to prosecute" these felony drug charges, the circuit court said, "Minnehaha County must have the ability to secure timely testing of substances to support its felony charging decisions." SR:37.

Finally, the circuit court "having found unnecessary delay in the prosecution of these cases due to the failures to comply with [c]ourt-imposed deadlines and the failure to secure testing results in a timely manner, dismisses the Indictment in CRI24-298 and the Motion to Revoke in CRI23-4626 pursuant to SDCL 23A-44-3." SR:37.

The State appeals the dismissal under SDCL 23A-44-3.

STANDARD OF REVIEW

Whether a circuit court grants or denies a motion to dismiss an indictment is typically reviewed for an abuse of discretion. *State v. Vatne*, 2003 S.D. 31, ¶ 8, 659 N.W.2d 380, 383. But whether a circuit court has the authority to dismiss an indictment based on that court's interpretation of a statute is a question of law, which this Court

reviews de novo. *State v. Blakey*, 2001 S.D. 129, ¶ 5, 635 N.W.2d 748, 750 (citing *State v. Cameron*, 1999 S.D. 70, ¶ 7, 596 N.W.2d 49, 51).

This case requires statutory interpretation, and "[s]tatutory interpretation is a question of law subject to de novo review." *State v. Jackson*, 2020 S.D. 53, ¶ 35, 949 N.W.2d 395, 406 (quoting *State v. Davis*, 1999 S.D. 98, ¶ 7, 598 N.W.2d 535, 537). In addition, "we review the determination of whether [a] period has expired as well as what constitutes good cause for delay, under a de novo standard." *State v. Hetzel*, 1999 S.D. 86, ¶ 7, 598 N.W.2d 867, 868 (citing *State v. Fowler*, 1996 S.D. 79, ¶ 10, 552 N.W.2d 391, 392, and *State v. Cooper*, 421 N.W.2d 67, 69 (S.D. 1988)).

"The court's findings of fact are reviewed under the clearly erroneous standard, but we give no deference to the court's conclusions of law." *State v. Grassrope*, 2022 S.D. 10, ¶ 7, 970 N.W.2d 558, 560.

ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT DISMISSED BRADSHAW'S CRIMINAL INDICTMENT FOR UNNECESSARY DELAY UNDER SDCL 23A-44-3.

The circuit court dismissed Bradshaw's case under SDCL 23A-44-3. That statute says:

> If there is unnecessary delay in presenting a charge to a grand jury or in filing an information against a defendant who has been held to answer to a circuit court, or if there is unnecessary delay in bringing a defendant to

> trial, a court may dismiss his indictment, information or complaint.

The circuit court found Minnehaha County caused unnecessary delay under the second part of the statute – in bringing Bradshaw to trial – for two reasons.

First, the circuit court concluded dismissal was appropriate because of "the failure to secure testing results in a timely manner[.]" SR:37.

Second, the circuit court found "unnecessary delay in the prosecution of these cases due to the failures to comply with Court-imposed deadlines . . . ." SR:37. It chided Minnehaha County for committing "two violations of the Court-imposed plea offer deadlines[,]" emphasizing that Minnehaha County "could neither offer a factual basis to support a plea nor proceed to trial without confirmation that the substance possessed by Defendant was in fact a controlled drug or substance." SR:37.

But the circuit court improperly dismissed the underlying criminal case for four reasons. At the outset, the circuit court improperly questioned the prosecutor's ability to "prove" its case. In other words, in its dismissal of the case, the circuit court inappropriately questioned the sufficiency of the evidence upon which the indictment was based – a burden for trial, not pretrial negotiations.

As to the conclusion that Minnehaha County failed to timely secure testing results, no unnecessary delay under SDCL 23A-44-3 occurred. Minnehaha County did not intentionally delay Bradshaw's prosecution or cause any needless postponement. In fact, Minnehaha County submitted the sample for testing three days after the Complaint was filed. Minnehaha County has no control over how quickly the State health lab processes samples and delivers testing results.

Next, even if an unnecessary delay occurred, Bradshaw was not prejudiced. Though the new felony charges arose while Bradshaw was on probation for another felony, he was immediately released on a PR bond and his liberties were not otherwise restrained.

Finally, as to the second basis for dismissal, it was improper for the circuit court to dismiss the indictment for any failure to provide Bradshaw with a plea agreement by a certain date because of the plain language of the statute and court's order, and because neither Bradshaw nor any defendant are entitled to a plea offer.

I. The Circuit Court Improperly Questioned the Sufficiency of the Evidence.

Bradshaw's case was dismissed primarily because Minnehaha County had not yet received test results back from the State health lab. The circuit court concluded "the State simply cannot prove that it's [a] felony and I think it's appropriate to dismiss it." PH:4-5. It said Minnehaha County "could neither offer a factual basis to support a

plea nor proceed to trial without confirmation that the substance possessed by Defendant was in fact a controlled drug or substance." SR:37.

But it was error for the circuit court to question Minnehaha County's ability to "prove" its case when Bradshaw asked for the plea hearing and showed up prepared to enter a plea. This Court has long held that a trial court cannot question the legality or sufficiency of the evidence when considering the dismissal of an indictment. *See Cameron*, 1999 S.D. 70, ¶ 11, 596 N.W.2d at 52 (reversed for the trial court's consideration of the facts of the case in making its decision to dismiss); *Blakey*, 2001 S.D. 129, ¶ 6, 635 N.W.2d at 750 (reversed for the circuit court's consideration of the facts upon which the indictment was based to conclude the facts did not sufficiently prove the crime charged).

Cameron and *Blakey* were decided based on SDCL 23A-8-2, the statute articulating the nine exclusive grounds for dismissing an indictment or information upon the motion of a defendant. This Court has never directly said this rule on inquiring about the sufficiency of the evidence applies to dismissal under SDCL 23A-44-3, but it has under SDCL 23A-44-2.[6]

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[6] SDCL 23A-44-2 says, "A prosecuting attorney may file a dismissal of an indictment, information, or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during a trial without the consent of the defendant."

This case is not too far removed from the one in which this Court built that bridge. In *State v. Schladweiler*, 436 N.W.2d 851 (S.D. 1989), the parties scheduled a criminal trial. Before trial began, the circuit court held a motions hearing. "During the hearing, the focus of the arguments shifted from the propriety of Schladweilers' [sic] motions and instead turned to whether State had sufficient evidence to prove [its case]." *Id.* at 852. As here, the circuit court informed the prosecutor it believed the county could not prove its case. *Id.* In response, the prosecutor asked if the county could dismiss the indictment without prejudice under SDCL 23A-44-2. *Id.* at 853. The trial court dismissed the case but did so with prejudice. *Id.*

This Court reversed the circuit court's dismissal with prejudice. *Id.* at 854. Important here, this Court held "the trial court cannot inquire into the legality or sufficiency of the evidence upon which an indictment is based when considering a dismissal under SDCL 23A-8-2." *Id.* This Court applied that rule in a SDCL 23A-44-2 case and should do the same here for SDCL 23A-44-3.

After all, the plain language of the statute says nothing about the sufficiency of the evidence. It only references timing, described as "unnecessary delay." SDCL 23A-44-3. This improper weighing in on the prosecutor's ability to prove its case outside of trial is exactly what the circuit court did here. It held "the State simply cannot prove that it's [a] felony and I think it's appropriate to dismiss [the indictment]."

PH:5. By doing so, it improperly "inquire[d] into the legality or sufficiency of the evidence upon which [the] indictment is based." *Schladweiler*, 436 N.W.2d at 854. This Court has also emphasized that state law explicitly prohibits the circuit court from meddling in plea negotiations. *State v. Ledbetter*, 2018 S.D. 79, ¶ 19, 920 N.W.2d 760, 764 (citing SDCL 23A-7-8).

The circuit court's flawed analysis ignored the realities of a plea bargain. A prosecutor need not establish proof beyond a reasonable doubt for a defendant to enter a plea. Instead, the court must only be subjectively satisfied that a factual basis exists for the plea. *State v. Schulz*, 409 N.W.2d 655, 658 (S.D. 1987). *See also* SDCL 23A-7-2 (stating, in part, "The court may not enter a judgment unless it is satisfied that there is a factual basis for any plea except a plea of nolo contendere.") and SDCL 23A-7-14 ("The court shall defer acceptance of any plea except a plea of nolo contendere until it is satisfied that there is a factual basis for the offense charged or to which the defendant pleads."). And although the circuit court concluded Minnehaha County could not prove a factual basis without the test results, the law provides that the factual basis may come from anything that appears on the record, including, at its simplest, a reading of the indictment and the defendant's admission of the acts described. *State v. Nachtigall*, 2007 S.D. 109, ¶ 5, 741 N.W.2d 216, 219. Even in cases where defendants maintain their innocence, a court can accept a plea

of nolo contendere if there is strong evidence a crime was committed based on transcripts, testimony, sworn statements, or other evidence, tangible or otherwise. *Id.*

The record does not reflect what the plea agreement was in this case, nor what other evidence existed outside the substance sent for testing, but it does reveal Bradshaw asked for the plea hearing on July 22, 2024, suggesting he was prepared to admit to one or both counts alleged against him that day. It was improper for the circuit court to dismiss the indictment based on its perception that Minnehaha County could not prove its case.

Simply put, a plain reading of SDCL 23A-44-3 asks a court to only consider "unnecessary delay" – that is, timing, not factual or legal sufficiency. Yet when considering any delay in the prosecution of this case, this Court will find none.

II. SDCL 23A-44-3 Was Misapplied.

The State's argument requires statutory interpretation, the rules of which are well settled:

> "The purpose of statutory interpretation is to discover legislative intent." *State v. Bryant*, 2020 S.D. 49, ¶ 20, 948 N.W.2d 333, 338. "[T]he starting point when interpreting a statute must always be the language itself." *Id.* "We therefore defer to the text where possible." *State v. Armstrong*, 2020 S.D. 6, ¶ 16, 939 N.W.2d 9, 13. "When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed." *Id.* "In conducting statutory interpretation, we give words their plain meaning and

> effect, and read statutes as a whole." [*State v.*] *Thoman*, 2021 S.D. 10, ¶ 17, 955 N.W.2d [759,] 767.

State v. Bettelyoun, 2022 S.D. 14, ¶ 24, 972 N.W.2d 124, 131 (cleaned up).

Though not facially apparent, SDCL 23A-44-3 originated as South Dakota's only "speedy trial" statute, in our code even before our Constitution was adopted in 1889. Rev. Code 1877, §§ 596 and 601. *See also State v. Werner*, 78 S.D. 562, 566, 105 N.W.2d 668, 670 (1960) (discussing the history of South Dakota's speedy trial laws). It required that a defendant be brought to trial "during or before the second [jury] term after the one at which the indictment or information is filed[.]" Rev. Code 1919, § 4808. *See also State v. Fleming*, 20 N.D. 105, 126 N.W. 565 (1910) (defining a "regular term" as a jury term) and *State v. Fogg*, 79 S.D. 576, 584, 115 N.W.2d 889, 893 (1962) (Smith, J., concurring specially) (describing terms of circuit court in most counties as opened at six-month intervals). The law morphed in form and number only, in 1960, when it became SDC § 34.2202, still permitting dismissal if a defendant hadn't been brought to trial before the second jury term after he was indicted. SDC § 34.2202.

