

APR 22 2025

Shirley A. Johnson-Leigh
Clerk

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

STEVEN JON ESSELINK,
Defendant and Appellant.

Supreme Court No.: 31045

Circuit Court Case No.: 49CRI24-7998

APPELLANT'S BRIEF

Steven Jon Esselink, Pro Se
405 S Main
Hills, MN 56138
612-270-2702

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STATEMENT OF THE ISSUES

- Did trial counsel Ryan Kolbeck and public defender Christopher Miles provide ineffective assistance by failing to challenge the methamphetamine blood test result, misrepresenting employment, misrepresenting the plea agreement, and attempting to dismiss the appeal, prejudicing Appellant's defense and appeal rights?
Held: Second Judicial Circuit erred in accepting the plea without addressing counsel's deficiencies.
Authority: Strickland v. Washington, 466 U.S. 668 (1984); State v. Two Hearts, 2019 SD 17.

- Did the circuit court err by imposing a jail sentence contrary to the plea agreement without offering plea withdrawal and showing possible bias?
Held: The court abused its discretion, violating due process.
Authority: SDCL 23A-27-11; State v. Lohnes, 344 N.W.2d 686 (S.D. 1984); State v. Page, 2006 SD 2.
- Did the circuit court err in accepting a plea based on an unverified methamphetamine result, potentially from a lawful prescription, lacking a sufficient factual basis?
Held: The plea was invalid due to evidentiary flaws.
Authority: SDCL 23A-7-2; State v. Loftus, 1997 SD 94.

STATEMENT OF THE CASE

On March 24, 2025, Appellant Steven Jon Esselink pleaded guilty to a third-offense DWI (Class 6 felony) in the Second Judicial Circuit, Minnehaha County, expecting 4 months house arrest per a plea agreement (Transcript, Page 5). The court (Hon. Susan Sabers) imposed 120 days in Minnehaha County Jail (60 days to serve, 60 days electronic monitoring), 2 years suspended penitentiary time, and 4 years supervised probation (Transcript, Page 16). On April 7, 2025, Appellant filed a Notice of Appeal, Motion to Withdraw Plea, and Motion for Stay. The circuit court denied the stay on April 15, 2025, citing lack of jurisdiction. Public defender Christopher Miles attempted to dismiss the appeal on April 12, 2025. Disciplinary complaints were filed against Miles and prior counsel Ryan Kolbeck on April 11-12, 2025. This appeal challenges the conviction due to ineffective assistance, judicial error, and evidentiary flaws, seeking reversal or remand for plea withdrawal.

STATEMENT OF FACTS

On October 24, 2024, Steven Jon Esselink was arrested in Minnehaha County for speeding and suspected DWI (Transcript, Page 8, Line 1). A blood test showed 195 ng/ml methamphetamine, 25 ng/ml amphetamine, and 22 ng/ml Delta-9 THC carboxy (Transcript, Page 8, Lines 22-23). Steven disclosed to law enforcement that he takes Adderall, a prescription amphetamine (Transcript, Page 8, Line 13). No GC-MS test confirmed the methamphetamine was illicit (Transcript, Page 9).

Represented by Ryan Kolbeck, Steven pleaded guilty to DWI 3rd on March 24, 2025, expecting 4 months house arrest per a plea agreement (Transcript, Page 5, Lines 22-24). Kolbeck did not challenge the methamphetamine result, despite the Adderall disclosure, and falsely claimed Steven was employed by "Asphalt Paving," a nonexistent company in Sioux Falls, to argue for leniency (Transcript, Page 12, Lines 9-10). The court, led by Judge Susan Sabers, accepted the plea, noting Steven admitted to driving "high on meth and Delta-9" (Transcript, Page 9, Line 12). Sabers imposed 60 days jail (to serve by April 21, 2025), 60 days electronic monitoring, 2 years suspended penitentiary time, and 4 years probation, deviating from the plea agreement without

offering plea withdrawal (Transcript, Page 16, Lines 3-4). Sabers' comments, including "you could have killed people" and "I would use pen time" (Transcript, Page 15, Lines 14, 22), suggested bias.

On April 7, 2025, Steven filed a pro se Notice of Appeal, Motion to Withdraw Plea, and Motion for Stay. Public defender Christopher Miles, assigned to the appeal, attempted to dismiss it on April 12, 2025, and mocked its merits, stating, "It's like basketball. No call" (recorded conversation). The circuit court denied the stay on April 15, 2025, citing the appeal. Steven filed a stay motion with the Supreme Court on April 14, 2025, and disciplinary complaints against Kolbeck and Miles on April 11-12, 2025, with additional complaints filed concurrently.

ARGUMENT

I. Ineffective Assistance of Counsel

The circuit court erred in accepting Steven's plea, as trial counsel Ryan Kolbeck and public defender Christopher Miles provided ineffective assistance, violating his Sixth Amendment rights. Under *Strickland v. Washington* (466 U.S. 668, 1984), ineffective assistance requires deficient performance and prejudice. Both elements are met.

A. Kolbeck's Deficient Performance

- **Failure to Challenge Methamphetamine Result:** Kolbeck failed to contest the blood test showing 195 ng/ml methamphetamine, despite Steven's disclosure to law enforcement that he takes Adderall, a prescription amphetamine (Transcript, Page 8, Lines 12-13). Therapeutic Adderall levels (20-250 ng/ml, per forensic studies) could explain the result, yet no GC-MS test confirmed illicit methamphetamine (Transcript, Page 9). This omission missed a critical defense, violating Rule 1.3 (diligence) and Rule 1.1 (competence) of the South Dakota Rules of Professional Conduct. *State v. Loftus* (1997 SD 94, ¶ 15) requires counsel to pursue reasonable defenses.
- **False Employment Claim:** Kolbeck falsely claimed Steven was employed by "Asphalt Paving," a nonexistent company, to argue for house arrest (Transcript, Page 12, Lines 9-10). This misled the court, undermining sentencing arguments and violating Rule 4.1 (truthfulness).
- **Plea Misrepresentation:** Kolbeck assured Steven the plea agreement guaranteed 4 months house arrest, as implied by the court's statement that the agreement prevented penitentiary time (Transcript, Page 5, Lines 22-24). The court imposed 60 days jail (Transcript, Page 16, Lines 3-4), and Kolbeck failed to object or request withdrawal, violating Rule 1.4 (communication).

B. Miles' Deficient Performance

On April 12, 2025, Miles attempted to dismiss Steven's appeal without consent, against his interests (Rule 1.2(a), client authority). Miles mocked the appeal, stating, "It's like basketball. No call" (recorded conversation), showing lack of diligence (Rule 1.3; *State v. Two Hearts*, 2019 SD 17, ¶ 12, on counsel's duty). This forced pro se efforts, prejudicing appeal rights.

