

IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

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STATE OF SOUTH DAKOTA,

*Plaintiff/Appellee,*

vs.

TYSON SEABOY,

*Defendant/Appellant.*

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No. 31406

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

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HONORABLE MARSHALL LOVRIEN  
Circuit Court Judge

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APPELLANT'S BRIEF

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CHRISTOPHER MILES  
South Dakota Office of Indigent Legal Services  
PO Box 88237  
Sioux Falls, SD 57109  
Attorney for Defendant/ Appellant

MARTY JACKLEY  
Attorney General  
1302 Hwy 1889, Suite 1  
Pierre, SD 57501

DYLAN KIRCHMEIER  
Roberts County State's Atty  
414 3<sup>rd</sup> Avenue East  
Sisseton, SD 57262

Attorneys for State/ Appellee

Notice of Appeal Filed on March 4, 2026

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No. 31406

PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as “SR” followed by the appropriate page number. Defendant and Appellant, Tyson Seaboy, will be referred to as “Seaboy.”

JURISDICTIONAL STATEMENT

Seaboy appeals the Amended Judgment of Conviction and Sentence of the Court entered February 23, 2026, by the Honorable Marshall Lovrien, Circuit Court Judge of the Fifth Judicial Circuit. SR 174-176. Seaboy’s Notice of Appeal was filed March 4, 2026. SR 177. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2 and SDCL 23A-32-9.

## STATEMENT OF LEGAL ISSUES

### I. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY DEPARTING FROM A PRESUMPTIVE SENTENCE.

The circuit court found aggravating circumstances supported the departure from a presumptive sentence.

SDCL 22-6-11

*State v. Kurtz*, 2024 S.D. 13, 4 N.W.3d 1

*State v. Roedder*, 2019 S.D. 9, 923 N.W.2d 537

### II. WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY IMPOSING AN AGGREGATE SENTENCE OF 15 YEARS WITH 5 SUSPENDED.

The circuit court imposed a sentence of 15 years in the state penitentiary with 5 years suspended.

*State v. Mitchell*, 2021 S.D. 46, 963 N.W.2d 326

*Riis v. Shaver*, 458 F. Supp. 3d 1130, (D.S.D. 2020), *aff'd*, 4 F.4th 701 (8th Cir. 2021)

SDCL 22-42-5.1

## STATEMENT OF CASE AND FACTS

On September 20, 2024, Seaboy was arrested during a traffic stop after law enforcement discovered methamphetamine paraphernalia in his pocket. SR 208. The arresting officer conducted a DUI investigation and obtained a sample of Seaboy's blood for testing. *Id.* The blood sample was sent to the state lab and the results showed the presence of 367 ng/ml of methamphetamine. *Id.* Seaboy was released on September 24, 2024, with bond conditions requiring his participation in the 24/7 program. SR 30. He participated in 24/7 via the "drug patch" and had multiple violations during the pendency of the case. SR 30, 42, 46, 55.

On November 1, 2024, a Roberts County Grand Jury returned an Indictment charging Seaboy with Unauthorized Possession of a Controlled Substance, Unauthorized Ingestion of a Controlled Substance, and DUI. SR 21. The same day, the State filed a Part II Information enhancing the DUI charge to a third offense, and a Part II Information alleging Seaboy had been convicted of three prior felonies. SR 23-26. Seaboy failed to appear for his arraignment hearing scheduled for December 19, 2024. SR 48. Seaboy's warrants remained active until his arrest on May 7, 2025. SR 51. Seaboy posted bond and was released on May 20, 2025. *Id.*

On June 2, 2025, the circuit court held an arraignment hearing. *See generally* SR 190-210, Arraignment Hearing. At the hearing, Seaboy entered a guilty plea to Unauthorized Ingestion of a Controlled Substance and admitted the Part II Information alleging his prior felony convictions. *Id.* at 196. Per the plea agreement, the State would "cap its request at 15 with 7 suspended" and the remaining charges in the Indictment, and a separate criminal file, would be dismissed. *Id.* at 196-197. The circuit court explicitly informed Seaboy that the terms of the plea agreement were non-binding recommendations. *Id.* at 202. The circuit court advised Seaboy of his statutory and constitutional rights, the potential penalties associated with his plea, and confirmed Seaboy was entering a voluntary, knowing, and intelligent plea. *Id.* at 193-196, 207. Seaboy did not dispute the State's rendition of the factual basis and admitted the prior felony

convictions listed in the Part II Information. *Id.* at 209. The circuit court ordered a Pre-Sentence Investigation (PSI) and delayed Seaboy's sentencing. SR 210.

Between the plea and the sentencing, the circuit court issued a warrant for Seaboy's arrest due to multiple 24/7 violations. SR 55-57. On Monday, June 30, 2025, the Program Manager at Tallgrass Recovery emailed the circuit court indicating Seaboy had been admitted to their facility on June 20, 2025. SR 59-60.

The parties returned for a sentencing hearing on August 11, 2025. *See generally* SR 216-231, Sentencing Hearing. At the hearing, the State detailed Seaboy's criminal history, his non-compliance with Tallgrass Recovery's treatment program, and the bond condition violations that occurred during the pendency of the case. SR 218. In concluding its sentencing argument, the State informed the circuit court that:

[P]ursuant to the plea agreement, the State is limited in asking for a sentence of 15 years in the state penitentiary with seven of those years being suspended. That is the State's recommendation at this time. Mr. Seaboy has shown nothing but contempt for the Court, the court system, his treatment facility, and any orders that he has been given during the pendency of this matter.

SR 220.

Seaboy, through counsel, implored the circuit court to suspend the execution of a penitentiary sentence and place him on probation. SR 224. To support his argument, Seaboy's counsel invoked policy-based arguments regarding the daily cost of imprisoning an inmate, the legislature's decision to mandate a presumptively suspended penitentiary sentence for this class of

crimes, and more recently, the legislature's action in reducing the penalty for ingestion offenses. SR 221. In addressing the circuit court personally, Seaboy apologized for his actions, acknowledged his lifelong struggle with addiction, and expressed his desire to get clean. SR 224.

At the conclusion of the sentencing hearing, the circuit court imposed a sentence of 15 years in the South Dakota State Penitentiary with 5 of those years suspended. SR 229. Seaboy was remanded to custody immediately. SR 230.

### STANDARD OF REVIEW

If the circuit court misapplies or misinterprets SDCL 22-6-11 by imposing a non-presumptive sentence without finding aggravating circumstances which pose a significant risk to the public, the de novo standard of review is applicable. *State v. Kurtz*, 2024 S.D. 13, ¶ 12, 4 N.W.3d 1, 4 (applying the de novo standard to the appellant's argument that the circuit court misinterpreted or misapplied SDCL 22-6-11 by imposing a penitentiary sentence despite finding the defendant did not pose a significant risk to the public).

When the circuit court finds aggravating circumstances which pose a significant risk to the public, but the appellant asserts the aggravating circumstances are insufficient to establish a significant risk to the public, the abuse of discretion standard is applicable. *State v. Beckwith*, 2015 S.D. 76, 871 N.W.2d 57 (applying the abuse of discretion standard to the appellant's assertion that the circuit court's "stated aggravating circumstances [were] insufficient to establish 'a significant risk to the public.'").