Then, in 1978, it and the preceding statute, SDC § 34.2201, were abbreviated and amalgamated to create their current form – SDCL 23A-44-3. No longer required to try an accused before the second jury term, courts faced a new challenge – boundless time

limitations, so long as any delays weren't "unnecessary" ones. The once bifurcated law hasn't changed since, and this Court has issued no opinions referencing SDC § 34.2202 since 1945. *State v. Smith*, 70 S.D. 402, 18 N.W.2d 246 (1945). This Court has never issued an opinion citing SDCL 23A-44-3 – a nod to its desuetude.

It is no wonder, really. The equal-justice-seeking revolutions of the 1970's echoed in the law, and particularly in the speedy trial rights of the accused. *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), set out a four-part test to analyze constitutionally centered delays before trial. After that, the Speedy Trial Act of 1974 established time limits for the completion of various stages within a federal criminal prosecution. *See* 18 U.S.C. §§ 3161-3174. By 1984, the ripple hit our state.

That's when this Court published Supreme Court Rule 85-4, which included Section XIII, a proposed new speedy trial statute. It set out that all criminal cases must be disposed of within 180 days after a defendant's first appearance, subject to good cause exceptions. Supreme Court Rule 85-4, § XIII.[7] This Court invited objections or proposed amendments from any interested persons, all of which were

[7] The Notice of Hearing for Supreme Court Rule 85-4 included a 120 day limit, but the adopted version named 180 days instead.

required to be reduced to writing.[8] After a hearing held on December 11, 1984, this Court adopted what is now SDCL 23A-44-5.1, our current 180 Day Rule.

With the speedy trial rule now clearly defined and firmly established in SDCL 23A-44-5.1, the vague latter portion of SDCL 23A-44-3 effectively became obsolete. A well-known rule of statutory construction is that "the more specific statute governs the more general statute." *Peterson, ex rel. Peterson v. Burns*, 2001 S.D. 126,

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[8] Several objections were received by this Court. *See* Supreme Court Rule 85-4 Hearing Correspondence, Letters of Carl W. Quist, President of the Sixth Judicial Circuit (saying the proposed rule "has no effect" and "Fails to recognize trials."); James D. Leach, Attorney at Law (calling the proposed law "totally unrealistic," as it "would work a revolutionary change in our criminal justice system . . . [and] would be tremendously disruptive of the existing system."); George E. Grassby, as a practicing attorney and in his capacity as the Director of the Public Defender's Office for Pennington County (calling the rule "too vague and unrealistic," "undefined," warning it "will provide a significant amount of appellate work for purposes of definition," and noting "Many felony cases take over 120 days to properly prepare both to prosecute and to defend.").

The same criticisms echoed in the federal realm. James E. Moore, *State v. Hoffman: The 180-Day Rule and A Lack of Balance*, 33 S.D. L. Rev. 165, 170 (1988). The Speedy Trial Act was adopted over the objections of the U.S. Department of Justice and many judges, one writing: "It is discouraging that our highly refined and complex system of criminal justice is suddenly faced with implementing a statute that is so inartfully drawn as this one." *Id.* (citing *United States v. Tirasso*, 532 F.2d 1298, 1301 (9th Cir. 1976)).

The State found only one letter filed with this Court in support of proposed Supreme Court Rule 85-4, § XIII, and it came from the State Bar Association, stating, "The Bar Commissioners urge the adoption of proposed rule XIII. They believe it offers potential benefits to County Commissioners and taxpayers generally."

¶ 28, 635 N.W.2d 556, 567; *Faircloth v. Raven Indus., Inc.*, 2000 S.D. 158, ¶¶ 11, 18, 620 N.W.2d 198, 202–03. It defies logic for a court to rely on SDCL 23A-44-3's imprecise requirement that a defendant be brought to trial without "unnecessary delay" when SDCL 23A-44-5.1 requires that a defendant be brought to trial within 180 days, a functional defining of the term "unnecessary" from its predecessor.[9]

This interpretation proposes no reinvention of the wheel. When this Court reviewed "unnecessary delay" under SDCL 23A-4-1 in 2009, it resolved to rely on a more precise time limit defined by the United States Supreme Court (48 hours, in that case). *State v. Larson*, 2009 S.D. 107, ¶ 11, 776 N.W.2d 254, 258 (citing *County of Riverside v. McLaughlin*, 500 U.S. 44, 56–57 (1991)). That is the appropriate measure here, referring to the defined time of 180 days under SDCL 23A-44-5.1.

This being so, if the circuit court intended to dismiss the case based on untimeliness, it should have relied on SDCL 23A-44-5.1 instead of SDCL 23A-44-3. And under SDCL 23A-44-5.1, dismissal was inappropriate.

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[9] *See also* Wyo. Stat. Ann. § 7-11-203, worded identically to SDCL 23A-44-3, and still a valid yet essentially unused statute in Wyoming. It originated as Wyo.Comp.Laws, ch. 14, § 150 (1876), similarly in state code before the state's Constitution. Yet Wyoming, too, adopted a 180 Day Rule in 1979 and has not used Wyo. Stat. Ann. § 7-11-203 for speedy trial bases since. *See* Wyo. R. Crim. P. 48 (Rule 48(b)(2)). *See also Harvey v. State*, 774 P.2d 87, 98 (Wyo. 1989) (Urbigkit, J., concurring specially) (providing a colorful illustration of the statutory speedy trial history of Wyoming).

a. There Was No 180 Day Rule Violation.

When considering a dismissal based on timeliness, a circuit court should only look to SDCL 23A-44-5.1, requiring a defendant go to trial within 180 days from the date he makes a first appearance. "The 180–day rule is a procedural rule of court and not a constitutional requirement." *State v. Duncan*, 2017 S.D. 24, ¶ 14, 895 N.W.2d 779, 782. And one of the driving questions behind the analysis is whether the delay is attributable to the defendant. *State v. Two Hearts*, 2019 S.D. 17, ¶ 10, 925 N.W.2d 503, 509; *Hays v. Weber*, 2002 S.D. 59, ¶ 23, 645 N.W.2d 591, 599; *State v. Webb*, 539 N.W.2d 92, 96 (S.D. 1995); *State v. Cross*, 468 N.W.2d 419, 421 (S.D. 1991). Of the enumerated exceptions to be excluded from the 180 days, one is most relevant here:

> (4) The following periods shall be excluded in computing the time for trial: . . .
>
> (b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel provided it is approved by the court and a written order filed. . . .

SDCL 23A-44-5.1(4)(b). Exclusion of these days is not optional; the rule mandates they be excluded from the 180 days. SDCL 23A-44-5.1(4). Indeed, when the 180 Day Rule is tolled for a reason enumerated within SDCL 23A-44-5.1(4)(a) through (4)(f), a motion for good cause need not be filed. *Hays*, 2002 S.D. 59, ¶ 20, 645 N.W.2d at 598. The 180 Day Rule was intended to address ineffective

scheduling practices and intentional delays by either party. *State v. Hoffman*, 409 N.W.2d 373, 375 (S.D. 1987).

As Minnehaha County pointed out to the circuit court, it still had time to bring the case to trial. Bradshaw's first appearance was on January 17, 2024. SR:3. His case was dismissed July 22, 2024, a total of 187 days later. PH:5. But Bradshaw filed three motions for delay and the circuit court granted three delay orders. SR:11, 12, 13. These delay requests began May 9, 2024, and continued through the disposal of the case. SR:11. Thus, 74 days must be excluded under SDCL 23A-44-5.1(4)(b). This leaves only 113 days from Bradshaw's initial appearance to dismissal. As a result, no prejudice to the defendant is presumed, no good cause for delay need be shown, and the State need not rebut any preconceptions based on the delay. *Two Hearts*, 2019 S.D. 17, ¶ 11, 925 N.W.2d at 509; SDCL 23A-44-5.1(5).

Despite Minnehaha County's timing argument, the circuit court faulted Minnehaha County for Bradshaw's delay requests and for violating the circuit court's plea offer deadlines. In doing so, three errors were made. First, it failed to recognize that no defendant is entitled to a plea offer, as discussed more thoroughly under Issue III. Second, it ignored the clarity in the record showing the requests were made by Bradshaw. And what follows, then, is that Bradshaw wanted those delays because, as stated directly in his requests, he wanted a plea offer. SR:11, 12, 13. He did not object to any deferment of the

proceedings, and he did not demand a trial. He asked the circuit court to postpone trial for his own benefit. And "where a defendant assents to a period of delay and later attempts to take advantage of it, courts should be loathe [sic] to find a violation of an accused's speedy trial rights." *Two Hearts*, 2019 S.D. 17, ¶ 16, 925 N.W.2d at 511 (quoting *State v. Cottrill*, 2003 S.D. 38, ¶ 11, 660 N.W.2d 624, 630).

A delay of 113 days is not enough to justify the dismissal of this felony drug case. Minnehaha County asked the circuit court for a "reset" for the first time on July 22, 2024, so it could "try and expedite that testing." PH:2. Its request should have been granted. Minnehaha County still had time to obtain the test results, move for continuance under SDCL 23A-44-5.1(4)(c) because of the unavailability of evidence material to its case,[10] move the court for good cause delay under SDCL 23A-44-5.1(4)(h), or proceed in some other fashion.

There was no 180 Day Rule issue here, so there was no basis for dismissal. Even if this Court disagrees, there was no unnecessary delay.

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[10] This is arguably what Minnehaha County did at the July 2024 hearing when it asked for a reset.

b. There Was No Unnecessary Delay.

"Unnecessary delay" is not defined by our Legislature. This Court has never opined on the meaning of "unnecessary delay" regarding the prosecution of a case under SDCL 23A-44-3. But this Court has analyzed it under SDCL 23A-4-1,[11] the statute requiring an arrested person to be brought before the nearest available magistrate without "unnecessary delay." A review of these cases reveals two things: for a delay to be "unnecessary," it implies an intentional bad-faith act or needless postponement by the prosecutor, and an accused must be prejudiced by the delay. Neither are present here.

Bad faith or needless postponement seem to be intertwined with necessity and reasonableness when considering delays. In *State v. Poss*, this Court explained the "unnecessary delay" in that case was "not the result of accident, inadvertence, or even gross negligence," but

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[11] SDCL 23A-4-1 says:

> A law enforcement officer shall, without unnecessary delay, take the arrested person before the nearest available committing magistrate. Any person, other than a law enforcement officer, making an arrest shall, without unnecessary delay, take the arrested person before the nearest available committing magistrate or deliver him to the nearest available law enforcement officer. If a person arrested without a warrant is brought before a committing magistrate, a complaint shall be filed forthwith. Unless given a court appearance date and released from custody, a person, arrested with or without a warrant or given a summons, shall appear initially before a committing magistrate in person or via ITV, without unnecessary delay, at which time the committing magistrate shall proceed in accordance with the applicable provisions of §§ 23A-4-2 to 23A-4-5, inclusive.

the result of a "willful, intentional act" by the prosecutor to solicit information from defendant before his appointment of a lawyer. *State v. Poss*, 298 N.W.2d 80, 85 (S.D. 1980). The Court concluded that "*[c]alculated* delay in a defendant's right to be taken before a judicial officer cannot be justified by self-ordained zeal and has no place in this state's system of criminal justice." *Id.* (emphasis added). The delay was unnecessary because it stemmed from the bad faith of the prosecutor. *Id.* Even so, this Court affirmed Poss's conviction because there was no prejudice.

In *State v. Langen*, this Court analyzed the 180 Day Rule and special attention was given to the fact that "Minnehaha County prosecutors were not dilatory" in their effort to abide by the Rule. *State v. Langen*, 2021 S.D. 36, ¶ 27, 961 N.W.2d 585, 591. When "[t]here is no evidence that the State was dilatory," good cause existed to justify the delay. *Id.* ¶ 30.