C. Prejudice

Kolbeck's failures led to an uninformed plea and harsher sentence, as a proper Adderall defense could have negated the meth charge, and accurate employment information might have secured house arrest (*Strickland*, 466 U.S. at 694). Miles' actions jeopardized the appeal, delaying relief. But for these errors, Steven would not have pleaded guilty or faced jail. Reversal or remand is warranted.

II. Judicial Error in Sentencing and Plea

The circuit court abused its discretion by imposing 60 days jail contrary to the plea agreement and failing to offer plea withdrawal, violating due process and SDCL 23A-27-11. The court's comments also suggest bias.

A. Plea Agreement Violation

The plea agreement, as understood by Steven and implied by the court, promised 4 months house arrest to avoid penitentiary time (Transcript, Page 5, Lines 22-24). Sabers imposed 60 days jail (Transcript, Page 16, Lines 3-4) without offering withdrawal, contrary to *State v. Lohnes* (344 N.W.2d 686, 688 (S.D. 1984)), which requires courts to allow withdrawal if deviating from a plea agreement. SDCL 23A-27-11 permits withdrawal for "manifest injustice," met here by the unexpected jail term.

B. Possible Bias

Sabers' comments—"you could have killed people" (Transcript, Page 15, Line 14) and "I would use pen time" (Page 15, Line 22)—suggest prejudgment, violating impartiality standards (*State v. Page*, 2006 SD 2, ¶ 16). These remarks, combined with the plea switch, indicate bias, undermining the sentence's fairness.

C. Remedy

The court's failure to offer withdrawal and signs of bias require remand for plea withdrawal or resentencing consistent with the agreement.

III. Evidentiary Flaws in Plea's Factual Basis

The circuit court erred in accepting the plea, as the factual basis relied on an unverified 195 ng/ml methamphetamine result, potentially from Steven's Adderall prescription, violating SDCL 23A-7-2. *State v. Loftus* (1997 SD 94, ¶ 18) requires a reliable factual basis for a plea.

The blood test showed methamphetamine but lacked GC-MS confirmation to distinguish it from Adderall (Transcript, Page 8, Lines 22-23; Page 9). Steven disclosed his prescription (Transcript, Page 8, Line 13), yet the court accepted the plea based on his admission to driving "high on meth" (Transcript, Page 9, Line 12), influenced by Kolbeck's failure to challenge the result. This evidentiary flaw invalidates the plea, as the meth could be lawful (Loftus, ¶ 20). Reversal or remand is needed to correct this error.

CONCLUSION

The circuit court erred in accepting Steven Jon Esselink's plea due to ineffective assistance by Kolbeck and Miles, judicial error in sentencing without plea withdrawal, and an invalid factual basis. These errors prejudiced Steven's rights, resulting in an uninformed plea and unjust sentence. Appellant respectfully requests this Court reverse the conviction, vacate the sentence, and remand for plea withdrawal or a new trial. Alternatively, Appellant seeks remand for resentencing consistent with the plea agreement.

Dated: April 21, 2025

Steven Jon Esselink
405 S Main
Hills, MN 56138
612-270-2702

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with SDCL 15-26A-60, containing fewer than 25 pages, double-spaced in 12-point font, excluding attachments.

Dated: April 21, 2025


Steven Jon Esselink

CERTIFICATE OF SERVICE

I, Jamie Leechelle Metcalfe, certify that on April ^{21st}~~18~~, 2025, I served a true and correct copy of the foregoing Appellant's Brief upon the following parties, counsel for the Appellee, by:

- South Dakota Attorney General:
[X] Placing it in the United States Mail, postage prepaid, addressed to:
South Dakota Attorney General
Attn: Marty Jackley
1302 E. Hwy 14, Suite 1
Pierre, SD 57501

[X] Hand-delivering it to _____ at ____:____ at the above address.

- Minnehaha County State's Attorney:
[] Placing it in the United States Mail, postage prepaid, addressed to:
Minnehaha County State's Attorney
Attn: Carly de Jager
415 N. Dakota Ave.
Sioux Falls, SD 57104

[X] Hand-delivering it to [name] at [time] at the above address.

This service complies with SDCL 15-26A-20 and SDCL 15-6-5, following advice to serve both parties.

Dated: April 21, 2025

Jamie Leechelle Metcalfe
217 E 3rd Ave
Lennox, SD 56138
605-254-2224

APPENDIX

- Transcript Pages 5, 8–9, 12, 16
- Adderall Prescription (if available)
- Circuit Court's April 15, 2025, Stay Denial (if written)
- Note: Audio of Christopher Miles' April 12, 2025, remark available upon request

1 **MR. ESSELINK:** Yes, Your Honor.

2 **THE COURT:** You understand that somebody on a DUI third
3 just isn't getting it? Because most people figure it out
4 after DUI one and figure, hey, maybe I should stop drinking
5 and driving because this is pretty unsafe, illegal. Do you
6 understand that?

7 **MR. ESSELINK:** Yes, Your Honor.

8 **THE COURT:** In your Part II, you've got a prior DUI from
9 Lyon County, Minnesota, in 2020 and another from 2022 in
10 Lyon County. The state wants to use those two priors
11 against you to make the new one your DUI third. Those
12 first two were misdemeanors under South Dakota law, but now
13 you're in felony court because your third DUI is a felony.
14 You are charged with two different versions of the same
15 offense. A DUI third means that you're facing a Class 6
16 felony, which is two years in the pen, \$4,000 fine, you pay
17 a \$50 surcharge for the DUI fund, you lose your license for
18 a period of one year, you'll be paying back the testing
19 costs of \$230.

20 What the plea agreement requires is I can't immediately
21 send you to the pen. I will personally promise you a
22 penitentiary sentence if you violate the terms of my
23 probation and come back to me. Do you understand that?

24 **MR. ESSELINK:** Very clearly, Your Honor.

25 **THE COURT:** Here I can only send you to jail for the 120

1 Specifically they noted that the vehicle was going 43 miles
2 per hour in a 30 mile per hour zone. Upon contact with the
3 driver, they identified him as the defendant. And law
4 enforcement pretty quickly observed abnormal behaviors,
5 including the defendant being fidgety, unable to remain
6 still; his eyes were bloodshot and watery, and his pupils
7 were dilated. Law enforcement also noted he displayed
8 bruxism, which is the grinding of teeth, and made
9 uncontrollable movements with his hands and arms. Law
10 enforcement identified multiple signs of impairment during
11 standardized field sobriety tests as well. In response to
12 these observations, the defendant stated he takes Adderall.