Lastly, when the circuit court fails to state the aggravating circumstances on the record at sentencing or fails to include them in the judgment of conviction – a *procedural* error – the plain error standard of review applies *if* the defendant did not object at the time the error occurred. *State v. Feucht*, 2024 S.D. 16, 5 N.W.3d 561 (concluding that a failure to comply with “the procedural requirements of SDCL 22-6-11” must be preserved in trial court to avoid plain error review).<sup>1</sup>

In this appeal, Seaboy is asserting the circuit court abused its discretion by (1) relying on aggravating circumstances which were insufficient to establish a significant risk to the public, and (2) imposing a 15-year aggregate sentence. “We generally review a circuit court's sentencing decision for an abuse of discretion.” *State v. Caffee*, 2023 S.D. 51, ¶ 26, 996 N.W.2d 351, 359-60 (quoting *State v. Manning*, 2023 S.D. 7, ¶ 51, 985 N.W.2d 743, 758). “An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.” *Id.* “Sentencing involves considering the totality of the circumstances as to *the individual* defendant before the court, and this same governing principle applies

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<sup>1</sup> In recent briefs, the South Dakota Office of Indigent Legal Services has asserted the de novo standard of review is applicable to misapplications of SDCL 22-6-11. The distinction between a *misapplication* of SDCL 22-6-11 and an abuse of discretion related to the *sufficiency* of the circuit court’s stated aggravating circumstances is admittedly narrow. With that said, the South Dakota Office of Indigent Legal Services remains steadfast in its assertion that, pursuant to *Feucht*, plain error review is applicable only when an appellant is alleging an error related to the *procedural* dictates of SDCL 22-6-11.

when a court makes its ultimate determination whether to depart from the otherwise mandated presumptive probation.” *Kurtz*, 2024 S.D. 13, ¶ 15, 4 N.W.3d at 5 (citing *State v. Seidel*, 2020 S.D. 73, ¶ 47, 953 N.W.2d 301, 316–17).

## ARGUMENT

### I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY DEPARTING FROM A PRESUMPTIVE SENTENCE.

Seaboy’s conviction under SDCL 22-42-5.1 triggers the presumptive probation requirements of SDCL 22-6-11. The circuit court acknowledged the applicability of SDCL 22-6-11 and found the following aggravating circumstances to support its departure from a presumptive sentence:

- 1) Defendant has a significant criminal history.
- 2) Defendant has violated bond over a half dozen times during the pendency of the case.
- 3) Defendant has failed to appear and remained in the wind for approximately six (6) months.
- 4) Defendant has shown he is unsupervisable based upon the bond violations, failure to appear, his behavior at the treatment facility, and his attempt to evade law enforcement when they attempted to serve an arrest warrant on him.

SR 174.

#### A. Aggravating circumstances posing a significant risk to the public require a public safety nexus under *Kurtz*.

“What constitutes aggravating circumstances posing ‘a significant risk to the public’ is not defined by statute.” *Kurtz*, 2024 S.D. 13, ¶ 12, 4 N.W.3d at 4.

Although a statutory definition does not exist, aggravating circumstances

typically encompass “factors that increase the severity or culpability of a criminal act.” *Aggravating Circumstances*, Cornell Law School, Legal Information Institute, [https://www.law.cornell.edu/wex/aggravating\\_circumstances](https://www.law.cornell.edu/wex/aggravating_circumstances) (last visited May 29, 2026). Much to the chagrin of circuit courts, prosecutors, and defense attorneys alike, the aggravating circumstances described in Seaboy’s Judgment of Conviction are common in drug-related cases within the scope of SDCL 22-6-11. And while the circumstances described in this case may be *aggravating* in a colloquial sense, they do not necessarily equate to aggravating circumstances which pose a significant risk to the public.

Over a decade ago in *Beckwith*, this Court affirmed the circuit court’s finding of aggravating circumstances based on the defendant’s failure to comply with the Pre-Sentence Investigation, a dated criminal history, and the lack of remorse exhibited through the defendant’s *Alford* plea. 2015 S.D. 76, ¶ 15, 871 N.W.2d at 60-61. However, in the more recent case of *State v. Roedder*, this Court determined the sentencing record was insufficient to justify a departure when the circuit court “commented generally on recidivism, mentioned the prior leniency Roedder obtained through [post-conviction relief], and referred to the traditional sentencing factors concerning ‘the protection of society from continued violations of the law.’” 2019 S.D. 9, ¶ 36, 923 N.W.2d 537, 548. This Court further noted that criminal history and public safety may be relevant considerations justifying a departure from a presumptive sentence, but “the

court's statements [were] inadequate to constitute a finding that 'aggravating circumstances exist that pose a significant risk to the public.'" *Id.*

Even more recently in *Kurtz*, this Court clarified that "while prior felonies and prior probation violations can constitute aggravating circumstances that pose such a risk, it is not a foregone conclusion that all defendants with lengthy prior criminal histories or a history of noncompliance categorically pose a significant risk to the public." 2024 S.D. 13, ¶ 15, 4 N.W.3d at 5. The *Kurtz* opinion also emphasized that "while a defendant's history may present aggravating circumstances, the sentencing court's required finding under SDCL 22-6-11 must *focus on the relationship of those circumstances to public safety.*" *Id.* (Emphasis added.)

Here, the public safety nexus required by *Kurtz* is missing because the sentencing transcript does not "focus on the relationship of [Seaboy's] circumstances to public safety." 2024 S.D. 13, ¶ 15, 4 N.W.3d at 5. Instead, the circuit court focused almost exclusively on behavior that is inextricably bound to Seaboy's addiction. The host of self-destructive behaviors which naturally accompany Seaboy's addiction are apparent. His risk to the public is not.

If the circuit court departs from a presumptive sentence, it must articulate how the aggravating circumstances connect with public safety. For example, the circuit court could connect the aggravating circumstances to public safety concerns related to impaired driving, theft offenses, violent behavior, weapons possession, or facts signaling involvement in the distribution of controlled

substances. The circuit court abused its discretion in departing from a presumptive sentence because it did not establish the public safety nexus required by *Kurtz* and the aggravating circumstances were insufficient under *Roedder*. Without articulating a nexus between the aggravating circumstances and a risk to the public, the circuit court's departure from a presumptive sentence was unwarranted.

**B. Seaboy's conduct reflects his addiction.**

Seaboy's criminal history exhibits a cycle of addiction, not public endangerment. Instead of developing a connection between Seaboy's non-compliance and the risk to public safety, the circuit court focused on Seaboy's suitability for probation. This consideration is relevant, to be sure, but it does not automatically create a public safety risk. *Beckwith*, 2015 S.D. 76, ¶ 11, 871 N.W.2d at 60 (finding "[t]he likelihood of not complying with the conditions of probation is an appropriate aggravating circumstance to consider as it *may* signal a significant risk to the public" (emphasis added)). Non-compliance is common amongst probationers.<sup>2</sup> Recognizing that the general behavioral characteristics associated with addiction inherently present *some* risk to the public, the legislature required a *significant* risk to the public to warrant departure. Certainly, the legislature was aware of these concerns when mandating

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<sup>2</sup> Of the 9,380 adults supervised by UJS court services officers in fiscal year 2025, 1,853 adults successfully completed probation. *South Dakota Unified Judicial System, 2026 State of the Judiciary* 12 (Jan. 14, 2026), available at <https://uj.s.sd.gov/media/ah2jltbn/2026-state-of-the-judiciary-online-file.pdf>.

presumptive sentences under SDCL 22-6-11, and for that reason, a prognostication of non-compliance should not by itself justify the departure from a presumptive sentence. The legislature's mandate is explicit – circuit courts shall issue presumptive sentences for offenders convicted of Class 5 and 6 felony drug offenses unless the aggravating circumstances of the defendant present a *significant* risk to the public. SDCL 22-6-11.

**II. THE CIRCUIT COURT'S DECISION TO IMPOSE AN AGGREGATE SENTENCE OF 15 YEARS WITH 5 YEARS SUSPENDED WAS AN ABUSE OF DISCRETION.**

Even if the circuit court was justified in departing from a presumptive sentence, the degree of the circuit court's departure was an abuse of discretion. The lengthy penitentiary sentence was unreasonable because it contravenes the principle that "[w]hen such statutory ranges are established, the legislative intent is that 'the more serious commissions of the crime ... deserve sentences at the harsher end of the spectrum.'" *State v. Bruce*, 2011 S.D. 14, ¶ 32, 796 N.W.2d 397, 407.