In *State v. Lohnes*, Justice Wollman noted an important aspect of the delay in that case was "the *good faith, diligent efforts*, ultimately unavailing, of the law enforcement officers . . . ." *State v. Lohnes*, 324 N.W.2d 409, 418 (S.D. 1982), overruled on other grounds by *State v. Waff*, 373 N.W.2d 18 (S.D. 1985) (Wollman, J., concurring in part) (emphasis added).

And *State v. Owen* notes that the Alaska Supreme Court explained that a delay was "reasonable" because law enforcement was

not delaying for the purpose of gathering more evidence to justify its actions. *State v. Owen*, 2007 S.D. 21, ¶ 27, 729 N.W.2d 356, 366 (citing *Riney v. State*, 935 P.2d 828, 837 (Alaska Ct. App. 1997)). Thus, a "reasonable" delay "does not constitute unnecessary delay." *Id.* *See also Werner*, 78 S.D. at 566, 105 N.W.2d at 670 (analyzing earlier versions of SDCL 23A-44-3 and using the word "unreasonable" interchangeably with, or in place of, "unnecessary"), and *Larson*, 2009 S.D. 107, ¶¶ 11-12, 776 N.W.2d at 258-59 (same when considering SDCL 23A-4-1).

As the circuit court pointed out, the delay here was beyond the control of the prosecutor's office. PH:2. The State health lab is under the control of the Department of Health, under the umbrella of the Executive Branch. SDCL ch. 34-1. It serves dozens of functions as it promotes the general health of the public, coordinates access to and delivers quality health care services, works to prevent and control communicable diseases, provides inspection and certifications of facilities, and navigates public health preparedness and response efforts. South Dakota Department of Health Strategic Plan, https://doh.sd.gov/about/strategic-plan/ (last visited September 24, 2024). The testing of drugs is one portion of one function it performs. It has no duty to investigate or prosecute crimes. In contrast, the Minnehaha County State's Attorney's office is the main prosecutor for adult and juvenile crimes in Minnehaha County alone. It is, in

essence, a customer of the State health lab – not an entity with the authority to demand a service be provided faster.

Minnehaha County did not delay in sending the sample to the lab. Minnehaha County did not delay in filing its Complaint and Indictment. It did not fail to preserve any evidence or destroy it. It was not delaying the case in bad faith to gather more evidence against Bradshaw. It was waiting for lab results – a process entirely out of its hands. "There is no evidence that the delay resulted from governmental misconduct or gross neglect or that the government took advantage of any delay." *United States v. Perez*, 306 F. App'x 929, 933 (6th Cir. 2009) (a federal speedy trial analysis). *See also State v. Velasquez*, 2016 MT 216, ¶ 51, 384 Mont. 447, 463, 377 P.3d 1235, 1248 (dismissal appropriate on speedy trial grounds after 309 day delay for the "*State's inaction* toward obtaining timely drug-testing") (emphasis added).

A Court of Appeals in Texas recently decided a case nearly identical to Bradshaw's. Justin Beck was charged with driving while intoxicated. *State v. Beck*, No. 01-23-00003-CR, 2024 WL 1914799, at *1 (Tex. App. May 2, 2024). Twenty-two months later, Beck moved to dismiss the case on constitutional speedy trial bases. *Id.* The prosecutor admitted most of the delay was because of "a significant backlog" at the State health lab. *Id.* at *2. The trial court dismissed the case, concluding, in part, "the delay was due to the lab's failure to

timely test the evidence and thus was attributable solely to the State's negligence or misconduct[.]" *Id.* The prosecutor moved to reconsider, which was denied, and appealed the dismissal. *Id.* at *3.

The appellate court reversed the trial court after applying the *Barker v. Wingo* four-factor speedy trial test that South Dakota adopted for constitutional challenges in 1972.[12] *State v. Starnes*, 86 S.D. 636, 649, 200 N.W.2d 244, 252 (1972).[13] Particularly relevant here, the court found the "undue delay by the DPS laboratory in testing Beck's blood and in failing to timely report the results of the test afterward" did not constitute "negligence or misconduct, since there [was] no evidence of misconduct." *Beck*, 2024 WL 1914799, at *10, *13. The court also faulted Beck for not asserting his right to a speedy trial until twenty-two months after his arrest. *Id.* at *11. Beck

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[12] The statutory right to a speedy trial differs from the constitutional right to a speedy trial. Indeed, "SDCL 23A–44–5.1 is clear and unambiguous on its face. It requires a disposition of criminal matters within 180 days lacking good cause for delay." *Hoffman*, 409 N.W.2d at 375. In contrast, the statute is not

> synonymous with the constitutional requirement for a speedy trial, thus the four-factor test used to determine whether a defendant has received a speedy trial set forth in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), is inapplicable to an analysis of an alleged violation of SDCL 23A–44–5.1.

Id.

[13] The four-factor test to be applied in determining whether a defendant's Sixth Amendment right to a speedy trial has been violated is: (1) The length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) prejudice to the defendant. *State v. Stock*, 361 N.W.2d 280, 284 (S.D. 1985).

not only consented to the delays during that time, but also failed to request a hearing or trial date. *Id.* "Beck's demand for a speedy trial was tardy and much of his conduct was inconsistent with someone who desired a speedy trial rather than dismissal." *Id.* As to prejudice, the appellate court found "It is undisputed that Beck made bond after his arrest and remained free for the duration of the proceedings. Therefore, he suffered no prejudice from incarceration." *Id.* at *13. There was no unnecessary delay here, so this Court should similarly reverse the circuit court's order of dismissal.

c. If There Was Any Delay, Bradshaw Was Not Prejudiced.

The requirement that prejudice be present to justify dismissal is universal. "In these cases, this [C]ourt has required not only a showing of unnecessary delay but also prejudice to the defendant's fair trial rights." *State v. Lassiter*, 2005 S.D. 8, ¶ 13, 692 N.W.2d 171, 175; *State v. Little Long*, 2021 S.D. 38, ¶ 49, 962 N.W.2d 237, 255; *State v. Hintz*, 318 N.W.2d 915, 917 (S.D. 1982) (citing *State v. Erdmann*, 292 N.W.2d 97, 98–99 (S.D. 1980)); *State v. Provost*, 266 N.W.2d 96, 102 (S.D. 1978).

Much like Beck, Bradshaw's liberty was not impacted by the delay here. He was not detained in custody. The circuit court vaguely referenced "scholarship and college ramifications for whether he pleads or not," but nothing in the record reveals what those may have

been, and those are considerations relevant only after Bradshaw were to plead, if at all. PH:4. No other arguments pertaining to prejudice were raised by Bradshaw. And the circuit court did not list any factors relating to prejudice in its findings, conclusions, or dismissal order. SR:34.

Recently, in *State v. O'Neal*, this Court considered the defendant's motion to dismiss a case based on delay before issuance of an indictment on constitutional grounds. *State v. O'Neal*, 2024 S.D. 40, ¶ 35, 9 N.W.3d 728, 744. This Court held that it would not consider the reasons for delay because O'Neal had not shown prejudice. *Id.* ¶ 40. At any rate, it mentioned that even if he had shown prejudice, there was no evidence in the record that the State's delay was "to gain some tactical advantage." *Id.* Rather, the record showed the delay was for discovery purposes, not unlike here. In *O'Neal*, it was "regarding the volume of the images extracted from O'Neal's phone and hard drive that needed to be examined." *Id.* ¶ 40.

Here, the volume of samples needing to be tested by the State health lab is not too dissimilar and is out of the prosecutor's hands. The delay certainly did not result from Minnehaha County's intention to gain some tactical advantage. Because there was no prejudice to Bradshaw, dismissal was improper.

III. The Circuit Court Erred By Dismissing Under SDCL 23A-44-3 for Failure to Provide a Plea Agreement by the Court-Imposed Deadline.

The second basis for the circuit court's dismissal under SDCL 23A-44-3 was Minnehaha County's failure to provide Bradshaw with a plea offer by the court-imposed deadline. SR:37. But this, too, was wrong for three reasons. First, the plain language of SDCL 23A-44-3 allows a court to dismiss a criminal case "if there is unnecessary delay in bringing a defendant to trial . . . ." As the State argued above, failure to present a plea offer by the court's deadline has nothing to do with the timing in bringing Bradshaw to trial. Thus, it was improper for the circuit court to rely on this statute for dismissal by its clear terms.

Second, it is true that SDCL 23A-7-12 requires the parties to notify the circuit court of the existence of a plea agreement by a time fixed by the circuit court. The State does not question the importance of court-imposed deadlines and the necessity that the parties abide by those time limits. But neither SDCL 23A-44-3, nor any statute, demands that the case be dismissed for the failure to do so. The circuit court's scheduling order here stated exactly what the consequence would be if a plea agreement was not offered by the deadline: a "plea agreement reached after [the deadline] . . . will result in an Open Plea." SR:10.

And lastly, no defendant is entitled to a plea offer. *Fast Horse v. Weber*, 2013 S.D. 74, ¶ 28, 838 N.W.2d 831, 839; *Missouri v. Frye*, 566 U.S. 134, 148 (2012); *State v. Miller*, 2006 S.D. 54, ¶ 16, 717 N.W.2d 614, 619. Faulting a prosecutor for not providing a plea offer by a certain date cannot be the basis for dismissal. This is especially true here when the court dismissed the case for failure to bring Bradshaw to *trial* without "unnecessary delay." SDCL 23A-44-3. For these reasons, it was error for the court to dismiss the case for failure to provide a plea offer by a certain date.

CONCLUSION

The circuit court improperly questioned the factual sufficiency of Minnehaha County's case and misinterpreted SDCL 23A-44-3 in its dismissal of Bradshaw's indictment. Minnehaha County has no control over how quickly it receives drug test results and thus it was error for the circuit court to rely on "unnecessary delay" in dismissing the indictment.

The State requests that this Court reverse the circuit court's order dismissing Bradshaw's case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's Brief contains 7,563 words.

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

Dated this 7th day of October 2024.

/s/ Sarah L. Thorne
Sarah L. Thorne
Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 7, 2024, a true and correct copy of Appellant's Brief in the matter of *State v. Aidan Bradshaw* was served electronically through Odyssey File and Serve on Christopher Miles at cmiles@minnehahacounty.org.

/s/ Sarah L. Thorne
Sarah L. Thorne
Deputy Attorney General

APPENDIX

APPENDIX

1. Findings of Fact, Conclusions of Law, and Order Dismissing Indictment and MTR APP:001

STATE OF SOUTH DAKOTA) :SS COUNTY OF MINNEHAHA)	IN CIRCUIT COURT SECOND JUDICAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff vs. **AIDAN BRADSHAW,**	**49CRI 24-298** **49CRI 23-4626** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DISMISSING INDICTMENT AND MTR**

The above-captioned matter came before the Court on July 22, 2024, for a change of plea hearing before the Honorable Susan M. Sabers. Defendant Aidan Bradshaw (Defendant) appeared with his attorney, D. Sonny Walter. The State was present and represented by Deputy State's Attorney Brooke Quinlivan, who was covering the matter for another deputy state's attorney. The Court was advised that the suspected drug had not yet been tested or confirmed to be a felony-level substance, despite being submitted for testing on January 9, 2024. The State had neither received test results nor provided results to Defendant. The State requested a continuance to further await test results. Defendant objected and moved to dismiss the indictment[1] pursuant to SDCL 23A-44-3 for unnecessary delay.