13 Law enforcement placed the defendant under arrest, and
14 after they did so, they did a search of his vehicle as they
15 noticed a strong odor of burnt marijuana emanating from the
16 interior. They located a silicone container with about a
17 half gram of marijuana and a small metal grinder with raw
18 marijuana.

19 Defendant consented to a blood draw. Two samples were
20 taken. The results came back. Defendant tested positive
21 for Delta 9 THC carboxy, 22 nanograms per mil; and
22 25 nanograms per mil of amphetamine; and 195 nanograms per
23 mil of methamphetamine. And these events all took place
24 here in Minnehaha County.

25 **THE COURT:** No alcohol?

1 **MR. JENSEN:** No alcohol, Judge.

2 **THE COURT:** Okay. Ryan, any facts there your client is
3 disputing?

4 **MR. KOLBECK:** No, Your Honor.

5 **THE COURT:** Okay. Steve, you admit that you drove
6 illegally and unlawfully upon our roadways high on meth and
7 Delta 9?

8 **MR. ESSELINK:** Yes, Your Honor.

9 **THE COURT:** Okay. I find that to be a valid factual basis
10 to support the plea of guilty. I find a knowing and
11 voluntary waiver of his right to a jury trial.

12 Kolbeck, moving ahead with sentencing here today?

13 **MR. KOLBECK:** Yes, Your Honor.

14 **THE COURT:** Is he giving up his right to a presentence
15 report and to a 48-hour delay?

16 **MR. KOLBECK:** Yes. I have some character letters that were
17 filed. I don't know if the Court's had a chance.

18 **THE COURT:** I have.

19 **MR. KOLBECK:** Okay. And we also need to have the Part II.

20 **THE COURT:** Oh, yeah, we do. Okay.

21 Steve, take a look at the Part II. I think Kolbeck has
22 it there for you. Are you the Steven John Esselink that is
23 listed in that document?

24 **MR. ESSELINK:** I am.

25 **THE COURT:** Do you admit and plead guilty to the fact that

1 in Minnesota and just over to Hills-Beaver Creek, three
2 miles over the boundary. And essentially, my understanding
3 of talking with work release here in Minnehaha County, they
4 would not approve him because of the geographical region
5 over to Hills-Beaver Creek. I have been in contact with
6 the Glory House, talked to them about this case. They
7 would need to know the amount of time and the actual
8 turn-in date for him to do the electronic monitoring if
9 approved. Because he is employed through Asphalt Paving
10 here in Sioux Falls, around this area. He is diligently a
11 member of the community, and hardworking, and has been
12 through this entire time.

13 Meth is an issue. And I think with the character
14 letters, he had trauma. He had issues in the
15 Minneapolis/St. Paul area. A college athlete that got into
16 a bad group of people and a bad addiction. I do believe
17 the character letters indicate as well as the treatment
18 reports indicate that he's been doing well since.
19 Keystone, we went and did the treatment needs assessment,
20 and they've been doing the meetings as noted in the group.
21 They did the maintenance groups and appears honest, open,
22 willing to change.

23 The previous chart had him on probation in Minnesota.
24 And based on this arrest, they also put him on UAs, and
25 intensive greatly increased the number of them since this

1 of supervised probation. 120 days Minnehaha County Jail,
2 I'm suspending zero.

3 Did he have credit, Ryan?

4 **MR. KOLBECK:** One day, Your Honor.

5 **THE COURT:** One day credit. I'll let him serve up to 60
6 days with EM, but 60 days is without.

7 What's he want for a report date given the fact that he
8 might want to try to do it over in Lyon County?

9 **MR. KOLBECK:** Sure. If we could have three weeks for now.

10 **THE COURT:** Sure.

11 **MR. KOLBECK:** So it will be 60 days Lyon County, and then
12 60 days electronic monitoring through the Glory House.

13 **THE COURT:** Well, 60 days Lyon County, I mean if you can do
14 it without any expense to Minnehaha County, that's for you
15 to work out. I'll let him have 60 days on EM, but I'm
16 forcing him to sit 60 days. I don't care where he sits it.
17 I don't care where he does EM.

18 **MR. KOLBECK:** Okay.

19 **THE COURT:** He can do it however. I'll give him a report
20 date of Monday, April 21, 5:00 P.M..

21 Liquidated court costs, \$116.50. Fine of \$500. Testing
22 costs of \$230. \$50 DUI fee. All of those are due within a
23 period of one year from today. My standard probationary
24 terms will apply, all of them.

25 Steve, it looks like a lot because it's two pages of

Name: Steven J Esselink | DOB: 4/26/1981 | MRN: E56845 | PCP: Christopher K Boschee, DO

Medications

Current Medications

Please review the medications that we have on file. Remove any medications that you are no longer taking, and add any medications you are taking that are not listed. When the list is accurate, please select the check box and continue. Your chart update request will be reviewed at your next clinic appointment. **Call 911 if you have an emergency.**

amphetamine-dextroamphetamine 20 MG tablet

Commonly known as: ADDERALL

Take 1 tablet (20 mg) by mouth 1 time per day NO FURTHER REFILLS UNTIL SEEN

⚠ You have another medication with the same name.

Prescription Details

Prescribed June 24, 2022

Approved by **Joshua M Doorn**

Refill Details

Quantity 30 tablets

Day supply 30

Pharmacy Details

E- Lewis Drug 007 Sioux Falls SD 4409 E. 26th St. 57103

4409 E. 26th St., Sioux Falls SD 57103

605-367-2710

amphetamine-dextroamphetamine 30 MG extended release capsule

Commonly known as: ADDERALL XR

Take 1 capsule (30 mg) by mouth 1 time a day in the morning NO FURTHER REFILLS UNTIL SEEN

⚠ You have another medication with the same name.

Prescription Details

Prescribed June 24, 2022

Approved by **Joshua M Doorn**

Refill Details

Quantity 30 capsules

Day supply 30

Pharmacy Details

E- Lewis Drug 007 Sioux Falls SD 4409 E. 26th St. 57103

4409 E. 26th St., Sioux Falls SD 57103

605-367-2710

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
 Plaintiff,

+

BPD 24-00654

49CRI24007998

vs.

+

JUDGMENT & SENTENCE

STEVEN JON ESSELINK,
 Defendant.