**A. Ingestion offenses are among the least serious criminal offenses.**

Seaboy's ingestion of a controlled substance is at the lowest end on the broad spectrum of criminality. "[I]ngesting drugs is one of the least serious drug crimes a person can commit." *Riis v. Shaver*, 458 F. Supp. 3d 1130, 1176 (D.S.D. 2020), *aff'd*, 4 F.4th 701 (8th Cir. 2021). Seaboy's crime is non-violent and victimless. The PSI reveals that Seaboy's personal and self-destructive decision to

ingest a harmful chemical compound is tied to a powerful and overwhelming addiction.

The prudence of a 15-year aggregate sentence is in stark contrast with legislature's recent amendment to SDCL 22-42-5.1. Prior to July 1, 2025, a violation of SDCL 22-42-5.1 was classified as a Class 5 felony punishable by a maximum of 5 years in the penitentiary. SL 2025, ch 98, § 1. As this Court is well aware, the legislature amended SDCL 22-42-5.1 and created a graduated penalty structure which classifies the first and second offenses as Class 1 misdemeanors and any third or subsequent offense a Class 6 felony.<sup>3</sup> *Id.*

To be clear, Seaboy recognizes that his offense was prior to the effective date of SDCL 22-42-5.1's amendment and therefore, it is not retroactively applicable to his conviction. In addition, because of Seaboy's admission on the Part II information, the circuit court's sentence was permissible under the applicable statutory framework. SR 21-22, 25-26. The sentence, however, is not a reflection of the legislature's policy objectives, and Seaboy simply asserts that the legislature's reduction of the penalty associated with ingestion convictions is a relevant consideration in analyzing the propriety of his 15-year aggregate sentence.

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<sup>3</sup> Because Seaboy had two prior convictions under SDCL 22-42-5.1 within ten years, the maximum penalty would have been enhanced to the equivalent of Class 6 felony under the amended version of SDCL 22-42-5.1. SR 25.

**B. A sentence equivalent to a severe Class 3 felony is arbitrary and capricious.**

The length of Seaboy's sentence is arbitrary when compared to the statutory sentencing ranges established by the legislature for more severe criminal offenses. Seaboy received a sentence at the high end of the statutory range for Class 3 felony offenses. Sentences of this magnitude are often reserved for violent, assaultive, and sexually deviant conduct resulting in a Class 3 felony convictions. *See* SDCL 22-22A-3; SDCL 26-10-1; SDCL 22-18-1.1 (classifying Aggravated Incest, Abuse or Cruelty to a Minor under Seven Years of Age, and Aggravated Assault as Class 3 felony offenses, respectively).

In rationalizing the length of the sentence, the circuit court mistakenly concluded that even under the new sentencing scheme of SDCL 22-42-5.1, Seaboy's maximum penalty could be enhanced to that of a Class 4 felony. SR 228. But that is not accurate. *See Carroll v. Solem*, 424 N.W.2d 155 (S.D. 1988) (prohibiting the double enhancement using both the "exclusive sentencing scheme for repeat DWI offenders" and the Part II habitual offender statute). Under the amended version of SDCL 22-42-5.1 and in recognition of the prohibition of double enhancement described in *Carroll*, Seaboy's maximum penalty could only be enhanced to the equivalent of a Class 6 felony, not a Class 4 felony.

Seaboy's 15-year aggregate sentence does not comport with the notion that harsh sentences within the statutory range are reserved for the more serious

commissions of the crime. Seaboy's 10-year active sentence is the equivalent of the mandatory minimum sentence for a *second* conviction for *distributing* or *manufacturing* a controlled substance. SDCL 22-42-2. And as it relates to non-violent drug offenses within the context of SDCL 22-6-11's presumptive sentence mandates, the degree of departure and harshness of a 10-year active sentence is apparent on its face.

**C. The traditional sentencing factors do not weigh in favor of a harsh sentence of extended incarceration.**

Of course, advancing Seaboy's claim is a tall order because circuit courts "have broad discretion in sentencing." *State v. Klinetobe*, 2021 S.D. 24, ¶ 28, 958 N.W.2d 734, 741. In exercising that discretion, circuit courts should consider "the traditional sentencing factors of retribution, deterrence – both individual and general – rehabilitation, and incapacitation" without affording one factor preeminence over another. *Id.* "The factors are to be weighed 'on a case-by-case basis' depending on the circumstances of the particular case." *Id.* (quoting *State v. Toavs*, 2017 S.D. 93, ¶ 10, 906 N.W.2d 354, 357). Additionally, a sentencing court must consider the person appearing before them by "studying a defendant's general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record." *State v. Mitchell*, 2021 S.D. 46, ¶ 29, 963 N.W.2d 326, 333 (citing *State v. Cepelcha*, 2020 S.D. 11, ¶ 64, 940 N.W.2d 682, 699).

Seaboy acknowledges that this Court does not “engage in appellate resentencing” or “micromanage the administration of criminal justice in South Dakota, even when individual trial judges impose widely different punishments for the same offense.” *Bruce*, 2011 S.D. 14, ¶ 28, 796 N.W.2d 397, 406 (citation modified). Under that framework, this Court will generally allow a sentence within the statutory maximum to stand. *Id.*

But even though the sentencing court’s discretion is broad, it should not be inordinate. While it was free to do so, the circuit court imposed a sentence which exceeded the State’s recommendation under the plea agreement. The circuit court acknowledged that it had reviewed the PSI and had become acquainted with Seaboy’s history, but quickly turned to Seaboy’s failures while on bond, his missed court appearances, and his actions related to avoiding being arrested on an outstanding warrant. SR 225-228, Sentencing Hearing.

At the time of sentencing, Seaboy was 48 years old, married, and the father of a 16-year-old son. SR 67 (sealed PSI). Although he was not employed during the sentencing hearing, Seaboy had labored as a bricklayer with the same masonry company from 2002 until 2020. *Id.* at 68 (sealed PSI). When Seaboy addressed the circuit court at the sentencing hearing, he expressed remorse for his actions. SR 224-225. Surely, Seaboy’s self-serving words could be viewed as mere lip service. But Seaboy’s comments regarding the offense contained in the PSI depict an individual that is remorseful, shameful of his poor choices, and aware of his powerful addiction to methamphetamine. SR 66 (sealed PSI). Seaboy

acknowledged that drugs and alcohol had made his life “unmanageable” and recognized his need for accountability, personal growth, and rehabilitation. *Id.* at 67-68. Seaboy’s remorse and insight into his addiction are mitigating factors worth considering. After pronouncing the oral sentence, the circuit court noted:

This is not an easy sentence for me to impose. But in complying with the goals of punishment and deterrence and rehabilitation, it’s the sentence that the Court without question feels is appropriate. I want you to get the help that you need and the treatment that you need so that you’re not in the court system anymore.

SR 230. Outside of these brief comments related to punishment, deterrence, and rehabilitation, the circuit court did not describe how it applied the traditional sentencing factors to determine Seaboy’s lengthy sentence was appropriate.

Seaboy’s initial parole date is set for May 11, 2029,<sup>4</sup> meaning the circuit court’s sentence will result in a minimum of 3 years and 9 months of active prison incarceration.<sup>5</sup> If released, Seaboy will remain on parole supervision until January 22, 2040. His extended period of incarceration is aligned primarily with incapacitation and punishment, not rehabilitation.

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<sup>4</sup> South Dakota Department of Corrections, Offender Locator <https://docadultlookup.sd.gov/adult/lookup/> (last visited June 3, 2026).

<sup>5</sup> Seaboy acknowledges that this Court has considered parole eligibility in analyzing the harshness of the sentence within 8<sup>th</sup> Amendment constitutional claims, and this factor reduces the effective harshness of the penalty. *See State v. Diaz*, 2016 S.D. 78, ¶ 54, 887 N.W.2d at 767; *State v. Chipps*, 2016 S.D. 8, ¶ 37, 874 N.W.2d 475, 488 (factoring “[t]he possibility of parole” into the equation for analyzing the harshness of the penalty).

## CONCLUSION

For the aforementioned reasons, Seaboy respectfully requests this Court reverse the circuit court's sentence and remand his case for a new sentencing hearing in front of a different circuit court Judge.

### CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant'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 3,781 words
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 4<sup>th</sup> day of June, 2026.