After considering the arguments of counsel, this Court dismissed the Indictment in CRI 24-298 and the pending Motion to Revoke in CRI 23-4246, finding that unnecessary delay had indeed occurred. This Court's oral decision from July 22, 2024, is incorporated herein by this reference, except to the extent that it is inconsistent with this written decision. The State filed a Motion to Reconsider Oral Order to Dismiss

[1]Defendant also moved to dismiss the Motion to Revoke in 23-4626, which the parties agreed was based on these same facts-i.e., the Defendant's felony drug charge.

Indictment and Motion to Revoke as well as Objections to Defendant's proposed order of dismissal. The Motion to Reconsider is denied and the objections are overruled.

Defendant then filed Proposed Findings of Fact and Conclusions of Law, which were refused in part and granted in part. The Court makes the following:

FINDINGS OF FACT

1. On January 17, 2024, Defendant made his initial appearance in CR! 24-298.

2. An Indictment was filed on February 28, 2024, charging Defendant with a Class 5 Felony--knowing possession of Delta-9 Tetrahydrocannabinol, a controlled drug or substance.

3. The Court entered a Scheduling Order on March 13, 2024. The discovery/plea offer deadline was set for April 5, 2024. The motion/plea deadline was set for April 26, 2024. The trial reset deadline was set for May 22, 2024, with trial scheduled for June 17, 2024.

4. Defendant filed a Motion for Delay on May 9, 2024, stating that he had not yet received a plea offer from the State. By that date, the Court-imposed plea offer deadline had long since passed. The requested delay was granted and a new plea deadline was set for May 24, 2024, with a trial reset deadline of June 18, 2024, and a trial date of July 15, 2024.

5. Defendant filed another Motion for Delay on June 20, 2024, and the reason for that delay was again because he had not yet received a plea offer from the State. By that date, the State was several months overdue with regard to the Court-imposed plea deadlines. Nevertheless, the requested delay was again granted and another plea deadline was set for June 21, 2024, a trial reset deadline for July 17, 2024, and a trial date for August 12, 2024.

6. Defendant claims the State's failures to make timely plea offers was due to the lack of testing results on the substance at issue. (Def.'s Proposed Findings and Conclusions para. 5).

7. Later in the day on June 20th, Defendant filed another Motion for Delay, changing the reason behind his request. In that filing, Defendant stated that a plea offer had just been received from the State and counsel needed time to discuss it with the Defendant. The scheduling dates were again extended, resulting in a plea deadline of July 19, 2024, a trial reset deadline of August 14, 2024, and a trial date of September 9, 2024.

8. A Motion to Revoke Suspended Sentence was filed in CR! 23-4626 on June 30, 2024, based on Defendant's felony-drug arrest in CRJ 24-298.

9. The parties reached a plea agreement and these cases came before this Court on July 22, 2024, for a change of plea hearing. At that hearing, the State was not prepared to proceed because it did not yet have testing results for the substance at issue. This was so, despite claiming the substance had been sent for testing back on January 9, 2024. The State could not offer a factual basis to support a guilty plea, given the lack of proof of the presence of a controlled drug in the sample submitted. The State requested a continuance "to try and expedite that testing," to which Defendant objected. The State gave no indication as to how much longer the parties would have to wait for the testing results.

10. Based on the lack of test results and an inability to proceed with the plea agreement, Defendant moved to dismiss the Indictment and the Motion to Revoke based on unnecessary delay.

CONCLUSIONS OF LAW

1. Any Finding of Fact that is more properly a Conclusion of Law shall be deemed so, and any Conclusion of Law more properly a Finding of Fact shall be deemed so.

2. The Court has jurisdiction over the parties and the subject matter.

3. SDCL 23A-44-3 provides:

   If there is unnecessary delay in presenting a charge to a grand jury or in filing an information against a defendant who has been held to answer to a circuit court, or if there is unnecessary delay in bringing a defendant to trial, a court may dismiss his indictment, information or complaint.

4. This statute provides a basis for dismissal of charges for unnecessary delay in prosecution that is independent of any analysis or ruling as to the 180-day rule set forth in SDCL 23A-44-5.1.

5. As clarified in SDCL 23A-44-5, a dismissal under SDCL 23A-44-3 is not a bar to another prosecution for the same offense. A dismissal under SDCL 23A-44-5.1's 180-day rule, in contrast, is a dismissal with prejudice.

6. The State's assertions as to the 180-day rule contained within its Motion to Reconsider misapprehend the basis for the Court's ruling. The Court did not analyze the Motion to Dismiss as an alleged violation of the 180-day rule or, for that matter, make any rulings or calculations based on the 180-day rule.

7. The State argues that Defendant should be held responsible for the delay here because Defendant, not the State, filed the underlying motions for delay. That argument, although likely successful under a 180-day analysis, paints with too broad a brush in the current analysis. The ultimate reason for the first two delays was the State's failure to make a timely plea offer; the reason for the requested continuance at the plea hearing was the absence of test results, without which Defendant could not intelligently enter a plea and the State could not proceed to trial. Furthermore, the State agreed to set the matter for a plea hearing on the Court's calendar knowing that it lacked the test results necessary to proceed with the scheduled hearing.

8. After nearly seven months of delay, including two violations of the Court-imposed plea offer deadlines, the State was still not ready to prosecute this matter to conclusion because it lacked the necessary testing results to establish the presence of a controlled substance. The State could neither offer a factual basis to support a plea nor proceed to trial without confirmation that the substance possessed by Defendant was in fact a controlled drug or substance. These facts constitute unnecessary delay under SDCL 23A-44-3.

9. While some counties have apparently elected to not prosecute these types of drug cases, Minnehaha County has chosen otherwise—a decision squarely within the law. Given the choice to prosecute, however, Minnehaha County must have the ability to secure timely testing of substances to support its felony charging decisions. Unnecessary delay such as that present on the facts of this case interferes with the effective and efficient prosecution of drug offenders.

10. This Court, having found unnecessary delay in the prosecution of these cases due to the failures to comply with Court-imposed deadlines and the failure to secure testing results in a timely manner, dismisses the Indictment in CRI 24-298 and the Motion to Revoke in CRI 23-4626 pursuant to SDCL 23A-44-3.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following:

ORDER

It is hereby ORDERED that the Defendant's Motion to Dismiss the Indictment in CRI 24-298 and the Motion to Revoke in CRI 23-4626 is hereby GRANTED without prejudice pursuant SDCL 23A-44-3.

Dated at Sioux Falls, South Dakota this 16th day of August, 2024.

BY THE COURT

Honorable Susan M. Sabers
Circuit Court Judge

ATTEST:
Angelia Griese, Clerk of Courts
By: _____
Deputy

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 30809

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

vs.

AIDAN BRADSHAW,

Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

HONORABLE SUSAN M. SABERS
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal Filed on August 22, 2024

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IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

vs. No. 30809

AIDAN BRADSHAW,

Defendant and Appellee.

PRELIMINARY STATEMENT

The above-named Defendant and Appellee, Aidan Bradshaw, was arrested for unauthorized possession of a controlled drug or substance on January 16, 2024. Just over six months later, on July 22, 2024, at a hearing meant for a change of plea and possible sentencing, Mr. Bradshaw's case was dismissed by the Circuit Court pursuant to SDCL 23A-44-3 for unnecessary delay in prosecution due to the State's failure to comply with court-imposed deadlines and the State's failure to produce scientific test results confirming the contents of the alleged controlled drug or substance. The State appeals the Circuit Court's dismissal.

In this brief, the Minnehaha County State's Attorney's Office is referred to as "the State." The Attorney General is referred to as "the Appellant." The

Defendant and Appellee, Aidan Bradshaw, is referred to as "Mr. Bradshaw." The Honorable Susan M. Sabers presided over Bradshaw's criminal proceedings and is referred to as "the Circuit Court." Relevant documents are known as follows:

Settled Record (Minnehaha County 49CRI24-298)..... SR

All references will be followed by the appropriate page number.

JURISDICTIONAL STATEMENT

The State appeals the Circuit Court's Findings of Fact, Conclusions of Law, and Order Dismissing Indictment and MTR[1], entered on August 16, 2024. SR:34. On August 22, 2024, the State and Appellant filed its Notice of Appeal. SR:39. This Court has jurisdiction to hear this appeal pursuant to SDCL 23A-32-4(2).

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ERRED IN DISMISSING THE INDICTMENT AGAINST MR. BRADSHAW FOR UNNECESSARY DELAY PURSUANT TO SDCL 23A-44-3.

The Circuit Court dismissed the Indictment against Mr. Bradshaw for unauthorized possession of a controlled drug or substance for unnecessary delay in prosecution pursuant to SDCL 23A-44-3. Specifically, the Circuit Court found such unnecessary delay was caused by the State's failure to secure scientific testing results in a timely manner and the State's failure to provide Mr. Bradshaw with a plea offer at various court-imposed deadlines.

SDCL 23A-44-3

[1] MTR presumably stands for "Motion to Revoke"

STATEMENT OF CASE & FACTS[2]

On January 16, 2024, Aidan Bradshaw was arrested for possession of a controlled drug or substance and possession of drug paraphernalia. SR:1, 23. The next day, January 17, 2024, the State filed a Complaint against Mr. Bradshaw charging him with possession of a controlled drug or substance—specifically Delta-9 Tetrahydrocannabinol—in addition to possession of drug paraphernalia. *Id.* Mr. Bradshaw made his initial appearance in Court that same day and was released on a personal recognizance bond. SR: 4, 5. At a later hearing, the State indicated the substance allegedly possessed by Mr. Bradshaw on January 16, 2024, was sent to the South Dakota State Public Health Lab in Pierre, South Dakota, on January 9, 2024 (presumably, the State meant January 19, not January 9, as January 9 would have been prior to the alleged criminal activity occurring).[3] SR:15. Mr. Bradshaw's case was set for a 45-day preliminary hearing on March 1, 2024. SR:5.

The case against Mr. Bradshaw was indicted by a grand jury on February 28, 2024, presumably without any lab test results to confirm whether the substance allegedly possessed by Mr. Bradshaw was in fact a controlled drug or substance. SR: 6, 23. Mr. Bradshaw was arraigned on March 13, 2024, and the Court issued a scheduling order and scheduled trial for June 17, 2024. SR:10, 23.

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[2] Like the government, Mr. Bradshaw combined his Statements of the Case and Facts for brevity and clarity.

[3] See also Appellant's Br. 4.