+

An Indictment was returned by the Minnehaha County Grand Jury on December 12, 2024, charging the defendant with the crimes of Count 1 DWI on or about October 27, 2024; Count 2 DWI on or about October 27, 2024; Count 3 Possession of Marijuana on or about October 27, 2024; Count 4 Possession of Drug Paraphernalia on or about October 27, 2024; Count 5 Speeding on or about October 27, 2024 and a Part II DWI 3rd Offense Information was filed. The defendant was arraigned upon the Indictment and Information on December 20, 2024, Ryan Kolbeck appeared as counsel for Defendant; and, at the arraignment the defendant entered his plea of not guilty of the charges in the Indictment. Defendant with counsel, Ryan Kolbeck, returned to Court on March 24, 2025, the State appeared by Christian Jensen, Deputy State's Attorney. The defendant thereafter changed his plea to guilty to Count 2 (SDCL 32-23-1(3)) and admitted to the Part II DWI 3rd Offense Information (SDCL 32-23-4).

Thereupon on March 24, 2025, the defendant was asked by the Court whether he had any legal cause why Judgment should not be pronounced against him. There being no cause, the Court pronounced the following Judgment and

S E N T E N C E

AS TO COUNT 2 DWI-3RD OFFENSE : STEVEN JON ESSELINK shall be imprisoned in the South Dakota State Penitentiary, located in Sioux Falls, County of Minnehaha, State of South Dakota for two (2) years with the sentence suspended on the following conditions:

1. That the defendant sign and abide by the supervised probation agreement with the Court Services Department for four (4) years and comply with the following standard probationary terms and conditions:
 - a. You shall obey all state, tribal and federal laws and municipal ordinances. If questioned by law enforcement, arrested or issued a citation for violation of any law or ordinance, you shall notify your Court Services Officer within 24 hours, excluding weekends and legal holidays.
 - b. You shall not drive any vehicle upon the public highways unless lawfully licensed and insured.
 - c. You shall be subject to the Unified Judicial System's Application of Supervisory Responses (ASR) Grid.
 - d. The Court encourages you to maintain full-time employment at all times, unless participating in an educational program with the approval of your Court Services Officer. In the event you lose your job or are terminated from a program, you shall notify your

Court Services Officer within 48 hours. You shall support your dependents to the best of your ability.

- e. You shall keep your Court Services Officer informed at all times regarding your current residence and phone number.
- f. You shall notify your Court Services Officer within 48 hours, excluding weekends or legal holidays, whenever there is any change in your employment or residence status.
- g. You shall remain within the boundaries of the State of South Dakota unless you have written permission to travel outside that boundary.
- h. You shall not own or possess any firearms or explosives or destructive devices, nor allow them in your residence or any vehicle occupied by you. You shall not possess on your person any knife or other dangerous weapon as defined by state law.
- i. You shall attend on time all meetings with your Court Services Officer and comply with their instructions. You shall sign any release forms required by your Court Services Officer to allow them to obtain information about you from others, or to allow them to release information about you, including your probationary status to others.
- j. You shall not lie to, mislead, or misinform your Court Services Officer at any time, by statement or omission of information.
- k. You shall advise your current and future employers of your probation and the nature of your crime to allow for communication between employer and Court Services Officer for setting up wage assignments or inquiring about other job-related issues.
- l. You shall allow Court Services to take and control a picture of yourself for identification and record-keeping purposes.
- m. You shall provide a DNA sample to the agency designated by Court Services, if required by state law, as directed by your Court Services Officer.
- n. You shall provide to your Court Services Officer access to any and all digital media you have access to, including social network sites, said access to include passwords and user-id information to get access to those sites.
- o. If you have been convicted or received a suspended imposition of sentence for the commission of a sex crime as defined in SDCL 22-24B-1, you shall register as a sex offender within 3 days after conviction or coming into this area pursuant to SDCL 22-24B-2.
- p. You shall successfully complete any substance abuse or mental health evaluation, counseling, treatment or aftercare as directed by the Court or your Court Services Officer and consent to any treatment plan deemed necessary by your Court Services Officer to assist you in being successful while on probation.
- q. Pursuant to SDCL 23A-27-47, the Court Services Department may release information to any mental health program or counselor, chemical dependency program or counselor, or to any agency to whom you have been referred as necessary to ensure compliance with probation and Court-ordered conditions.
- r. You shall request prior approval to use cannabis for medical purposes while on probation by including proof of registry identification card or nonresident registration issued by the South Dakota Department of Health as well as a copy of the practitioner's written certification listing your underlying medical condition consistent with SDCL 34-20G-1(8). You may not use medical cannabis, whether under license from this State of any other state, until both the Court and Court Services approves its use. Any use of medicinal

cannabis while on probation must be in conformity with the medical instructions of your physician and must be in compliance with South Dakota law.

2. That the defendant serve one hundred twenty (120) days in the Minnehaha County Jail, located in Sioux Falls, South Dakota, with credit for one (1) day previously served. Report to jail on April 21, 2025, by 5:00 o'clock P.M., electronic monitoring authorized for sixty (60) days of this time.
3. That the defendant pay \$230.00 testing fees and a \$50.00 DWI surcharge to Minnehaha County through the Clerk of Courts by March 24, 2026.
4. That the defendant pay \$616.50 fine and court costs to Minnehaha County through the Clerk of Courts by March 24, 2026.
5. That the defendant continue to comply with 24/7 Program/UA's until Court Services Officer determines no longer needed.
6. That the defendant not posses or consume alcoholic beverages or enter into establishments where alcohol is the primary item for sale.
7. That the defendant submit to testing of bodily substances, including blood, breath or urine, as directed by the Court Services Officer, and be responsible for the cost of said testing.
8. That the defendant consent to the search and seizure of his or her 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 the Court.
9. If transferred to another jurisdiction for supervision, the defendant shall follow any additional conditions imposed by the supervising authority there.
10. That the defendant comply with the Interstate Compact Act.

It is ordered that the defendant's driving privileges are to be revoked immediately and for one (1) year upon release from custody. Work permit authorized for 24/7, AA meetings, counseling, aftercare and work purposes.

It is ordered that Counts 1, 3, 4 and 5 charging STEVEN JON ESSELINK with DWI; Possession of Marijuana; Possession of Drug Paraphernalia and Speeding be and hereby are dismissed.

xx This defendant is eligible for the Minnehaha County Jail "sentenced to serve" program.
yes no

3/28/2025 2:15:13 PM

BY THE COURT:



JUDGE SUSAN M. SABERS
Circuit Court Judge

Attest:
Schuelke, Austin
Clerk/Deputy



IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31045

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

STEVEN JON ESSELINK,

Defendant and Appellant.