/s/ Christopher Miles  
Christopher Miles  
Attorney for Appellant

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Appellant's Brief were electronically served upon:

MARTY JACKLEY  
Attorney General  
[atgservice@state.sd.us](mailto:atgservice@state.sd.us)  
*Attorney for Appellee, State of South Dakota*

DYLAN KIRCHMEIER  
Roberts County State's Attorney  
[dylankirchmeier@gmail.com](mailto:dylankirchmeier@gmail.com)  
*Attorney for Appellee, State of South Dakota*

Dated this 4<sup>th</sup> day of June, 2026.

/s/ Christopher Miles  
Christopher Miles  
Attorney for the South Dakota Office  
of Indigent Legal Services  
PO Box 88237  
Sioux Falls, SD 57109

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No. 31406

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*Plaintiff and Appellee,*

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APPEAL FROM THE CIRCUIT COURT  
FIFTH JUDICIAL CIRCUIT  
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THE HONORABLE MARSHALL C. LOVRIEN  
Circuit Court Judge

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**APPELLEE'S BRIEF**

---

MARTY J. JACKLEY  
ATTORNEY GENERAL

Christopher Miles  
South Dakota Office of Indigent  
Legal Services  
PO Box 88237  
Sioux Falls, SD 57109  
Telephone: (605) 220-4132  
Email: ILSService@state.sd.us

ATTORNEY FOR DEFENDANT  
AND APPELLANT

Renee Stellagher  
Assistant Attorney General  
Gavin Holt, Legal Intern  
1302 East S.D. Hwy 1889, Suite 1  
Pierre, SD 57501  
Telephone: (605) 773-3215  
Email: atgservice@state.sd.us

ATTORNEYS FOR PLAINTIFF  
AND APPELLEE

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Notice of Appeal filed March 4, 2026

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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No. 31406

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STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

TYSON JAMES SEABOY,

*Defendant and Appellant.*

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**PRELIMINARY STATEMENT**

The circuit court found aggravating circumstances rendered Seaboy a significant risk to the public; therefore, it appropriately imposed a penitentiary sentence. Seaboy did not object to the circuit court's departure from presumptive probation. Now, Seaboy argues the departure was improper and the circuit court abused its discretion in imposing the sentence. Seaboy, however, has waived his appellate argument. Further, the circuit court complied with the statutory requirements for departing from presumptive probation, and it acted within its discretion to craft Seaboy's sentence. The sentence should be affirmed.

References to documents are cited as follows:

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## **JURISDICTIONAL STATEMENT**

The circuit court filed an Amended Judgment of Conviction on February 23, 2026, to allow Seaboy to appeal his sentence. SR 173–76. On March 4, 2026, Seaboy appealed the Amended Judgment of Conviction. SR 177. This Court has jurisdiction under SDCL 23A-32-2.

## **STATEMENT OF LEGAL ISSUE AND AUTHORITIES**

### **I. WHETHER THE CIRCUIT COURT PROPERLY DEPARTED FROM PRESUMPTIVE PROBATION?**

The circuit court found Seaboy posed a significant risk to the public and sentenced Seaboy to penitentiary time.

*State v. Scott*, 2024 S.D. 27, 7 N.W.3d 320

*State v. Underwood*, 2017 S.D. 3, 890 N.W.2d 240

### **II. WHETHER SEABOY WAS PROPERLY SENTENCED?**

The circuit court did not rule on this issue.

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

*State v. Bear Robe*, 2024 S.D. 77, 15 N.W.3d 460

## **STATEMENT OF THE CASE AND FACTS<sup>1</sup>**

On September 20, 2024, Seaboy was driving approximately thirty miles per hour in a twenty-mile-per-hour speed zone in Sisseton. SR 8 (confidential). After passing Corporal Justin Isaacson's patrol vehicle, Seaboy appeared to increase his speed. SR 8 (confidential). Corporal Isaacson observed the infraction, activated his emergency lights, and initiated a traffic stop. SR 8 (confidential).

During the stop, Corporal Isaacson instructed Seaboy to exit the vehicle and placed him in handcuffs due to his "unpredictable behavior." SR 8 (confidential). A pat-down search of Seaboy's person revealed a smoking pipe that contained a white residue. SR 8 (confidential). A field test indicated the white residue was methamphetamine. SR 8 (confidential). While being transported to jail, Seaboy admitted he had smoked methamphetamine two days prior. SR 8 (confidential).<sup>2</sup>

The State charged Seaboy by indictment with possession of methamphetamine, a Class 5 felony, in violation of SDCL 22-42-5; ingestion of methamphetamine, a Class 5 felony, in violation of SDCL 22-42-5.1; and driving under the influence, a Class 1 misdemeanor, in violation of SDCL 32-23-1(2). SR 21-22. The State additionally brought a Part II information against Seaboy and charged

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<sup>1</sup> The Statement of the Case and the Statement of Facts are combined for brevity and clarity.

<sup>2</sup> The South Dakota Public Health Laboratory found the presence of methamphetamine in Seaboy's blood. SR 77-79.

him as a habitual offender, raising the underlying felonies to Class 3 offenses. SR 23–26. Seaboy was released on bond on September 24, 2024. SR 17. While out on bond, Seaboy repeatedly violated his conditions. Seaboy was required to wear a drug patch as part of the 24/7 Program. *See* SR 27. Still, Seaboy continued to use controlled substances. His drug patches tested positive for methamphetamine on four occasions. SR 27, 30, 40, 45.

Seaboy failed to appear at his arraignment hearing on December 19, 2024, and the circuit court issued a bench warrant. SR 48. Until May 2025, Seaboy remained “on the run.” ST 11 (sealed). On May 8, 2025, local and federal officers went to Seaboy’s residence to execute the warrant. PSI 18 (sealed). There, Seaboy concealed himself in the attic as officers entered the home. PSI 18 (sealed). This attempt to evade arrest was unsuccessful, and Seaboy was taken into custody. PSI 18 (sealed).

Seaboy and the State entered into a plea agreement. AT 5 (sealed). On June 2, 2025, Seaboy pleaded guilty to ingestion of methamphetamine. AT 17 (sealed). He further admitted to the allegations in the Part II information. AT 17 (sealed). The State dismissed the remaining charges and capped its sentencing request at fifteen years with seven years suspended. AT 5–6 (sealed). The terms of the plea agreement were nonbinding recommendations on the circuit court. AT 11 (sealed).

After pleading guilty, Seaboy again used methamphetamine in violation of his bond conditions. SR 54. The circuit court issued a bench warrant on June 23, 2025. SR 54. Subsequently, the circuit court received an email from Tallgrass Recovery, which stated that Seaboy had been admitted to inpatient treatment on June 20, 2025. SR 59–60. The warrant was never served. ST 12 (sealed). Instead, Seaboy “completed treatment on July 18th and never turned himself in on the warrant.” ST 12 (sealed).

Initially, Tallgrass wrote that Seaboy “successfully completed” treatment after a “remarkable transformation.” PSI 42 (sealed). However, a letter dated just days later indicated otherwise. According to the letter, Seaboy “utilized manipulative tactics to portray himself as a sober recovery member working towards a new start at life,” and “secured character reference letters from two staff members for his upcoming court date under false pretenses.” PSI 43 (sealed). The letter explained:

Following his departure, staff members at Tallgrass were informed of Tyson’s continued substance use, specifically the consumption of marijuana via a vape pen. Upon investigation, three fellow guests who were in treatment alongside Tyson confirmed these claims. Furthermore, Tyson left behind an empty marijuana vape, which was inappropriately displayed on the meeting room brick wall. This brick wall[] displays many tokens as a memory of the accomplishments that have taken place amongst past and present guests. Tyson deliberately disrespected Tallgrass.

PSI 43 (sealed). Because of this behavior, Tallgrass asserted that Seaboy “not only jeopardized his own recovery but also posed a risk to the well-

being of other guests who are committed to maintaining their sobriety and pursuing a positive path.” PSI 44 (sealed).