The first deadline imposed by the Court was on April 5, 2024, which was a Discovery/Plea Offer Deadline. *Id.* By that date, the State was ordered to have provided defense counsel with discovery and a plea offer and the Defendant was ordered to have had contact with his attorney. *Id.* April 5 passed, and defense counsel was not provided with a plea offer nor with lab test results on the substance possessed by Mr. Bradshaw on January 17, 2024. *See* SR:11, 24. The State made no request for additional time to provide such materials to defense. *See id.*

The second deadline imposed by the Court was a Motion/Plea/Reset deadline on April 26, 2024. SR:10. By that date, defense counsel was ordered to file any non-standard pre-trial motions and supportive briefs, or if the case would be resolved with a plea, defense counsel was to inform the Court and the case would be scheduled for a plea. *Id.* Instead, defense counsel requested a delay, as he had not yet received a plea offer from the State, nor lab testing results, thus indicating the State's failure to comply with the April 5, 2024, Discovery/Plea Offer deadline.[4] SR:11, 24. The State's failure to comply with the Court's scheduling order was not addressed and instead, upon defense's request,

[4] According to the settled record, defense's delay request was made via written motion and order on May 9, 2024. However, in the Second Circuit, these deadlines are usually addressed first via email on the date of the deadline and, if granted, are followed by motions/orders for delay. Mr. Bradshaw concedes that such preliminary emails are not a part of the settled record in this case.

the case was then reset one-cycle, or four weeks, and a new Motion/Plea/Reset deadline was scheduled for May 24, 2024. *Id.*

Presumably on or about May 24, 2024,[5] again defense counsel requested a delay, citing the State's failure to send a plea offer by that new deadline. SR:12, 24. The case was again reset one-cycle, or four weeks, and a new Motion/Plea/Reset deadline was scheduled for June 21, 2024. *Id.* On June 18, 2024, defense counsel first requested an additional delay, again indicating no plea offer had been received, but within a few hours, defense was able to update their delay request citing "Just received plea offer. Need time to discuss with client and his family." SR: 28–29. The case was again reset one-cycle, or four weeks, and a new Motion/Plea/Reset deadline was scheduled for July 19, 2024. SR:13, 24. However, on June 20, defense informed the Court that a plea agreement had been reached between the parties, and Mr. Bradshaw's case was set for a change of plea hearing on July 22, 2024. SR:24.

Despite the State having sent the substance to the State lab in January 2024, and the State having 32-days' notice of the change of plea hearing, at the hearing on July 22, 2024, the State indicated that it had not yet received lab test results on the substance allegedly possessed by Mr. Bradshaw on January 17, 2024, and so the State requested a delay, based on its inability to proceed without

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[5] See, footnote 2, *supra*. According to the settled record, the defense's delay request was made via written motion and order dated June 20, 2024. However, a second delay request dated June 20, 2024, is contradicted by the date of defense's third request for delay on June 18, 2024, as evidenced by SR:28–29.

such test results. SR:15. Based on the State's inability to proceed, counsel for Mr. Bradshaw responded with a request to dismiss the case. *Id.* The Court granted counsel's request to dismiss the case, and the related motion to revoke a previously suspended sentence,[6] citing the State's inability to proceed as scheduled due to the delay in testing, and the fact that Mr. Bradshaw's and his family detrimentally relying on the State's implied readiness to proceed as scheduled on July 22, 2024. SR:17–18.

After the July 22, 2024, hearing, the State filed Objections to the Court's Order and a Motion to Reconsider. SR:20–27. Both were denied, and the Court entered its Findings of Fact and Conclusions of Law. SR:30–38. This appeal followed. SR:39.

STANDARD OF REVIEW

This Court reviews a Circuit Court's granting a motion to dismiss indictment for an abuse of discretion. *State v. Vatne*, 2003 S.D. 31, ¶ 8, 659 N.W.2d 380, 383.

ARGUMENT

THE TRIAL COURT DID NOT ERR WHEN IT DISMISSED MR. BRADSHAW'S CRIMINAL INDICTMENT FOR UNNECESSARY DELAY IN PROSECUTION PURSUANT TO SDCL 23A-44-3.

As noted in its Findings of Fact and Conclusions of Law, the Circuit Court dismissed Mr. Bradshaw's case pursuant to SDCL 23A-44-3, specifically for

[6] Case 49CRI23-4626. Appellee has no objection to Appellant's request that this Court take judicial notice of 49CRI23-4626.

unnecessary delay in prosecution. Mr. Bradshaw agrees that the text of SDCL 23A-44-3 reads:

> If there is unnecessary delay in presenting a charge to a grand jury or in filing an information against a defendant who has been held to answer to a circuit court, or if there is unnecessary delay in bringing a defendant to trial, a court may dismiss his indictment, information or complaint.

Here, the Circuit Court dismissed the indictment against Mr. Bradshaw primarily for the State's unnecessary delay in bringing Mr. Bradshaw to trial, not due to a lack of sufficient evidence against Mr. Bradshaw, as is asserted by Appellant in its brief.

The Court's initial scheduling order in this case, signed and filed on March 13, 2024, not only included several deadlines, but also scheduled trial for June 17, 2024. SR:10. The State did not indicate until July 22, 2024, at Mr. Bradshaw's change of plea hearing, that it was unable to proceed and required a delay. SR:15. Meaning that, at the first deadline on April 5, 2024, the State did not have the required test results to include in their discovery materials, but inexplicably, did not request additional time to acquire the results, nor did the State offer a plea to Mr. Bradshaw. At the second deadline on April 26, 2024, the State still did not have the required test results, did not request additional time to acquire the results, and did not make a plea offer. Rather, the defense requested a delay of that April 26, 2024, deadline, hoping to engage in pre-trial plea negotiations with the State. At the third deadline on May 24, 2024, the State still

did not have the required test results, did not request additional time to acquire the results, and did not make a plea offer. Again, the defense requested a delay of that May 24, 2024, deadline, still hoping to engage in pre-trial negotiations with the State.

Just before the fourth deadline, on June 20, 2024, but after the original trial date of June 17, 2024, the defense requested another deadline delay, again indicating its desire to engage in pre-trial plea negotiations with the State. At that time, plea negotiations occurred between the State and defense, and at the defense's request, and without objection from the State, the case was scheduled for a change of plea hearing on July 22, 2024. SR:37. It was not until at that change of plea hearing on July 22, 2024, that the State finally admitted it lacked testing results and required a delay of the proceedings. No explanation was offered for the State's complete disregard of the Court's April 5, April 26, and May 24 deadlines and the original trial date of June 17.

Appellant argues that the Circuit Court's dismissal of the indictment against Mr. Bradshaw pursuant to SDCL 23A-44-3 was improper as it "inappropriately questioned the sufficiency of the evidence upon which the indictment was based—a burden for trial, not pre-trial negotiations." Appellant's Br. 11. But July 22, 2024, was not the time for pre-trial negotiations—in fact, that hearing was more than a month after the Court's initial trial date of June 17, 2024. The government essentially asks this Court to find the entire life of Mr. Bradshaw's case to be considered "pre-trial negotiations," even while the State

ignored all circuit court-imposed deadlines related to pre-trial negotiations. Due to the State's inattention, Mr. Bradshaw's case suffered unnecessary delays, allowing for a dismissal without prejudice pursuant to SDCL 23A-44-3.

I. SDCL 23A-44-3 Was Properly Utilized by the Circuit Court to Dismiss this Matter Without Prejudice for Unnecessary Delay.

The government argues that since SDCL 23A-44-5.1—known colloquially as the "180-day rule"—is more specific than SDCL 23A-44-3, that SDCL 23A-44-5.1 should govern the dismissal of an action as untimely, not SDCL 23A-44-3. However, the government offers no explanation for the State's failure to comply with the provisions of SDCL 23A-44-5.1 and the State's complete disregard for court-imposed deadlines.[7] Further, like any other statute, SDCL 23A-44-3 is entitled to a presumption of validity. See *State v. Guerra*, 2009 S.D. 74, ¶ 32, 33, 772 N.W.2d 907, 916 (S.D. 2009) ("Administrative rules have 'the force of law and are presumed valid. . . . We employ the same rules of construction for statutes as we do for administrative rules.") (internal citations omitted). SDCL 23A-44-3 should not be considered obsolete simply at the suggestion of the government. SDCL 23A-44-3 is valid and enforceable, and it provides an adequate explanation for the dismissal.

[7] In fact, in its brief, the government states: "The State does not question the importance of court-imposed deadlines and the necessity that the parties abide by those time limits." Appellant's Br. 31.

A. Analysis under SDCL 23-44-5.1, also known as the "180-day rule."

SDCL 23A-44.5.1(1) states: "Every person indicted, informed or complained against for any offense shall be brought to trial within one hundred eighty days, and such time shall be computed as provided in this section." "By its express language, the 180-day rule requires the prosecution to dispose of criminal cases within 180 days 'from the date the defendant has first appeared before a judicial officer on the complaint, information, or indictment." *State v. Kordonowy*, 523 N.W.2d 556, 557 (1994). Pursuant to SDCL 23-44.5.1(5): "If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, prejudice to the defendant is presumed." Mr. Bradshaw made his initial appearance on January 17, 2024, and 180 days from January 17, 2024, was July 15, 2024, one week before Mr. Bradshaw's scheduled change of plea hearing and the State's first request for delay. As such, without at least one week being considered an excludable period enumerated in SDCL 23A-44-5.1, prejudice to Mr. Bradshaw would be presumed.

SDCL 23A-44-5.1 lists specific periods to be excluded from the calculation of the 180-day period. They include: (4)(c) "[t]he period of delay resulting from a continuance granted by the court at the request of the prosecuting attorney if the continuance is granted because of the unavailability of evidence material to the State's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date and provided a written order is filed."

However, in Mr. Bradshaw's case, no continuance was requested by the State until July 22, 2024, more than 180 days since Mr. Bradshaw's initial appearance. At no point before July 22, 2024, did the State indicate that it would be unable to proceed as it awaited testing results. At no point did the State show show the Court the due diligence exercised to obtain the test results in a timely manner, as required by SDCL 23A-44-5.1(4)(c). As such, no periods should be excluded from the 180-day calculation pursuant to SDCL 23A-44-5.1(4)(c).

SDCL 23A-44-5.1(4) (b) does exclude "[t]he period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel provided it is approved by the court and a written order filed" from the 180-day requirement. Appellee does not dispute that counsel for Mr. Bradshaw thrice requested delays in order to attempt to resolve Mr. Bradshaw's case without trial, but would note that such requests were made as a result of the State's failure to meet the April 5 discovery/plea offer deadline as ordered by the Court and continued failure to comply until a plea agreement was supposedly reached on or about June 20, 2024. As such, Appellee concedes, and agrees with the Circuit Court, that dismissal of this matter pursuant to SDCL 23A-44-5.1 would have been inappropriate. Further, such a dismissal would have been "with prejudice," whereas the dismissal at issue in this matter was "without prejudice." *Compare* SDCL 23A-44-5.1 *with* SR:37.

II. The Circuit Court Did Not Err By Dismissing Pursuant to SDCL 23A-44-3 for the State's Failure to Secure Test Results in a Timely Manner.

In response to the Circuit Court's finding that the testing results in Mr. Bradshaw's case had been outstanding for too long as of July 22, 2024, Appellant argues that it lacks control over the State Health Laboratory and has no ability to expedite such testing. Appellant focuses on the fact that the substance was sent to the lab for testing soon after the alleged incident occurred, back in January of 2024, to show the State's supposedly diligent attempt to prosecute this case. SR:15. Such an argument completely obscures the State's blatant disregard of the court-imposed deadlines and decorum. The State could have and should have requested a delay to secure testing results long before July 22, 2024, and, very likely, would have been provided additional time to secure such results, for example, pursuant to SDCL 23A-44-5.1(4)(c). Instead, the State ignored all court-imposed deadlines and the government now seeks to blame the laboratory for the State's own tardiness and inattention with regard to Mr. Bradshaw's case. While Appellee certainly questions the need for such testing results to require more than six months to produce, Appellee agrees with that the primary issue and reason for the dismissal is due to the State's inattention, resulting in unnecessary delays in prosecuting Mr. Bradshaw.