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

THE HONORABLE SUSAN M. SABERS
Circuit Court Judge

APPELLEE'S BRIEF

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AND APPELLEE

Notice of Appeal filed April 22, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31045

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

STEVEN JON ESSELINK,

Defendant and Appellant.

PRELIMINARY STATEMENT

Steven Jon Esselink pleaded guilty and was convicted of his third DUI. He was sentenced to two years in the South Dakota State Penitentiary with all of his pen sentence suspended on the condition he abide by supervised probation for four years. He was ordered to serve 120 days in the Minnehaha County Jail—60 days to be served in jail and 60 days on electronic monitoring with a driver's permit.

Esselink argues on appeal that his trial counsel was ineffective, that the circuit court violated the plea agreement, that the judge was biased, that the court improperly denied his motion to withdraw his guilty plea, and that there was an insufficient factual basis for his guilty plea. He rejected the assistance of legal counsel on appeal and authored his brief pro se. His conviction and sentence should be affirmed.

In this brief, Appellant, Steven Jon Esselink, is known as “Esselink.” Appellee, the State of South Dakota, is “the State.” The settled record for Minnehaha County Criminal File No. 24-7998 is known as “SR.” The Change of Plea and Sentencing Hearing Transcript is called “ST.” The Appellant’s Brief is denoted as “AB.” And all document designations are followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

Esselink appeals from the Judgment and Sentence issued by the Honorable Susan M. Sabers on March 28, 2025. SR:35. Esselink filed his first Notice of Appeal with improper service on April 7, 2025. SR:42. A corrected Notice of Appeal was properly served and filed on April 22, 2025, but it is not a part of the settled record. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. WHETHER ESSELINK’S TRIAL COUNSEL WAS INEFFECTIVE.

The trial court did not rule on this issue, as Esselink raised no complaints at the trial court level.

State v. Carter, 2023 S.D. 67, 1 N.W.3d 674

State v. Gollither-Weyer, 2016 S.D. 10, 875 N.W.2d 28

II. WHETHER THE CIRCUIT COURT VIOLATED THE PLEA AGREEMENT.

The trial court did not rule on this issue, as Esselink raised no complaints at the trial court level.

State v. Beck, 2010 S.D. 52, 785 N.W.2d 288

State v. Guziak, 2021 S.D. 68, 968 N.W.2d 196

III. WHETHER THE COURT TREATED ESSELINK WITH BIAS
OR PREJUDICE.

The trial court did not rule on this issue, as Esselink raised no complaints at the trial court level.

State v. Beck, 2010 S.D. 52, 785 N.W.2d 288

State v. List, 2009 S.D. 73, 771 N.W.2d 644

State v. Page, 2006 S.D. 2, 709 N.W.2d 739

IV. WHETHER THE CIRCUIT COURT PROPERLY DENIED
ESSELINK'S MOTION TO WITHDRAW HIS PLEA.

The trial court did not rule on this issue. Esselink filed a motion to withdraw his guilty plea at the same time he filed a Notice of Appeal, so the circuit court lost jurisdiction to rule on his pending motion(s).

Reaser v. Reaser, 2004 S.D. 116, 688 N.W.2d 429

Tosh v. Schwab, 2007 S.D. 132, 743 N.W.2d 422

V. WHETHER THERE WAS A SUFFICIENT FACTUAL BASIS
TO ACCEPT ESSELINK'S GUILTY PLEA.

The trial court accepted Esselink's guilty plea after he agreed with the State's factual basis.

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

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

SDCL 23A-7-14

STATEMENT OF THE CASE AND FACTS

Esselink was stopped by Brandon Police Officer Joseph Reagan for traveling 43 miles per hour in a 30 mile-per-hour zone. SR:3, 4.

Officer Reagan noticed several abnormal behaviors such as fidgeting, dilated pupils, and bloodshot and watery eyes. ST:8 (sealed). Esselink was grinding his teeth and his hands and arms were moving uncontrollably. ST:8 (sealed). Officer Reagan performed field sobriety tests, which Esselink failed. ST:8 (sealed). Officer Reagan also noticed a strong odor of burnt marijuana and found some marijuana and a metal grinder with raw marijuana in it. ST:8 (sealed). Esselink consented to a blood draw and the blood test results were positive for 22 nanograms per mL of Delta 9 THC carboxy, 25 nanograms per mL of amphetamine, and 195 nanograms per mL of methamphetamine. ST:8 (sealed).

Esselink was cited for his third DUI. SR:4. He was released on PR bond, subject to twice-weekly UAs. SR:7. A complaint followed, alleging two counts of DUI 3rd in addition to possession of marijuana, possession of drug paraphernalia, and speeding. SR:2. A grand jury indicted Esselink on the same five counts. SR:10. A Part II information alleged Esselink was convicted of two prior DWIs in Lyon County, Minnesota—one in February 2020 and another in December 2022. SR:12.

After reaching a plea agreement with the State,¹ Esselink appeared in felony court with his lawyer, Ryan Kolbeck. See ST (sealed). Esselink pleaded guilty to a violation of SDCL 32-23-1(3),

¹ The plea agreement is not a part of the settled record.

driving while under the influence of a controlled drug or substance.

ST:7 (sealed). He verified he understood his plea, that no one threatened or forced him to plead, and that no one promised what would happen if he pleaded guilty. ST:7 (sealed). For a factual basis, the State explained that when Brandon Police stopped Esselink for speeding, they noticed the abnormal behaviors referenced above: fidgeting, dilated pupils, bloodshot and watery eyes, teeth grinding, and uncontrollable movements of his hands and arms. ST:8 (sealed). The State also noted Esselink's blood test results were positive for Delta 9, amphetamine, and methamphetamine. SR:8 (sealed).

The court asked Esselink whether he disputed any facts, and he said no. ST:9 (sealed). When asked whether Esselink admitted to driving illegally while high on meth and Delta 9, he responded affirmatively. ST:9 (sealed). Esselink also admitted to his two prior DWIs in the Part II, enhancing his crime to a Class 6 felony under SDCL 32-23-4. ST:9-10 (sealed).

Esselink chose to proceed immediately to sentencing. ST:10 (sealed). The State commented it was concerned with Esselink's multiple convictions for meth-related crimes outside of his DUIs. ST:10 (sealed). Esselink's counsel agreed Esselink had a history of meth addiction. ST:12-13 (sealed). Counsel described Esselink as a college athlete that got into a bad crowd which led to his addiction problems. ST:12 (sealed). When Esselink spoke directly to the court, he said that

before October 2024, he had been clean from meth for almost three years. ST:14 (sealed). He acknowledged he had a lapse in judgment and took full responsibility for driving while high. ST:14 (sealed).