At sentencing, the circuit court stated that it had reviewed the presentence investigation report. ST 2 (sealed). It also “acquire[d] a thorough acquaintance” with Seaboy and his circumstances. ST 10 (sealed). The circuit court noted Seaboy’s “significant criminal history” and that he has “without question demonstrated that [he is] unwilling or unable to be supervised.” ST 13 (sealed).

The circuit court enumerated the following specific aggravating circumstances which supported departing from presumptive probation:

the defendant’s criminal history, the numerous bond violations while this case was pending, his failure to appear at court, his evading law enforcement when law enforcement was trying to serve an arrest warrant on him, his unsuccessful attempts at treatment and disrespecting the program, [and] his refusal to turn himself in on an arrest warrant when one was issued.

ST 14 (sealed). It found that each circumstance alone could justify departure. ST 14 (sealed). “And when you put all six of those together,” the circuit court continued, “it certainly demonstrates that Mr. Seaboy poses a significant risk to the public.” ST 14 (sealed). As a result, the circuit court imposed a fifteen-year sentence with five years suspended. ST 14 (sealed). Seaboy did not object to this pronouncement. ST 15 (sealed).

In Seaboy’s judgment of conviction, the circuit court restated its findings for departing from presumptive probation. They are as follows:

1. Defendant has a significant criminal history.
2. Defendant violated bond over half a dozen times during the pendency of the case.
3. Defendant failed to appear and remained in the wind for approximately six (6) months.
4. Defendant has shown he is unsupervisable based upon the bond violations, failure to appear, his behavior at the treatment facility, and his attempt to evade law enforcement when they attempted to serve an arrest warrant on him.

SR 175.

### **ARGUMENT**

#### **I. THE CIRCUIT COURT'S DEPARTURE FROM PRESUMPTIVE PROBATION SHOULD NOT BE DISTURBED ON APPEAL.**

A sentencing court may depart from presumptive probation under SDCL 22-6-11 upon finding that an offender convicted of a Class 5 felony poses a "significant risk to the public." Then, "the judge must state the aggravating circumstances on the record at the time of sentencing and in the dispositional order." SDCL 22-6-11.

Seaboy now contends the circuit court's findings were insufficient to justify departure. AB 10. However, at sentencing, the circuit court announced several "significant aggravating circumstances . . . which pose a significant risk to the public." ST 14 (sealed). The circuit court also identified the aggravating circumstances in its Amended Judgment of Conviction. *Id.* Thus, the requirements of SDCL 22-6-11 were satisfied.

*A. Seaboy waived his challenge to the circuit court's departure from presumptive probation.*

This Court has “recently held that a defendant must object to a circuit court’s failure to comply with the presumptive sentencing provisions of [SDCL 22-6-11].” *State v. Scott*, 2024 S.D. 27, ¶ 31, 7 N.W.3d 320, 330 (citing *State v. Feucht*, 2024 S.D. 16, ¶ 24, 5 N.W.3d 561, 569). And “[i]n the absence of such objection, the error [is] forfeited and subject to review under the plain error doctrine.” *Id.* Seaboy suggests that with respect to SDCL 22-6-11, only procedural errors must be preserved at the circuit-court level. AB 6. However, this Court has not limited a defendant’s obligation to object to a circuit court’s failure to comply with SDCL 22-6-11 to procedural errors.

At the circuit court, Seaboy did not object to the departure from presumptive probation. He has therefore waived this issue on appeal. The circuit court’s departure from presumptive probation can be affirmed on this basis alone.

*B. If this Court reviews the circuit court's departure, it will find no error.*

SDCL 22-6-11 permits sentencing courts to impose a sentence other than probation “if the court finds aggravating circumstances exist that pose a significant risk to the public,” and “[i]f a departure is made, the judge must state the aggravating circumstances on the record at the time of sentencing and in the dispositional order.” SDCL 22-6-11.

Because Seaboy failed to preserve his issue for appellate review, this

Court has the discretion to review his case for plain error. *State v. Clemensen*, 2025 S.D. 68, ¶ 48, 28 N.W.3d 902, 918. But this Court invokes its discretion to exercise plain-error review “cautiously and only in ‘exceptional circumstances.’” *Id.* (emphasis in original) (quoting *State v. McMillen*, 2019 S.D. 40, ¶ 13, 931 N.W.2d 725, 729). And Seaboy has not met his burden to show his case is an exceptional circumstance justifying appellate review.

Even if this were an exceptional circumstance, Seaboy must show that there was “(1) error, (2) that is plain, (3) affecting substantial rights; and only then may this Court exercise its discretion to notice the error if, (4) it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (quoting *McMillen*, 2019 S.D. 40, ¶ 13, 931 N.W.2d at 729–30). The third prong further requires an appellant show “a ‘reasonable probability’ that, but for the error, the result of the proceeding would have been different.” *State v. O’Brien*, 2024 S.D. 52, ¶ 31, 11 N.W.3d 881, 890 (quoting *State v. Babcock*, 2020 S.D. 71, ¶ 45, 952 N.W.2d 750, 763).

It is obvious on the face of the record that the circuit court satisfied the mandates of SDCL 22-6-11. Before departing from presumptive probation, the circuit court identified several aggravating circumstances that justified departure. It then stated those aggravating circumstances in its judgment of conviction. Moreover, Seaboy has not argued that any alleged error seriously affected the fairness, integrity, or

reputation of judicial proceedings. The circuit court therefore did not commit plain error.

Seaboy still fails to meet his burden should this Court review the circuit court's decision to depart from presumptive probation for an abuse of discretion. *See State v. Beckwith*, 2015 S.D. 76, ¶ 7, 871 N.W.2d 57, 59. That standard asks whether the circuit court's decision was "a fundamental error of judgment, a choice outside the reasonable range of permissible choices, a decision that, on full consideration, is arbitrary or unreasonable." *State v. Spry*, 2026 S.D. 21, ¶ 23, 34 N.W.3d 192, 199 (quoting *Hood v. Straatmeyer*, 2025 S.D. 12, ¶ 7, 18 N.W.3d 649, 654). The circuit court enumerated six specific aggravating circumstances and explicitly found that such circumstances pose a significant risk to the public. Consequently, its decision to depart from presumptive probation was not an abuse of discretion.

*C. Seaboy's arguments lack merit.*

i. The circuit court's findings were sufficient.

The circuit court satisfied SDCL 22-6-11 with its findings at sentencing. Seaboy's numerous aggravating circumstances provided a sufficient basis for the circuit court to determine that Seaboy posed a significant risk to the public. Departing from presumptive probation was thus warranted.

Seaboy cites *State v. Roedder*, 2019 S.D. 9, 923 N.W.2d 537, in his assertion that the circuit court abused its discretion by failing to provide

a sufficient finding to justify departing from presumptive probation. AB 8–9. However, *Roedder* is factually distinguishable. There, the circuit court merely “commented generally on recidivism, mentioned the prior leniency Roedder obtained through a post-conviction sentencing reduction following his 2011 convictions, and referred to the traditional sentencing factor concerning ‘the protection of society from continued violations of the law.’” *Id.* ¶ 36, 923 N.W.2d at 548. This Court found such vague, unspecific findings were “inadequate” under SDCL 22-6-11. *Id.* That inadequacy is a far cry from the instant case, where the circuit court provided particularized findings about Seaboy’s significant risk to the public.

This case is more analogous to *State v. Underwood*, 2017 S.D. 3, 890 N.W.2d 240. In *Underwood*, the circuit court departed from presumptive probation due to the defendant’s criminal history, involvement with illegal drugs before—and during—his time in the Department of Corrections’ custody, and disrespect for court orders and supervised release. *Id.* ¶ 9–10, 890 N.W.2d at 242–43. This Court agreed that “Underwood’s criminal history and complete disregard for supervised release indicate the court’s departure from the presumptive sentence of probation was warranted.” *Id.* ¶ 10, 890 N.W.2d at 243. Likewise, Seaboy’s criminal history and complete disregard for treatment, among other things, indicate that departure was warranted.