It is also important to consider the fact that the Circuit Court dismissed Mr. Bradshaw's case *without prejudice*. SR:37. Pursuant to SDCL 23A-44-5, "A dismissal under § . . . 23A-44-3 . . . is not a bar to another prosecution for the same offense." With a dismissal pursuant to SDCL 23A-44-3 for unnecessary delay in prosecution, the Circuit Court signaled to the State that, despite the State

being unable to proceed on July 22, 2024, presumably, once it received testing results from the State Health Laboratory, the State would be free to prosecute Mr. Bradshaw for the January 17, 2024, offense. Should the dismissal in this case been a dismissal pursuant to SDCL 23A-44-5.1, the dismissal would have been a dismissal with prejudice, preventing any further prosecution of Mr. Bradshaw.

III. The Circuit Court Properly Found That Mr. Bradshaw Was Prejudiced by the State's Undue Delay in Prosecuting his Case.

The government asserts in its brief that Mr. Bradshaw was not prejudiced by the State's inability to prosecute his case to conclusion by July 22, 2024. Not only is that assertion incorrect, but, by its plain language SDCL 23A-44-3 does not require a showing of prejudice prior to the grant of a dismissal.[8]

Certainly, Mr. Bradshaw was not held in custody for more than two days during the pendency of this case, SR: 1, 4–5, but his liberty was restrained in other ways, resulting in prejudice. For example, upon his release from the Minnehaha County Jail on January 17, 2024, on a personal recognizance bond, Mr. Bradshaw was required to maintain good behavior and was barred from using any drugs without a valid prescription, or "a warrant of arrest would immediately issue." SR:4. Further, at the time of the scheduled plea hearing, Mr.

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[8] *Compare* SDCL 23A-44-3 *with* SDCL 23A-44-5.1(5): "(5) If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, prejudice to the defendant is presumed. Unless the prosecuting attorney rebuts the presumption of prejudice, the defendant shall be entitled to a dismissal with prejudice of the offense charged and any other offense required by law to be joined with the offense charged."

Bradshaw was completing summer school and preparing to move away to attend college. SR:16. As acknowledged by the Circuit Court, "this is a defendant who has scholarship and college ramifications for whether he pleads or not." *Id.* at 16–17. His mother flew to Sioux Falls from Chicago, Illinois, for the plea hearing, expecting her son's case to be resolved that same day. *Id.* Further, during the pendency of his case, Mr. Bradshaw was required to maintain contact with his attorney, despite the lack of progress with his case, and resulting in additional legal fees being incurred. Although SDCL 23A-44-3 does not require that unnecessary delay in prosecution result in prejudice to defendant to allow for a dismissal, in this case, Mr. Bradshaw was prejudiced by the State's inattention, lack of due diligence, and complete disregard for court-imposed deadlines.

IV. The Circuit Court Did Not Err By Dismissing Under SDCL 23A-44-3 for Failure to Provide a Plea Offer by the Court-Imposed Deadline.

The government further argues that the dismissal of the indictment against Mr. Bradshaw based on the State's failure to provide a plea offer by the court-imposed deadline of April 5, 2024, is improper. However, the State's failure to provide Mr. Bradshaw with a plea offer by the court-imposed deadline directly led to defense counsel's three requests for delay of trial of Mr. Bradshaw's case, and, consequently, the State's unnecessary delay in prosecuting this case. SR:37.

Appellant asserts "no defendant is entitled to a plea offer." Appellant's Br. 32. However, in the Second Circuit, local rules allow for the setting of a "plea

deadline."[9] SDCL 23A-45-12 Appendix A, Second Circuit Criminal Rule CR. Two. Such deadlines are routinely set using the Second Circuit Criminal Trial Scheduling Order as: "Plea Offer Deadline. The State shall inform counsel for the Defendant of any plea offers by this date." SR:10. A second plea deadline follows, defined as "Plea/Reset Deadline. Counsel for the Defendant shall notify the Court, counsel for the State, and Court Administration by NOON on this date whether: (1) A plea agreement has been reached." *Id.*

In South Dakota's Second Judicial Circuit, pursuant to Orders of the Circuit Court setting specific plea deadlines, as is allowed by this Supreme Court, defendants may be entitled to engage in discussions with the State with the intention of resolving his or her pending case without demanding a trial. SDCL 23A-45-12. Certainly, no defendant is entitled to a favorable plea offer. The State is free to make an "open plea offer." *See, infra.* Additionally, South Dakota Statute prohibits circuit courts from interfering with plea negotiations. SDCL 23A-7-8. However, the South Dakota Supreme Court, in approving the Second Circuit's Criminal Rule CR. Two grants Circuit Courts the authority to require the State to engage in some discussion with the defense to resolve his pending case.

Lastly, the government asserts that the proper remedy for the State's failure to provide a plea offer should be "an open plea." SR: 10, Appellant's Brief

[9] Such a "plea deadline" is not defined by the Second Circuit Criminal Rules, but is explained via the Second Circuit Criminal Trial Scheduling Order. *See* SR:10.

at 31. This assertion is absurd as an "open plea" favors only the State. *See State v. Pack*, 516 N.W.2d 655, 669 (S.D. 1994) ("Therefore, an attorney representing a defendant on an open plea can easily calculate what a client is facing as a potential sentence; namely, maximum years on each charge [in the indictment] with the sentences to run consecutively.") (Amundson, J., concurring.). Under the government's argument, there is no reason for the State to offer *any* plea bargain, because, if the State "misses" its plea offer deadline, the defendant will be forced to plead guilty to each charge in the indictment with the sentences to run consecutively, in order to resolve his case with the Circuit Court. There must be some consequence for the State's complete disregard of the Circuit Court-imposed deadlines and resulting defense requests for delay of the case. The Circuit Court correctly found that the State's inaction resulted in an unnecessary delay in prosecution allowing for a dismissal of the charges without prejudice pursuant to SDCL 23A-44-3.

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Brief contains 4,079 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Office 2019.

Dated this 6th day of January, 2024.

/s/ Kimberly Topel Kline
Kimberly Topel Kline
Attorney for Appellee

APPENDIX

FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER DISMISSING INDICTMENT AND MTR A-1

CERTIFICATE OF SERVICE

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STATE OF SOUTH DAKOTA) :SS COUNTY OF MINNEHAHA)	IN CIRCUIT COURT SECOND JUDICAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff vs. **AIDAN BRADSHAW,**	**49CRI 24-298** **49CRI 23-4626** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DISMISSING INDICTMENT AND MTR**

The above-captioned matter came before the Court on July 22, 2024, for a change of plea hearing before the Honorable Susan M. Sabers. Defendant Aidan Bradshaw (Defendant) appeared with his attorney, D. Sonny Walter. The State was present and represented by Deputy State's Attorney Brooke Quinlivan, who was covering the matter for another deputy state's attorney. The Court was advised that the suspected drug had not yet been tested or confirmed to be a felony-level substance, despite being submitted for testing on January 9, 2024. The State had neither received test results nor provided results to Defendant. The State requested a continuance to further await test results. Defendant objected and moved to dismiss the indictment[1] pursuant to SDCL 23A-44-3 for unnecessary delay.

After considering the arguments of counsel, this Court dismissed the Indictment in CRI 24-298 and the pending Motion to Revoke in CRI 23-4246, finding that unnecessary delay had indeed occurred. This Court's oral decision from July 22, 2024, is incorporated herein by this reference, except to the extent that it is inconsistent with this written decision. The State filed a Motion to Reconsider Oral Order to Dismiss

[1]Defendant also moved to dismiss the Motion to Revoke in 23-4626, which the parties agreed was based on these same facts—i.e., the Defendant's felony drug charge.

Indictment and Motion to Revoke as well as Objections to Defendant's proposed order of dismissal. The Motion to Reconsider is denied and the objections are overruled.

Defendant then filed Proposed Findings of Fact and Conclusions of Law, which were refused in part and granted in part. The Court makes the following:

FINDINGS OF FACT

1. On January 17, 2024, Defendant made his initial appearance in CRI 24-298.

2. An Indictment was filed on February 28, 2024, charging Defendant with a Class 5 Felony--knowing possession of Delta-9 Tetrahydrocannabinol, a controlled drug or substance.

3. The Court entered a Scheduling Order on March 13, 2024. The discovery/plea offer deadline was set for April 5, 2024. The motion/plea deadline was set for April 26, 2024. The trial reset deadline was set for May 22, 2024, with trial scheduled for June 17, 2024.

4. Defendant filed a Motion for Delay on May 9, 2024, stating that he had not yet received a plea offer from the State. By that date, the Court-imposed plea offer deadline had long since passed. The requested delay was granted and a new plea deadline was set for May 24, 2024, with a trial reset deadline of June 18, 2024, and a trial date of July 15, 2024.

5. Defendant filed another Motion for Delay on June 20, 2024, and the reason for that delay was again because he had not yet received a plea offer from the State. By that date, the State was several months overdue with regard to the Court-imposed plea deadlines. Nevertheless, the requested delay was again granted and another plea deadline was set for June 21, 2024, a trial reset deadline for July 17, 2024, and a trial date for August 12, 2024.

6. Defendant claims the State's failures to make timely plea offers was due to the lack of testing results on the substance at issue. (Def.'s Proposed Findings and Conclusions para. 5).

7. Later in the day on June 20th, Defendant filed another Motion for Delay, changing the reason behind his request. In that filing, Defendant stated that a plea offer had just been received from the State and counsel needed time to discuss it with the Defendant. The scheduling dates were again extended, resulting in a plea deadline of July 19, 2024, a trial reset deadline of August 14, 2024, and a trial date of September 9, 2024.

8. A Motion to Revoke Suspended Sentence was filed in CRI 23-4626 on June 30, 2024, based on Defendant's felony-drug arrest in CRI 24-298.

9. The parties reached a plea agreement and these cases came before this Court on July 22, 2024, for a change of plea hearing. At that hearing, the State was not prepared to proceed because it did not yet have testing results for the substance at issue. This was so, despite claiming the substance had been sent for testing back on January 9, 2024. The State could not offer a factual basis to support a guilty plea, given the lack of proof of the presence of a controlled drug in the sample submitted. The State requested a continuance "to try and expedite that testing," to which Defendant objected. The State gave no indication as to how much longer the parties would have to wait for the testing results.

10. Based on the lack of test results and an inability to proceed with the plea agreement, Defendant moved to dismiss the Indictment and the Motion to Revoke based on unnecessary delay.

CONCLUSIONS OF LAW

1. Any Finding of Fact that is more properly a Conclusion of Law shall be deemed so, and any Conclusion of Law more properly a Finding of Fact shall be deemed so.

2. The Court has jurisdiction over the parties and the subject matter.

3. SDCL 23A-44-3 provides:

   If there is unnecessary delay in presenting a charge to a grand jury or in filing an information against a defendant who has been held to answer to a circuit court, or if there is unnecessary delay in bringing a defendant to trial, a court may dismiss his indictment, information or complaint.

4. This statute provides a basis for dismissal of charges for unnecessary delay in prosecution that is independent of any analysis or ruling as to the 180-day rule set forth in SDCL 23A-44-5.1.

5. As clarified in SDCL 23A-44-5, a dismissal under SDCL 23A-44-3 is not a bar to another prosecution for the same offense. A dismissal under SDCL 23A-44-5.1's 180-day rule, in contrast, is a dismissal with prejudice.

6. The State's assertions as to the 180-day rule contained within its Motion to Reconsider misapprehend the basis for the Court's ruling. The Court did not analyze the Motion to Dismiss as an alleged violation of the 180-day rule or, for that matter, make any rulings or calculations based on the 180-day rule.