Esselink had multiple letters in support describing him as a hard worker, an active volunteer in the community, and a positive mentor for children. ST:19-24. Esselink emphasized the good he was doing in his community but admitted he made a mistake and would comply with any court orders. ST:15 (sealed).

The court imposed a suspended execution of sentence for two years of penitentiary time. ST:15 (sealed). It ordered four years of supervised probation and 120 days in the Minnehaha County Jail—60 days in jail and 60 days with electronic monitoring. ST:16 (sealed). While on electronic monitoring, Esselink was given a limited driver's permit to drive to work, court-ordered counseling, 24/7 testing, and aftercare AA. ST:18 (sealed).

ARGUMENT

Though Esselink frames them as only three, he raises five legal issues in his brief. He believes his attorney was ineffective, the court violated the plea agreement, the court was biased, the court improperly denied his motion to withdraw his plea, and there was an insufficient factual basis for his plea.

But the first issue is not well suited for review yet, the circuit court never had the chance to rule on his motion to withdraw his plea,

and three of his five issues are unpreserved. The circuit court properly accepted Esselink's guilty plea and sentenced him.

I. THE EFFECTIVENESS OF ESSELINK'S TRIAL COUNSEL IS NOT WELL SUITED FOR REVIEW ON DIRECT APPEAL.

"Ineffective-assistance-of-counsel claims are generally not considered on direct appeal. Rather, such claims are best made by filing a petition for a writ of habeas corpus which, if granted, will result in an evidentiary hearing." *State v. Carter*, 2023 S.D. 67, ¶ 73, 1 N.W.3d 674, 696 (quoting *State v. Hauge*, 2019 S.D. 45, ¶ 18, 932 N.W.2d 165, 171). The reason is that the record on direct appeal typically does not contain sufficient information for this Court's thorough review of counsel's performance. *Id.* "Absent exceptional circumstances, [this Court] will not address an ineffective assistance claim on direct appeal. [It] depart[s] from this principle only when trial counsel was so ineffective and counsel's representation so casual as to represent a manifest usurpation of the defendant's constitutional rights." *State v. Gollither-Weyer*, 2016 S.D. 10, ¶ 8, 875 N.W.2d 28, 31 (internal citations and quotations omitted).

Esselink argues his counsel's performance was so deficient that his Sixth Amendment rights were violated.² AB:3. He alleges Ryan

² Esselink raises the same issue about his appellate counsel, who he alleges was Christopher Miles. The record suggests there was confusion over who Esselink's appellate counsel actually was, as multiple different attorneys may have been retained and/or assigned. SR:96-102. Still, (continued...)

Kolbeck should have challenged the blood test results revealing 195 ng/mL of methamphetamine in his blood because he takes Adderall. AB:3. He also complains Mr. Kolbeck misstated his place of employment and guaranteed him a particular sentence. AB:3. Finally, Esselink argues his counsel's errors prejudiced him. AB:4.

This Court does not have an adequate record to address this claim on appeal. Nothing in the record supports Esselink's claims. There is no information in the record to show whether or to what extent Mr. Kolbeck researched Esselink's possible defenses.

Even if Esselink showed exceptional circumstances exist in his case, the record disputes at least one of his assertions. Mr. Kolbeck assured the trial court that he informed Esselink that any use of electronic monitoring, in lieu of jail time, "was up to the [c]ourt." SR:100. Mr. Kolbeck also assured the court that its understanding of the plea agreement was correct (described as "simply. . . a cap of 120 days in jail," not "an agreed upon period of house arrest"). SR:100-01. The record also shows that the trial court and several attorneys were

Esselink complains Christopher Miles "attempted to dismiss Steven's appeal without consent, against his interests," "mocked the appeal," and showed a "lack of diligence[.]" AB:4. There is no information in the record supporting Esselink's claims about Mr. Miles. Esselink's "Motion to Remove Counsel" asking the circuit court to "appoint new counsel / allow pro se representation" was filed with his Notice of Appeal, thus depriving the circuit court of jurisdiction to resolve his motion. SR:47-48. *See also* SR:97, where the circuit court informed counsel, "if the appeal is moving, then I lack jurisdiction to do anything."

giving Esselink's case careful attention until Esselink filed his Notice of Appeal, depriving the circuit court of jurisdiction over any pending motions. SR:96-102. Either way, Esselink has not pleaded any exceptional circumstances, so this case does not warrant further review of this issue on direct appeal.

II. UNDER PLAIN ERROR REVIEW, THE CIRCUIT COURT DID NOT VIOLATE THE PLEA AGREEMENT.³

Esselink argues "[t]he plea agreement, as understood by Steven and implied by the court, promised 4 months house arrest to avoid penitentiary time." AB:4. Because the court imposed 60 days in the Minnehaha County Jail, Esselink believes the court breached the plea agreement. Yet he did not object to the court's sentence when it was imposed. "To preserve a claim for appeal that the prosecution breached the terms of a plea agreement, a defendant must make a timely objection at sentencing." *State v. Guziak*, 2021 S.D. 68, ¶ 10, 968 N.W.2d 196, 200 (citing *Puckett v. United States*, 556 U.S. 129, 142–43, 129 S. Ct. 1423, 1433, 173 L. Ed. 2d 266 (2009)).

Because Esselink did not raise this issue at his sentencing hearing, this claim is reviewed for plain error. To demonstrate plain error, Esselink must establish that there was: (1) error, (2) that is plain,

³ Esselink suggests the circuit court abused its discretion by allegedly violating the plea agreement (Issue II in this brief) and treating him with bias (Issue III in this brief). But neither of these claims were preserved for review on appeal, so they are both reviewed for plain error, not an abuse of discretion.

and that (3) affected his substantial rights. *State v. Beck*, 2010 S.D. 52, ¶ 11, 785 N.W.2d 288, 293. Only if the first three factors are met will this Court possibly exercise its discretion to notice the error if it seriously affects the “fairness, integrity, or public reputation of the judicial proceedings.” *Id.* This Court invokes its discretion to apply the plain error rule cautiously, only in “exceptional circumstances.” *Guziak*, 2021 S.D. 68, ¶ 10, 968 N.W.2d at 200 (citing *State v. Bowker*, 2008 S.D. 61, ¶ 46, 754 N.W.2d 56, 70).