Seaboy downplays his behavior by pointing out that “non-compliance is common amongst probationers.” AB 10. But Seaboy’s actions went beyond mere noncompliance. In addition to his criminal history, Seaboy repeatedly used methamphetamine in violation of his bond conditions; he failed to appear in court; he evaded law enforcement; and he “deliberately disrespected” the facility which provided him treatment. These aggravating circumstances are particularly noteworthy.

The circuit court’s findings were a sufficient basis for departing from presumptive probation. Here, unlike in *Roedder*, the circuit court made particularized findings with respect to Seaboy’s risk to the public. And just as in *Underwood*, Seaboy’s aggravating circumstances indicate the circuit court’s departure was warranted.

- ii. The circuit court fulfilled its obligation to connect its findings to a public-safety risk.

Seaboy contends the circuit court abused its discretion by failing to “articulate *how* the aggravating circumstances connect with public safety.” AB 9 (emphasis added). He asserts that the circuit court should have elaborated on the way in which these findings affect, for instance, “impaired driving, theft offenses, violent behavior, weapons possession, or facts signaling involvement in the distribution of controlled substances.” *Id.* This assertion is simply not what is required of sentencing courts under SDCL 22-6-11. Finding “likely violence,” or

even “career criminality” is not necessary to satisfy SDCL 22-6-11.

*Underwood*, 2017 S.D. 3, ¶ 10, 890 N.W.2d at 243.

A circuit court need not speculate on the record as to how the defendant might harm the public in the future. While *State v. Kurtz*, 2024 S.D. 13, ¶ 15, 4 N.W.3d 1, held that SDCL 22-6-11 requires findings that “focus on the relationship of those circumstances to public safety,” the opinion went on to frame this issue in the negative. *Kurtz*, 2024 S.D. 13, ¶ 15, 4 N.W.3d at 5. In that case, the circuit court “specifically found that Kurtz does not pose a significant risk to the public,” yet departed from presumptive probation. *Id.* ¶ 16, 4 N.W.3d at 5–6. This Court responded by admonishing circuit courts not to “ignore recent prognostic indicators suggesting the defendant does not presently pose a significant risk to the public,” and to instead “consider[] the totality of the circumstances as to *the individual*.” *Id.* ¶ 15, 4 N.W.3d at 5 (emphasis in original). *Kurtz* does not demand sentencing courts describe the potential effect of aggravating circumstances on public safety. It simply instructs them to craft their SDCL 22-6-11 findings with public safety as the primary consideration.

Here, the circuit court complied with *Kurtz*’s substantive directions. It explicitly connected aggravating circumstances to its conclusion that Seaboy posed a “significant risk to the public.” Seaboy has not alleged that the circuit court ignored any facts which undermine this conclusion. And none of the circuit court’s findings were

inconsistent with a risk to the public, unlike those in *Kurtz*. That the circuit court did not detail *how* Seaboy's aggravating circumstances might put the public at significant risk is inconsequential. The circuit court appropriately found aggravating circumstances existed that pose a significant risk to the public. At the very least, it does not constitute an abuse of discretion.

## II. SEABOY WAS PROPERLY SENTENCED.

Seaboy was convicted under SDCL 22-42-5.1 of ingestion of a schedule I or II controlled substance. SR 174. If this conviction stood alone, it would have been a Class 5 felony. SDCL 22-42-5.1. However, because Seaboy admitted habitual-offender status under SDCL 22-7-8.1, his offense raised to Class 3 felony. SDCL 22-7-8.1. With this conviction, Seaboy faced up to fifteen years in prison and a fine of \$30,000. SDCL 22-6-1(6). The circuit court sentenced him to fifteen years' imprisonment with five of those years suspended. SR 175. The sentence which the circuit court imposed here fell within the statutory maximum and was neither an abuse of discretion nor grossly disproportionate to Seaboy's offense.

### *A. The circuit court did not abuse its discretion in sentencing Seaboy.*

"[A]rguments that bear on the question whether the sentencing court acted within its discretion will be reviewed under the abuse-of-discretion standard." *State v. Rice*, 2016 S.D. 18, ¶ 29 n.8, 877 N.W.2d 75, 85 n.8. And as this Court is aware, "a sentence within the statutory

maximum generally will not be disturbed on appeal.” *State v. Miles*, 2021 S.D. 13, ¶ 17, 956 N.W.2d 61, 67 (quoting *State v. Bruce*, 2011 S.D. 14, ¶ 28, 796 N.W.2d 397, 406). This is because “[s]entencing courts possess broad discretion within constitutional and statutory limits to determine the extent and kind of punishment to be imposed.” *State v. Deleon*, 2022 S.D. 21, ¶ 17, 973 N.W.2d 241, 246 (quoting *State v. Mitchell*, 2021 S.D. 46, ¶ 27, 963 N.W.2d 326, 332). When crafting a sentence, a “sentencing court should acquire a thorough acquaintance with the character and history of the [person] before it.” *State v. Bear Robe*, 2024 S.D. 77, ¶ 12, 15 N.W.3d 460, 465 (alteration in original).

The circuit court here did demonstrate familiarity with the case. It reviewed both the presentence investigation report and plea agreement. See AT 10; ST 2. It noted that Seaboy is “48 years old”; “has one child, a 16-year-old”; “is a high school graduate but is currently unemployed”; and “has been to treatment twice.” ST 10 (sealed). The circuit court recognized that “[b]etween September of 2024 and his arraignment date on December 19th, [Seaboy] had three bond violations of the 24/7 Program.” ST 11 (sealed). Seaboy then “failed to appear at his arraignment,” and the same judge “issued a bench warrant for his arrest.” *Id.* The circuit court commented that Seaboy remained “on the run” from December to May, and “hid in the attic to avoid detention” when law enforcement went to serve the warrant. *Id.* Seaboy “again, used methamphetamine” while out on bond.” ST 12 (sealed). The circuit

court emphasized that rather than being arrested, Seaboy “was allowed to complete treatment.” *Id.* It acknowledged the letters from Tallgrass documenting how Seaboy “disrespected” and deceived the facility. ST 12–13 (sealed).

In addition, the circuit court enumerated six aggravating factors for its justification for departing from presumptive probation. ST 14 (sealed). Finally, the circuit court stated that because Seaboy has a “significant criminal history,” is “unwilling or unable to be supervised,” and poses a “significant risk to the public,” the ten-year active “penitentiary sentence in this case is absolutely warranted and appropriate.” ST 13 (sealed).

Seaboy submits that the circuit court abused its discretion by imposing a sentence which he says dovetails with the Legislature’s “policy objectives.” AB 12. He makes much of the fact that the Legislature recently reduced the punishment for violations of SDCL 22-42-5.1, though he concedes that this new legislation does not apply retroactively to his case. *Id.* Seaboy also points to the sorts of violent crimes which South Dakota law categorizes as Class 3 felonies. AB 13. But “[w]hen the language in a statute is clear, certain, and unambiguous, . . . the Court’s only function is to declare the meaning of the statute as clearly expressed.” *State v. Long Soldier*, 2023 S.D. 37, ¶ 11, 994 N.W.2d 212, 217 (quoting *State v. Bettelyoun*, 2022 S.D. 14, ¶ 24, 972 N.W.2d 124, 131). Moreover, when assessing legislative intent,

this Court “defer[s] to the text where possible.” *Id.* (quoting *Bettelyoun*, 2022 S.D. 14, ¶ 24, 972 N.W.2d at 131).

Here, the offense and its enhancement carry a punishment equal to a Class 3 felony under SDCL 22-42-5.1 and SDCL 22-7-8.1. The statutes at issue are not ambiguous, nor has Seaboy claimed they are. This Court therefore need not examine statutory history. That the circuit court fulfilled its obligations and acted within the confines of the Legislature’s sentencing prescriptions is sufficient.