7. The State argues that Defendant should be held responsible for the delay here because Defendant, not the State, filed the underlying motions for delay. That argument, although likely successful under a 180-day analysis, paints with too broad a brush in the current analysis. The ultimate reason for the first two delays was the State's failure to make a timely plea offer; the reason for the requested continuance at the plea hearing was the absence of test results, without which Defendant could not intelligently enter a plea and the State could not proceed to trial. Furthermore, the State agreed to set the matter for a plea hearing on the Court's calendar knowing that it lacked the test results necessary to proceed with the scheduled hearing.

8. After nearly seven months of delay, including two violations of the Court-imposed plea offer deadlines, the State was still not ready to prosecute this matter to conclusion because it lacked the necessary testing results to establish the presence of a controlled substance. The State could neither offer a factual basis to support a plea nor proceed to trial without confirmation that the substance possessed by Defendant was in fact a controlled drug or substance. These facts constitute unnecessary delay under SDCL 23A-44-3.

9. While some counties have apparently elected to not prosecute these types of drug cases, Minnehaha County has chosen otherwise—a decision squarely within the law. Given the choice to prosecute, however, Minnehaha County must have the ability to secure timely testing of substances to support its felony charging decisions. Unnecessary delay such as that present on the facts of this case interferes with the effective and efficient prosecution of drug offenders.

10. This Court, having found unnecessary delay in the prosecution of these cases due to the failures to comply with Court-imposed deadlines and the failure to secure testing results in a timely manner, dismisses the Indictment in CRI 24-298 and the Motion to Revoke in CRI 23-4626 pursuant to SDCL 23A-44-3.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following:

ORDER

It is hereby ORDERED that the Defendant's Motion to Dismiss the Indictment in CRI 24-298 and the Motion to Revoke in CRI 23-4626 is hereby GRANTED without prejudice pursuant SDCL 23A-44-3.

Dated at Sioux Falls, South Dakota this 16th day of August, 2024.

BY THE COURT

Honorable Susan M. Sabers
Circuit Court Judge

ATTEST:
Angelia Griese, Clerk of Courts
By: _____
Deputy

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30809

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

AIDAN BRADSHAW,

Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE SUSAN M. SABERS
Circuit Court Judge

APPELLANT'S REPLY BRIEF

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Notice of Appeal filed August 22, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 29657

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

AIDAN BRADSHAW,

Defendant and Appellee.

PRELIMINARY STATEMENT

In Aidan Bradshaw's brief, he mainly replies to the State's legal arguments by narrowing in on the circuit court-imposed plea offer deadline. In essence, he suggests that the failure to offer a plea by a certain date justifies dismissal of a criminal indictment under SDCL 23A-44-3. Yet he agrees a dismissal under the 180 Day Rule would be improper, he agrees the circuit court cannot meddle in plea negotiations, and he agrees no defendant is entitled to a plea offer. As the State advocates, dismissal for delay in prosecution should be made only under the defined bounds of the 180 Day Rule—a proposition which creates uniformity across the board for our courts.

To avoid repetitive arguments and to follow SDCL 15-26A-62, the State's reply is confined only to new matters raised in the brief of Appellee, which is known as "AB." The State of South Dakota is referred

to as "the State." The Minnehaha County State's Attorney's office is called "Minnehaha County." The Defendant and Appellee, Aidan Bradshaw, is referred to as "Bradshaw." The Honorable Susan M. Sabers presided over Bradshaw's criminal proceedings and is known as "the circuit court." All citations are followed by the appropriate page number.

Any issue or argument raised in the State's initial brief, but not reproduced here, is not intended to be waived. The State relies on the Jurisdictional Statement, Statement of the Case and Facts, and Standard of Review offered in its initial brief.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ERRED WHEN IT DISMISSED BRADSHAW'S CRIMINAL INDICTMENT FOR UNNECESSARY DELAY UNDER SDCL 23A-44-3?

The circuit court dismissed the case on two bases under SDCL 23A-44-3: because Minnehaha County caused unnecessary delay in bringing Bradshaw to trial and because of Minnehaha County's failure to offer Bradshaw a plea deal before the circuit court's deadline.

Faircloth v. Raven Indus., Inc., 2000 S.D. 158, 620 N.W.2d 198

Fast Horse v. Weber, 2013 S.D. 74, 838 N.W.2d 831

State v. Two Hearts, 2019 S.D. 17, 925 N.W.2d 503

State v. Schladweiler, 436 N.W.2d 851 (S.D. 1989)

SDCL 23A-7-8

SDCL 23A-44-3

SDCL 23A-44-5.1

ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT DISMISSED BRADSHAW'S CRIMINAL INDICTMENT FOR UNNECESSARY DELAY UNDER SDCL 23A-44-3.

I. The Circuit Court Improperly Questioned the Sufficiency of the Evidence.

Bradshaw makes two short statements in response to the State's first argument. At the outset, he echoes the circuit court by saying the dismissal of his indictment was "primarily for the State's unnecessary delay," "not due to a lack of sufficient evidence against Mr. Bradshaw[.]" AB:7. *See also* AB:12 ("The primary issue and reason for the dismissal is due to the State's inattention[.]")

Bradshaw fails to acknowledge the circuit court's demand that Minnehaha County be able to prove its case at the plea hearing, or this Court's authority forbidding a circuit court to question a prosecutor's ability to prove its case before trial. *See State v. Schladweiler*, 436 N.W.2d 851 (S.D. 1989) (reversed due to the trial court's inquiry into the legality or sufficiency of the evidence upon which the indictment was based); *State v. Cameron*, 1999 S.D. 70, ¶ 11, 596 N.W.2d 49, 52 (reversed for the trial court's consideration of the facts of the case in making its decision to dismiss); *State v. Blakey*, 2001 S.D. 129, ¶ 6, 635 N.W.2d 748, 750 (reversed for the circuit court's consideration of the facts upon which the indictment was based to conclude the facts did not sufficiently prove the crime charged).

Nor does Bradshaw offer any legal authority supporting the circuit court's conclusion that Minnehaha County could not establish a factual basis to support the plea without the test results. As set out in the State's initial brief, Bradshaw could have pled without those results, as he apparently intended to do on July 22, 2024. SR:36. The State relies on the argument in its initial brief and reiterates it was improper for the circuit court to dismiss the indictment based on its perception that Minnehaha County could not prove its case.

Second, Bradshaw noted that he agrees with the State that a circuit court is prohibited from interfering with plea negotiations. AB:15 (citing SDCL 23A-7-8). Indeed, this Court has emphasized as much. *State v. Ledbetter*, 2018 S.D. 79, ¶ 19, 920 N.W.2d 760, 764 (citing SDCL 23A-7-8). That occurred here. It was improper for the circuit court to question Bradshaw's willingness to enter a plea at the beginning of the plea hearing *he requested*. Had the circuit court been unsatisfied with the factual basis for his plea, it could have deferred acceptance of the plea until it was satisfied. SDCL 23A-7-14.

II. SDCL 23A-44-3 Was Misapplied.

As to the State's second issue, Bradshaw argues that administrative rules have the force of law and are presumed valid. AB:9 (citing *State v. Guerra*, 2009 S.D. 74, ¶ 32, 772 N.W.2d 907, 916). He misses the mark. *Guerra* says that this Court "employ[s] the same rules of construction for statutes as we do for administrative rules." *Id.* ¶ 33.

But SDCL 23A-44-3 is not an administrative rule; it is a statute. For the reasons set forth in the State's initial brief, the circuit court misapplied the obsolete portion of that statute in this case.

What Bradshaw may have intended to say is that "[a] strong presumption exists that statutes are constitutional." *State v. Myers*, 2014 S.D. 88, ¶ 6, 857 N.W.2d 597, 599. The State agrees and has not challenged SDCL 23A-44-3's constitutionality. Rather, it argues two well-established rules of statutory construction. First, that the more specific statute (SDCL 23A-44-5.1) governs the more general statute (SDCL 23A-44-3). *Peterson, ex rel. Peterson v. Burns*, 2001 S.D. 126, ¶ 28, 635 N.W.2d 556, 567 (citing *Faircloth v. Raven Indus., Inc.*, 2000 S.D. 158, ¶ 11 & 18, 620 N.W.2d 198, 202–03; *Dahn v. Trownsell*, 1998 S.D. 36, ¶ 14, 576 N.W.2d 535, 539, *abrogated on other grounds by Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006); *Meyerink v. Nw. Pub. Serv. Co.*, 391 N.W.2d 180, 184 (S.D. 1986)). And second, that the more recent statute (SDCL 23A-44-5.1) supersedes the older statute (SDCL 23A-44-3). *State v. Harris*, 494 N.W.2d 619, 622 (S.D. 1993); *Peterson, ex rel. Peterson*, 635 N.W.2d at 567; *Matter of PUC Docket HP 14-0001*, 2018 S.D. 44, ¶ 19, 914 N.W.2d 550, 557.

When reviewing statutes that overlap or conflict, this Court seeks to read them together and harmonize them if possible. *Faircloth*, 2000 S.D. 158, ¶ 7, 620 N.W.2d at 201. That is possible here, as Bradshaw

recognizes in his brief. AB:13, n. 8. The relevant portion of SDCL 23A-44-3 says, quite succinctly, "if there is unnecessary delay in bringing a defendant to trial, a court may dismiss his indictment, information or complaint." The 180 Day Rule, on the other hand, details that if a defendant is not "brought to trial within *one hundred eighty days*, [ ] such time shall be computed as provided in this section." SDCL 23A-44-5.1 (emphasis added). It specifies the exact time of an allowable delay and the appropriate mechanism of dismissal for delay in prosecution. SDCL 23A-44-5.1 is newer and more specific and should be the only statute a court can rely on to dismiss a criminal indictment for a delay in bringing a defendant to trial. That leads to the State's next argument.

a. There Was No 180 Day Rule Violation.

Bradshaw "concedes, and agrees with the [c]ircuit [c]ourt, that dismissal of this matter pursuant to SDCL 23A-44-5.1 would have been inappropriate." AB:11. He agrees that the delays requested were his ("Appellee does not dispute that counsel for Mr. Bradshaw thrice requested delays"); he merely complains they are Minnehaha County's fault. AB:11 ("such requests were made as a result of the State's failure to meet the April 5 discovery/plea offer deadline"). Bradshaw recognizes, then, that all delays in bringing Bradshaw to trial fell under SDCL 23A-44-5.1(4)(b). His delays began May 9, 2024, and continued through the disposal of the case—74 days. SR:11. Thus only 113 days had tolled under the 180 Day Rule, no prejudice was presumed, and the State need

not rebut any preconceptions based on the delay. *Two Hearts*, 2019 S.D. 17, ¶ 11, 925 N.W.2d at 509; SDCL 23A-44-5.1(5). "[W]here a defendant assents to a period of delay and later attempts to take advantage of it, courts should be loathe [sic] to find a violation of an accused's speedy trial rights." *Id.* ¶ 16, 925 N.W.2d at 511 (quoting *State v. Cottrill*, 2003 S.D. 38, ¶ 11, 660 N.W.2d 624, 630).

Next, Bradshaw suggests Minnehaha County should have asked for delays under SDCL 23A-44-5.1(4)(c) but did not. AB:11-12. The record does not reveal whether Minnehaha County planned to do so, but it does show Bradshaw's first request for a delay was made well before Minnehaha County's 180 days were up. SR:11. Bradshaw postulates what "could," "should," "would," or "presumably" might have happened in his brief over a half dozen times. AB:10-14. But the parties and this Court cannot engage in speculation on matters outside the record. *People in Int. of D.S.*, 2021 S.D. 63, ¶ 33, 967 N.W.2d 1, 9. As to his complaint that the delays are Minnehaha County's fault, the State addresses that in detail under Issue III., below.

b. There Was No Unnecessary Delay.