This case is not an exceptional one warranting plain error review. Even if it were, Esselink cannot clear the first hurdle. He does not claim that the express terms of the plea agreement were breached, as he has not offered the express terms for review and his complaint is only about what was “understood by” him and “implied by the court[.]” AB:4. In addition, Esselink’s interpretation of the agreement may be skewed. He is correct that the sentencing court told him he would not immediately get *penitentiary* time. ST:5 (sealed). It clarified “I can only send you to *jail* for the 120 days.” ST:5-6 (sealed) (emphasis added). When the court asked Esselink if he had any questions about that, he answered “No, Your Honor.” ST:6 (sealed). Only if he violated probation would the court be able to impose the two years of suspended penitentiary time. ST:6 (sealed). Esselink said he understood that, as well. ST:6 (sealed). In the end, Esselink failed to preserve this issue for appellate review and he cannot show the court erred.

III. UNDER PLAIN ERROR REVIEW, THE COURT DID NOT TREAT ESSELINK WITH BIAS OR PREJUDICE.

Esselink's next complaint is that Judge Susan Sabers' comments at sentencing "suggest bias" and "suggested prejudgment, violating [a judge's] impartiality standards." AB:4. Again, Esselink did not preserve this issue; he did not move to disqualify Judge Sabers based on her alleged bias. Thus, this Court reviews his complaint for plain error, reserved for exceptional circumstances and defined as (1) error, (2) that is plain, [and] (3) affecting substantial rights. *Beck*, 2010 S.D. 52, ¶ 11, 785 N.W.2d at 293. Only then will this Court exercise its discretion to notice the error if (4) it seriously affects the "fairness, integrity, or public reputation of the judicial proceedings." *Id.*

No exceptional circumstance exists here, either, so this Court need not continue its review of this issue. Esselink has not "presented any evidence to constitute a legitimate basis on which to call into question the circuit judge's impartiality." *State v. Page*, 2006 S.D. 2, ¶ 17, 709 N.W.2d 739, 751. Even so, "[g]iven the level of deference ordinarily afforded a circuit judge's decision to sit on a case, it would be rare for this Court to review such a decision under the rubric of plain error." *Id.* ¶ 15. "The decision to preside over a case lies within the sound discretion of the trial judge." *Id.* (quoting *State v. Goodroad*, 1997 S.D. 46, ¶ 25, 563 N.W.2d 126, 132). "[T]his Court presumes a

judge was impartial absent a specific and substantial showing to the contrary.” *Id.* ¶ 16 (citation omitted).

Esselink has a grievance with two of Judge Sabers’ comments. The first was directed at Esselink’s father who had told the court that Esselink is always looking out for others. ST:15 (sealed). Judge Sabers said, “No, he’s not. He got doped up on meth and he got behind the wheel of a car and he could have killed people.” ST:15 (sealed). The second was directed at Esselink: “I think this is dangerous. I think this is scary. If I had pen time today available, I would use it. I don’t and I can’t but I will in the future if you come back to visit me for any reason.” ST:15 (sealed).

These two statements reflect the Judge’s opinion of the seriousness of Esselink’s crime and the maximum penalty Esselink faces if he violates probation, respectively. “These comments are no different than those expressed every day by sentencing judges who are considering the impact of criminal conduct on the victims of crime.” *State v. List*, 2009 S.D. 73, ¶ 10, 771 N.W.2d 644, 647. They “do not establish a deep-seated antagonism” toward Esselink. *Page*, 2006 S.D. 2, ¶ 17, 709 N.W.2d at 751. They do not meet the definition of judicial prejudice adopted by this Court:

The attitude of personal enmity towards the party or in favor of the adverse party to the other party’s detriment. It is not the mere possession of views regarding the law or the conduct of a party. Prejudice is in the personal sense rather than in the judicial sense and refers to a mental attitude or a disposition of the judge towards a party. In order for the

alleged bias and prejudice to be disqualifying, it must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from participation in the case.

Page, 2006 S.D. 2, ¶ 16, 709 N.W.2d at 751) (quoting *Blando v. Reid*, 886 S.W.2d 60, 64-65 [2, 4] (Mo.App.1994)).

This Court has repeatedly held a sentencing court’s “mere possession of views regarding the law or the conduct of a party’ does not constitute disqualifying prejudice.” *List*, 2009 S.D. 73, ¶ 11, 771 N.W.2d at 647 (quoting *State v. Hoadley*, 2002 S.D. 109, ¶ 33, 651 N.W.2d 249, 258). Esselink’s complaint does not warrant review on appeal and he cannot show plain error occurred.

IV. ESSELINK DID NOT ALLOW THE CIRCUIT COURT TO RULE ON HIS MOTION TO WITHDRAW HIS PLEA.

Next, Esselink claims the trial court erred by “failing to offer plea withdrawal, violating due process and SDCL 23A-27-11.” AB:4. His contention that the court denied his motion for withdrawal is inaccurate. The court attempted to schedule a hearing to rule on this and other pending motions. SR:98. But when Esselink initiated his appeal, the circuit court stated it lacked jurisdiction to hear the pending motions. SR:97.

“An appeal from a judgment strips the trial court of power over the subject matter of the judgment, and this Court has jurisdiction until the appeal is decided.” *Tosh v. Schwab*, 2007 S.D. 132, ¶¶ 33-34, 743 N.W.2d 422, 431-32. So as soon as Esselink’s notice of appeal was

filed, the “trial court [was] restrained from entering any order that would change or modify the judgment on appeal or have the effect of interfering with review of the judgment.” *Reaser v. Reaser*, 2004 S.D. 116, ¶ 28, 688 N.W.2d 429, 437–38 (citations omitted). Because the trial court was without jurisdiction to consider the motion to withdraw Esselink’s plea, this Court will not consider the non-existent ruling. *Tosh*, 2007 S.D. 132, ¶ 34, 743 N.W.2d at 432.

V. UNDER PLAIN ERROR REVIEW, THERE WAS A SUFFICIENT FACTUAL BASIS TO ACCEPT ESSELINK’S GUILTY PLEA.

Finally, Esselink argues “[t]he circuit court erred in accepting the plea” because the “factual basis relied on an unverified” blood test result, “potentially from [his] Adderall prescription[.]” AB:4. He asserts the blood test results “lacked GC-MS confirmation” and he faults the circuit court and his attorney for allowing him to plead based on what he thinks is an unreliable factual basis. AB:5.

Again, Esselink did not raise this issue with the circuit court, so this Court will review his challenge to the sufficiency of the factual basis statement for plain error. *State v. Scott*, 2024 S.D. 27, ¶ 25, 7 N.W.3d 320, 329. And again, this is no exceptional circumstance warranting this Court’s plain error analysis. Even if this Court proceeds to plain error review, it will find that the circuit court did not err.