While Seaboy correctly notes that the circuit court made a mistake when it commented on what Seaboy’s maximum penalty would be under the new sentencing scheme of SDCL 22-42-5.1, this mistake was immaterial. AB 13. The circuit court did not rely on it to craft Seaboy’s sentence. Instead, the circuit court found that because of Seaboy’s “significant criminal history,” his “unwilling[ness] or [inability] to be supervised,” and his “significant risk to the public,” the ten-year active “penitentiary sentence in this case is absolutely warranted and appropriate.” ST 13 (sealed). The circuit court’s inaccurate comment thus did not affect Seaboy’s sentence.

This Court permits even maximum punishments when sentencing courts take due care in fashioning them. In *State v. Deleon*, 2022 S.D. 21, 973 N.W.2d 241, the sentencing court imposed a maximum sentence on a defendant convicted of a Class 2 felony. *Id.* ¶ 25, 973 N.W.2d at 247. Because the sentencing court properly considered all the

evidence, it “was free to exercise its discretion within the limits of its statutory authority.” *Id.*

Here, the circuit court validly exercised its discretion by crafting a sentence that while considerable, was within the statutory maximum. Given the aggravating circumstances in this case and the circuit court’s thorough knowledge of the facts, the sentence did not constitute an abuse of discretion.

*B. Seaboy’s sentence does not violate the Eighth Amendment.*

Seaboy’s argument at times mirrors an Eighth Amendment challenge, though he mentions that constitutional provision only in the final footnote of his brief. AB 16 n.5. This Court has cautioned that it “will consider only those issues that the parties actually briefed.” *Black Hills Truck & Trailer, Inc. v. S.D. Dep’t of Revenue*, 2016 S.D. 47, ¶ 10 n.3, 881 N.W.2d 669, 672 n.3 (quoting *Daily v. City of Sioux Falls*, 2011 S.D. 48, ¶ 10 n. 6, 802 N.W.2d 905, 910 n. 6.). Granted, it has previously elected to analyze ostensible Eighth Amendment challenges under an abuse-of-discretion standard when in reality, those challenges claimed an abuse of discretion. *See Deleon*, 2022 S.D. 21, ¶ 16, 973 N.W.2d at 246. If this Court deems the inverse appropriate here, it will not find that Seaboy’s sentence constitutes cruel and unusual punishment.

When “determining whether a noncapital sentence is in violation of the Eighth Amendment, [this Court] must decide whether the sentence is ‘grossly disproportionate to its corresponding offense.’” *Bear Robe*,

2024 S.D. 77, ¶ 21, 15 N.W.3d at 467 (quoting *State v. Caffee*, 2023 S.D. 51, ¶ 17, 996 N.W.2d 351, 358). This analysis is conducted de novo. *Id.* ¶ 20, 15 N.W.3d at 467. The first step is to “compare the gravity of the offense . . . to the harshness of the penalty.” *Id.* ¶ 21, 15 N.W.3d at 467 (quoting *Caffee*, 2023 S.D. 51, ¶ 17, 996 N.W.2d at 358). The next is to “compare the sentence to those ‘imposed on other criminals in the same jurisdiction’ as well as those ‘imposed for commission of the same crime in other jurisdictions.’” *Id.* (quoting *Caffee*, 2023 S.D. 51, ¶ 17, 996 N.W.2d at 358). “[T]ypically,” this Court has observed, the analysis will end after the first step, “as gross proportionality is rarely found.” *Id.* (quoting *Caffee*, 2023 S.D. 51, ¶ 17, 996 N.W.2d at 358).

Seaboy admitted habitual-offender status along with his conviction for ingestion of a schedule I or II controlled substance. AT 17. This enhancement is relevant because “[i]n cases where the offender’s ‘sentence is enhanced because of the offender’s recidivism, then the gravity of his past offenses also contributes to the gravity of the present offense.’” *State v. Lanpher*, 2024 S.D. 26, ¶ 21, 7 N.W.3d 308, 316 (quoting *State v. Chipps*, 2016 S.D. 8, ¶ 36, 874 N.W.2d 475, 488). “[T]hat history is relevant to an Eighth Amendment analysis of this sentence.” *Chipps*, 2016 S.D. 8, ¶ 40, 874 N.W.2d at 490. Habitual offenses sit much higher on the spectrum of criminality than do isolated offenses. *See Solem v. Helm*, 463 U.S. 277, 296 (1983) (“[A] State is justified in punishing a recidivist more severely than it punishes a first

offender.”). “The habitual offender statutes are designed to protect society from individuals who continue to commit felonies and by doing so have demonstrated that rehabilitation has failed.” *State v. Guthmiller*, 2003 S.D. 83, ¶ 37, 667 N.W.2d 295, 308.

Seaboy’s ten-year sentence is situated toward the lower end of the spectrum of punishments in South Dakota, which ranges from probation on one end to mandatory life imprisonment or even death on the other. This sentence was warranted based on the offense at issue, the facts of this case, and Seaboy’s characteristics. This was more than a simple ingestion conviction; Seaboy admitted to being a habitual offender and has a lengthy criminal history. The sentence the circuit court imposed is not grossly disproportionate to Seaboy’s offense and therefore does not violate the Eighth Amendment.

The circuit court acted within its constitutional and statutory limits in this case. In addition to Seaboy’s conviction for ingestion and habitual-offender status, his long criminal history, “numerous” bond violations, failure to appear, evasion of law enforcement, disciplinary problems at a treatment facility, and refusal to turn himself in on an arrest warrant demonstrate that the circuit court properly exercised its sentencing authority. As neither grossly disproportionate nor an abuse of discretion, Seaboy’s sentence was proper.

## **CONCLUSION**

This Court should affirm Seaboy's sentence. Seaboy made no objection at his sentencing, and the appellate record reveals no error—much less plain error or an abuse of discretion—in the circuit court's departure from presumptive probation. By conforming to SDCL 22-6-11, the circuit court fulfilled its sentencing duty. It found aggravating circumstances that made Seaboy a significant risk to the public and listed those factors both in sentencing and in the judgment of conviction. Moreover, Seaboy's sentence fell within the circuit court's range of statutorily and constitutionally permissible choices. The State accordingly requests that Seaboy's sentence be affirmed.

Respectfully submitted,

**MARTY J. JACKLEY**  
**ATTORNEY GENERAL**

/s/ Renee Stellagher

Renee Stellagher

Assistant Attorney General

1302 East SD Highway 1889, Suite 1

Pierre, SD 57501-8501

Telephone: (605) 773-3215

Email: atgservice@state.sd.us

### **CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 4,489 words.

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

Dated this 20th day of July 2026.

/s/ Renee Stellagher  
Renee Stellagher  
Assistant Attorney General

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 20, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Tyson Seaboy* was served via Odyssey File and Serve upon Christopher Miles at ILSService@state.sd.us.

/s/ Renee Stellagher  
Renee Stellagher  
Assistant Attorney General

IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

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STATE OF SOUTH DAKOTA,

*Plaintiff/Appellee,*

vs.

TYSON SEABOY,

*Defendant/Appellant.*

No. 31406

---

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

---

HONORABLE MARSHALL LOVRIEN  
Circuit Court Judge

---

APPELLANT'S REPLY BRIEF

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CHRISTOPHER MILES  
South Dakota Office of Indigent Legal Services  
PO Box 88237  
Sioux Falls, SD 57109  
Attorney for Defendant/ Appellant

MARTY JACKLEY  
Attorney General  
1302 Hwy 1889, Suite 1  
Pierre, SD 57501

DYLAN KIRCHMEIER  
Roberts County State's Atty  
414 3<sup>rd</sup> Avenue East  
Sisseton, SD 57262

Attorneys for State/ Appellee

Notice of Appeal Filed on March 4, 2026

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

vs.

TYSON SEABOY,

*Defendant and Appellant.*

---

No. 31406

PRELIMINARY STATEMENT

In an attempt to avoid repetitive arguments, Defendant and Appellant, Tyson Seaboy (“Seaboy”), will limit discussion to the issues that need further development or argument. Any matter raised in Seaboy’s initial brief, but not specifically mentioned herein, is not intended to be waived. Seaboy will attempt to avoid revisiting matters adequately addressed in the initial brief.