The State argues that if SDCL 23A-44-3 were a valid basis for dismissal of an indictment, any "unnecessary" delay would require intentional bad faith or needless postponement on the part of the prosecutor. In response, Bradshaw makes no legal argument. Instead, he generally argues Minnehaha County was not diligent in its attempt to

prosecute his case. AB:11 ("At no point did the State show show [sic] the [c]ourt the due diligence exercised to obtain the test results in a timely manner"); AB:12 ("Appellant focuses on the fact that the substance was sent to the lab for testing soon after the alleged incident occurred, back in January of 2024, to show the State's supposedly diligent attempt to prosecute this case."); AB:14 (referencing Minnehaha County's "lack of due diligence").

In essence, Bradshaw suggests a prosecutor must regularly probe a drug testing facility about the whereabouts of its report and make those requests a part of the criminal record in order to show it is diligently prosecuting a case. No law or rule exists requiring as much. Yet a statutory rule *does* exist which requires prosecutors to "keep their nose to the legal grindstone," demanding "effective prosecution of criminal cases." *State v. Cross*, 468 N.W.2d 419, 422 (S.D. 1991) (Henderson, J., concurring specially). It is the 180 Day Rule, which is the only proper basis for dismissal of a case for untimely prosecution. Had Minnehaha County been up against its 180-day limit, it could have moved the circuit court for allowable delays under SDCL 23A-44-5.1. But it was not. And it was premature for the circuit court to dismiss a criminal indictment for delay outside the confines of that statute.

c. If There Was Any Delay, Bradshaw Was Not Prejudiced.

Bradshaw insists a dismissal under SDCL 23A-44-3 "does not require a showing of prejudice prior to the grant of dismissal" because

"by its plain language SDCL 23A-44-3 does not require a showing of prejudice[.]" AB:13. That a defendant be prejudiced by a party's failure to comply with a statutory rule is a necessary showing in many scenarios without plain language within the statute to that effect. This Court has made a prejudice requirement clear for SDCL ch. 23A-4 dismissals. *See* SDCL 23A-4-1; *State v. Hintz*, 318 N.W.2d 915, 917 (S.D. 1982) ("In these cases, this [C]ourt has required not only a showing of unnecessary delay but also prejudice to the defendant's fair trial rights.") (*citing State v. Erdmann*, 292 N.W.2d 97, 98–99 (S.D. 1980); *State v. Provost*, 266 N.W.2d 96, 102 (S.D. 1978); and *Application of Dutro*, 83 S.D. 168, 156 N.W.2d 771, 772 (1968)).

A prejudice requirement is not limited to statutory application. It is generally necessary for constitutional violations as well. When considering an alleged due process violation for unnecessary pre-indictment delay, "[d]ismissal of an indictment is warranted when there is a showing 'that the preindictment delay . . . caused substantial prejudice to [a defendant's] rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused.'" *State v. O'Neal*, 2024 S.D. 40, ¶ 37, 9 N.W.3d 728, 745 (*quoting United States v. Marion*, 404 U.S. 307, 324, 92 S. Ct. 455, 465, 30 L. Ed. 2d 468 (1971)).

Even so, Bradshaw argues his "liberty was restrained in other ways, resulting in prejudice." AB:13. His first grievance is that his release on a PR bond required him to maintain good behavior and not

use drugs. AB:13. Second, Bradshaw parroted the circuit court's bases for prejudice: that he had "scholarship and college ramifications" and that his mother flew to Sioux Falls from Chicago to watch him enter his plea. AB:14. Finally, Bradshaw complains he accrued additional legal fees during the pendency of his criminal prosecution. AB:14.

Bradshaw's first nod at prejudice is incongruous. Not only is it an expectation of all law-abiding citizens to maintain good behavior and not use illegal drugs, but especially so for Bradshaw. He was granted a suspended imposition of sentence for Possession of Methamphetamine, a Class 5 felony, just two hours before this underlying case came about. SR:23. The court ordered him to serve two years on supervised probation beginning January 16, 2024. *See* Minnehaha County CRI23-4626, Order of Probation filed January 17, 2024 (judicial notice requested in Appellant's Brief and not objected to in Appellee's Brief). He was ordered to "obey all state, tribal and federal laws and municipal ordinances," "submit to testing of bodily substances," and "consent to the search and seizure of [his] person, property, home, and car, at any time or place, with or without a search warrant, whenever reasonable suspicion is determined by a probation officer, law enforcement officer, or court." *Id.* He was also required to obtain prior court approval to use medical cannabis. *Id.* This case created no heightened expectation for Bradshaw to behave—certainly not a prejudicial precondition.

As to his mother's decision to fly from Chicago, this is not an argument for prejudice. She flew from Chicago to see her son plead to a second felony drug charge. She saw her son's second case get dismissed and he remained out on probation. It is hard to conceive how her presence in Sioux Falls hindered him. Though distinguishable from this case, this Court has reviewed cases for prejudice pertaining to pre-indictment delays. Prejudice can look like illegal detention (*State v. Poss*, 298 N.W.2d 80, 85 (S.D. 1980), prolonged detention (*State v. Larson*, 2009 S.D. 107, ¶ 15, 776 N.W.2d 254, 259), or a reasonable nexus between an unnecessary delay and a confession (*Hintz*, 318 N.W.2d at 917), none of which occurred here. Prejudice isn't presumed under SDCL 23A-44-5.1 unless "a defendant is not brought to trial before [180 days], as extended by excluded periods," which Bradshaw and the circuit court agree had not happened yet. And as for potential consequences if Bradshaw were convicted of his second felony drug charge, the State reiterates its argument that hypothetical tangential consequences to conviction do not and cannot create prejudice justifying dismissal before trial.

Lastly, Bradshaw says that "additional legal fees" amount to prejudice. AB:14. This Court has never equated the financial burden of legal fees with a restraint on a criminal defendant's liberty. *See White Eagle v. State*, 280 N.W.2d 659, 661 (S.D. 1979) (holding repayment of attorney's fees as a requirement of probation does not

violate equal protection). No prejudice to Bradshaw existed in the pendency of this prosecution.

III. The Circuit Court Erred By Dismissing Under SDCL 23A-44-3 for Failure to Provide a Plea Agreement by the Court-Imposed Deadline.

The bulk of Bradshaw's response falls under this issue. He offers no new legal argument but rather rebukes Minnehaha County prosecutors. He repeatedly chastises them for not offering Bradshaw a plea by the circuit court's deadline, referencing:

- "[T]he State's complete disregard of the [c]ourt's April 5, April 26, and May 24 deadlines[.]" AB:8.
- "[T]he State ignored all circuit court-imposed deadlines" "[d]ue to the State's inattention[.]" AB:8-9.
- "[T]he State's complete disregard for court-imposed deadlines." AB:9.
- "[A]s a result of the State's failure to meet the April 5 discovery/plea offer deadline as ordered by the [c]ourt and continued failure to comply until a plea agreement was supposedly reached[.]" AB:11.
- "[T]he State's supposedly diligent attempt to prosecute this case." AB:12.
- "[T]he State's blatant disregard of the court-imposed deadlines and decorum." AB:12.
- "[T]he government now seeks to blame the laboratory for the State's own tardiness and inattention[.]" AB:12.
- "[T]he State's failure to provide a plea offer by the court-imposed deadline of April 5, 2024." AB:14.
- "[T]he State's inattention, lack of due diligence, and complete disregard for court-imposed deadlines." AB:14.
- "[T]he State's failure to provide Mr. Bradshaw with a plea offer by the court-imposed deadline directly led to defense counsel's three requests for delay of trial of Mr. Bradshaw's case, and, consequently, the State's unnecessary delay in prosecuting the case." AB:14.
- "[T]he State's complete disregard of the Circuit Court-imposed deadlines and resulting defense requests for delay of the case." AB:16.

His words are wasted on an inarguable fact—the State does not dispute no plea was offered by April 5th. The failure to offer a criminal defendant a deal does not equate to ignorance, lack of diligence, blatant disregard, tardiness, or inattention. *See Fast Horse v. Weber*, 2013 S.D. 74, ¶ 28, 838 N.W.2d 831, 839 ("a defendant has no right to be offered a plea") (citing *Missouri v. Frye*, 566 U.S. 134, 148, 132 S. Ct. 1399, 1410, 182 L. Ed. 2d 379 (2012) and *State v. Miller*, 2006 S.D. 54, ¶ 16, 717 N.W.2d 614, 619 (stating that "there is no constitutional right to be offered the opportunity to plea bargain").

Next, Bradshaw relies heavily on the fact that SDCL 23A-45-12 permits circuit courts to establish local rules, and local rules allow for the setting of plea deadlines. AB:14-15. That SDCL 23A-45-12 *permits* a schedule does not *demand* a prosecutor make a plea offer, and thus does not create a statutory burden to offer a plea by a certain date. As the State argued and Bradshaw admits, "[c]ertainly, no defendant is entitled to a favorable plea offer." AB:15. At bottom, the failure of one party to abide by a local court rule does not create a basis for the dismissal of a criminal indictment. *See* SDCL 23A-8-2 (naming the exclusive grounds for dismissal of an indictment); SDCL 23A-44-5.1 (permitting dismissal of a criminal case if not brought to trial within 180 days, with exceptions); and *Hamilton v. Sommers*, 2014 S.D. 76, ¶ 28, 855 N.W.2d 855, 864 (holding local rules, practices, or customs may be

relevant to a specific lawyer's breach of duty, but "in many cases locality is not relevant to the application of the standard of care.")

Finally, Bradshaw believes the State "assert[ed] that the proper remedy for the State's failure to provide a plea offer should be an 'open plea.'" AB:15 (citing SR:10 and Appellant's Brief at 31). No such assertion was made. The State merely quoted the circuit court's order which stated the result if the parties did not come to a plea agreement by the court-imposed deadline. The circuit court's scheduling order named the consequence if a plea agreement was not met by its deadline: not the dismissal of an indictment, but an open plea.

The urgency with which Bradshaw argues a plea must be offered ignores the fact that no plea offer is necessary in criminal trials. Of course, they provide mutual benefits to both the State and the accused in some cases. But plea bargaining is *permitted*, not required. SDCL 23A-7-8. Bradshaw requested delays from May to July because he wanted a plea offer from Minnehaha County; not because he had to. Bradshaw could have simply waited to see if Minnehaha County could carry its burden at trial. It would have been to Minnehaha County's detriment if it could not prove its case without the drug test results, but again, the myriad of hypothetical scenarios is not for this Court to consider.

Simply put, an application of SDCL 23A-44-3 as Bradshaw requests and as the circuit court ruled here creates an absurd result:

that the failure to offer a plea by a court-imposed deadline is a basis to dismiss a criminal indictment. Such a notion is contrary to the law, so it was improper for the circuit court to hold as much.

CONCLUSION

The State respectfully asks this Court to reverse the circuit court's dismissal of Bradshaw's indictment for the reasons stated above and in the State's initial brief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A-66(a) using Bookman Old Style typeface in 12-point type. Appellant's Brief contains 4,504 words.

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

Dated this 28th day of January, 2025.

/s/ Sarah L. Thorne
Sarah L. Thorne
Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 28, 2025, a true and correct copy of Appellant's Reply Brief in the matter of *State of South Dakota v. Aidan Bradshaw* was served via Odyssey File and Serve upon Kimberly Topel Kline at kkline@minnehahacounty.gov.

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