The brief of Plaintiff and Appellee, the State of South Dakota, is referred to as “SB.” All citations will be followed by the appropriate page number. Seaboy relies upon the Jurisdictional Statement, Statement of the Case and Facts, and Statement of Legal Issues presented in his initial brief, filed with the Court on June 4, 2026.

## ARGUMENT

### I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY DEPARTING FROM A PRESUMPTIVE SENTENCE.

The State asserts that Seaboy's claim should be reviewed under the plain error doctrine because Seaboy did not "object to the departure from presumptive probation." SB 8. Citing *State v. Scott* for support, the State contends Seaboy was required to object at the sentencing hearing. 2024 S.D. 27, ¶ 31, 7 N.W.3d 320, 330; AB 8.

But to determine the appropriate standard of review, it is important to clarify *what*, specifically, Seaboy would be objecting to. Here, unlike *Scott* and *Feucht*, Seaboy would not be objecting to *non-compliance* with the statute, instead, he would be objecting, rather curiously, to the circuit court's exercise of discretion. See *Scott*, 2024 S.D. 27, ¶ 34, 7 N.W.3d at 330 (this Court classifying the circuit court's failure to "identify aggravating factors on the record to justify a departure" and "list aggravating factors in the judgment of conviction" as non-compliance with the statute); *State v. Feucht*, 2024 S.D. 16, ¶ 22, 5 N.W.3d 561, 568 (explaining that "these types of errors – failure to state aggravating circumstances on the record at sentencing or failure to include them in the judgment of conviction – relate to *sentencing procedure*, not to *whether the circuit court abused its discretion* in imposing a penitentiary sentence under the circumstances before the court.") (emphasis added).

In *Scott*, neither party, nor the circuit court, recognized the defendant's

conviction for a Class 5 felony required the application of SDCL 22-6-11. *Scott*, 2024 S.D. 27, ¶ 34, 7 N.W.3d at 330. *Scott* and *Feucht* both dealt with straightforward issues of non-compliance with SDCL 22-6-11. Citing *State v. Beckwith*, 2015 S.D. 76, 871 N.W.2d 57 as an example, this Court clarified the difference between a circuit court's non-compliance with SDCL 22-6-11 and a circuit court's *decision* to depart from the mandate of SDCL 22-6-11. *Feucht*, 2024 S.D. 16, ¶ 22, 5 N.W.3d 561, 568. When Seaboy implored the circuit court to impose a presumptively suspended sentence, he preserved the issue for appeal. SR 224. Lodging an objection on these grounds *after* the circuit court pronounced the sentence would be superfluous, and tantamount to objecting to the circuit court's opinion. In this case, like any other appellant arguing the circuit court abused its discretion by *deciding* to impose a specific sentence, an objection to the circuit court's discretionary decision is not required to preserve the argument on appeal. Accordingly, Seaboy respectfully disagrees with the State's assertion that "this Court has not limited a defendant's obligation to object to a circuit court's failure to comply with SDCL 22-6-11 to procedural errors." SB 8. Under *Feucht* and *Beckwith*, it has.

A circuit court's decision to depart from a presumptive sentence should be reviewed for an abuse of discretion. Conversely, if the circuit court did not procedurally comply with SDCL 22-6-11 and the appellant did not notify the circuit court of the non-compliance, then the issue would be reviewed for plain error. See *Feucht*, 2024 S.D. 16, ¶ 23, 5 N.W.3d at 568-59 (recognizing that

objecting to non-compliance promotes judicial efficiency because it reminds the circuit court of its obligations under the statute and provides an opportunity to correct the error).

For the reasons described in Seaboy's initial brief, and because the sentencing record does not focus on the relationship of Seaboy's circumstances to public safety, the circuit court abused its discretion in finding Seaboy posed a significant risk to the public under SDCL 22-6-11.

## **II. THE CIRCUIT COURT'S DECISION TO IMPOSE AN AGGREGATE SENTENCE OF 15 YEARS WITH 5 YEARS SUSPENDED WAS AN ABUSE OF DISCRETION.**

At the outset, Seaboy intends to clarify that his argument is not an Eighth Amendment challenge. Because "the Eighth Amendment is not concerned with the harshness of a penalty relative to the range of punishments for a particular offense[,]" but the "the penalty's relative position on the spectrum of *all permitted punishments*[" an argument suggesting the harshness of Seaboy's sentence is comparable to the death penalty, or life without parole, is untenable. *State v. Holler*, 2020 S.D. 28, ¶ 13, 944 N.W.2d 339, 343 (emphasis in original). Instead, Seaboy's argument is confined to whether the circuit court's decision to impose a 15-year aggregate sentence for an ingestion offense was an abuse of discretion.

The State recognized that the circuit court's sentence was "considerable" in length, but because it fell within the statutory maximum, it should not be disturbed on appeal. SB 18. "Although the abuse of discretion standard of review affords much deference to sentencing courts, it is not without bounds." *State v.*

*Mitchell*, 2021 S.D. 46, ¶ 46, 963 N.W.2d 326, 336 (DeVaney, J., concurring).

Viewed through the narrow lens of statutory maximum penalties, the circuit court's sentence was within the range of *legally* permissible choices. But more broadly, the abuse of discretion standard also asks if the circuit court's decision was a "fundamental error of judgment" or a decision which, after full consideration, was "arbitrary or unreasonable." *State v. Caffee*, 2023 S.D. 51, ¶ 26, 996 N.W.2d 351, 359-60.

The State suggests the sentence was appropriate because the circuit court was familiar with the case. SB 15. Seaboy agrees that the circuit court was familiar with the case. However, that alone does not necessarily justify the resulting sentence. In *Mitchell*, there was "no question that the circuit court exercised careful review of Mitchell's history and characteristics." 2021 S.D. 46, ¶ 38, 963 N.W.2d at 335. Despite that familiarity, this Court found an abuse of discretion because the circuit court "overlooked the elements of SDCL 22-16-15(4)" and "effectively treated Mitchell as solely responsible for [the victim's] killing without considering [the victim's] criminal conduct." *Id.* In doing so, the circuit court's "concern with the punitive objective of sentencing was artificially heightened." *Id.*

Certainly, Seaboy recognizes that the specific aspects of *Mitchell* are distinguishable from his case. But here, as described in Seaboy's initial brief, the circuit court overlooked important context in determining the length of the sentence. The circuit court mistakenly believed that Seaboy would be subject to a

10-year maximum sentence under the new sentencing scheme of SDCL 22-42-5.1. Also, it failed to appreciate that “ingesting drugs is one of the least serious drug crimes a person can commit.” *Riis v. Shaver*, 458 F. Supp. 3d 1130, 1176 (D.S.D. 2020), *aff'd*, 4 F.4th 701 (8th Cir. 2021). *Mitchell*, at the very least, recognizes that a sentencing court’s discretion is broad, but not unlimited.

For the reasons described in Seaboy’s initial brief, he requests this Court find the circuit court’s decision to impose a 15-year aggregate sentence to be “a decision, which on full consideration, is arbitrary or unreasonable.” *Holler*, 2020 S.D. 28, ¶ 13, 944 N.W.2d 339, 343 (citation omitted).

#### CONCLUSION

For the aforementioned reasons, Seaboy respectfully requests this Court reverse the circuit court’s sentence and remand his case for a new sentencing hearing.

### CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Reply Brief contains 1,261 words
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 19<sup>th</sup> day of August, 2026.

/s/ Christopher Miles  
Christopher Miles  
Attorney for Appellant

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Appellant's Reply Brief were electronically served upon:

MARTY JACKLEY  
Attorney General  
atgservice@state.sd.us  
*Attorney for Appellee, State of South Dakota*

DYLAN KIRCHMEIER  
Roberts County State's Attorney  
dylankirchmeier@gmail.com  
*Attorney for Appellee, State of South Dakota*

Dated this 19<sup>th</sup> day of August, 2026.

/s/ Christopher Miles  
Christopher Miles  
Attorney for the South Dakota Office  
of Indigent Legal Services  
PO Box 88237  
Sioux Falls, SD 57109