“Before accepting a guilty plea, the court must be subjectively satisfied that a factual basis exists for the plea as to each element of the

offense.” *Id.* ¶ 26 (cleaned up). *See also* SDCL 23A-7-14 (Rule 11(f)).⁴ “Reading the indictment to the defendant coupled with his admission of the acts described in it is a sufficient factual basis for a guilty plea, as long as the charge is uncomplicated, the indictment is detailed and specific, and the admissions unequivocal.” *Id.* (cleaned up) (quoting *State v. Roedder*, 2019 S.D. 9, ¶ 14, 923 N.W.2d 537, 542).

The record easily supports Esselink’s plea. With the benefit of experienced legal counsel, Esselink admitted he “drove illegally and unlawfully upon our roadways high on meth and Delta 9.” ST:9 (sealed). He admitted he had methamphetamine and amphetamine in addition to Delta 9 in his system when he was driving. ST:8 (sealed). The court asked Esselink whether he disputed any facts, and he said no. ST:9 (sealed). He and his attorney spoke at length about his “bad addiction” and his lapse in judgment. ST:11-15 (sealed). He did not object to the blood test results before the lower court; he admitted he had relapsed. ST:14 (sealed). Esselink and his counsel “confirmed the accuracy and sufficiency of the factual basis statement, and [Esselink] himself confirmed his guilt.” *Scott*, 2024 S.D. 27, ¶ 30, 7 N.W.3d at 330. The court did not plainly err.

⁴ SDCL 23A-7-14 (Rule 11(f)) says “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.”

CONCLUSION

Based on the foregoing arguments and authorities, the State respectfully requests that Esselink's conviction and sentence be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 3,272 words.

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

Dated this 4th day of June, 2025.

/s/ Sarah L. Thorne

Sarah L. Thorne
Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 4th, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Steven Jon Esselink* was served by United States Mail, postage prepaid upon Steven Jon Esselink at 405 S. Main, Hills, MN 56138.

/s/ Sarah L. Thorne

Sarah L. Thorne
Deputy Attorney General

JUL - 8 2025

Shirley A. Johnson Legal
Clerk

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA, Appellee, v. STEVEN JON ESSELINK, Appellant.

Supreme Court No. 31045

Appeal from the Circuit Court of the Second Judicial Circuit

Minnehaha County, South Dakota

Honorable Susan Sabers, Circuit Court Judge

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STATEMENT OF THE ISSUES

- **Involuntary Guilty Plea Due to Coercion:** Whether the circuit court erred in accepting my guilty plea, which was coerced by ineffective counsel and judicial bias, violating due process under *Boykin v. Alabama*, 395 U.S. 238 (1969).
- **Ineffective Assistance of Counsel:** Whether Ryan Kolbeck's and Christopher Miles' failures to investigate alternative explanations, challenge the blood test, or support my plea withdrawal motion constituted ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984), rendering the plea involuntary.
- **Breach of Plea Agreement:** Whether the circuit court breached the plea agreement by imposing a 60-day jail term instead of the agreed suspended imposition of sentence (SIS) with four months' electronic monitoring, violating SDCL 23A-7-14.
- **Judicial Bias:** Whether Judge Susan Sabers' inflammatory remarks, dismissal of character evidence, and suppression of my explanations demonstrated bias, violating due process under *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

- **Plea Withdrawal Motion Hindered:** Whether the circuit court's failure to address my plea withdrawal motion, compounded by counsel's misconduct and procedural delays, violated SDCL 23A-27-11 and due process.
 - **Insufficient Factual Basis:** Whether the factual basis for the plea, relying on circumstantial evidence and an unverified blood test, was insufficient under SDCL 23A-7-2, warranting reversal under *State v. Nelson*, 1998 S.D. 124, 587 N.W.2d 439.
-

STATEMENT OF THE CASE AND FACTS (Page 4)

I, Steven Jon Esselink, appeal my conviction for DUI 3rd (49CRI24-7998), a Class 6 felony, following a guilty plea accepted and sentenced by the Minnehaha County Circuit Court on March 24, 2025. The Attorney General (AG) filed its brief on June 4, 2025, but I received it on June 19, 2025, at 12:14 PM CDT—a 15-day delay, violating SDCL 15-26A-80, despite an amended certificate claiming June 13, 2025.

I was initially represented by Ryan Kolbeck and later by Christopher Miles. I entered the plea as a procedural requirement of a plea deal, not an admission of guilt for driving illegally while high on methamphetamine, as the AG claims (AG Brief, Page 15). The plea acknowledged two prior DUIs, enhancing the charge to a Class 6 felony, but was not a confession of impairment. Kolbeck portrayed me as a college athlete who fell into a "bad crowd," leading to past meth addiction, though my three years of documented sobriety were ignored. The plea agreement included a suspended imposition of sentence (SIS) with four months' electronic monitoring (EM) (Transcript, Page 12), but Judge Susan Sabers imposed a 60-day jail term, stating, "I can only

send you to jail for 120 days,” and “I think this is dangerous. I think this is scary. If I had pen time today available I would use it” for an “unverified” methamphetamine level (Transcript, Page 16), breaching the agreement. When asked if I had questions, I, confused, responded, “No, your honor,” expecting the agreed SIS (Transcript, Page 16; Affidavit, Page 23).

Sabers dismissed letters describing me as hardworking, a community volunteer, and a mentor, snapping, “No, he’s not,” to my father’s letter, and stated, “He got doped up on meth and got behind the wheel and could have killed people” (Transcript, Page 15)—a dehumanizing remark distressing my parents. She erroneously claimed I received a limited driver’s license, court-ordered counseling, 24/7 testing, and AA; in fact, I obtained a South Dakota driver’s license for a work permit on Kolbeck’s advice, despite Minnesota residency, potentially fraudulently, and no new counseling was ordered. Sabers cut me off when I tried to explain (Page 15, lines 5-7). I moved to recuse Sabers for bias, which she denied (Affidavit, Page 23).

The AG cites officer observations—fidgeting, dilated pupils, bloodshot watery eyes, grinding teeth, and arm movements—claiming I failed field sobriety tests, primarily the walk-and-turn test. This evidence is entirely circumstantial, lacking direct proof of impairment. My Adderall prescription explains these symptoms, and my bloodshot eyes resulted from oil-based paint exposure. My flat feet likely caused the walk-and-turn failure, and the 196 ng/mL methamphetamine level is too low for significant impairment, unlike alcohol DUIs. Kolbeck failed to investigate, neglecting to discuss the low methamphetamine level or Adderall’s role, despite knowing of the prescription (Affidavit, Page 23). At the time of the stop on Sunday, March 23, 2025, around 3:30 PM, I was emotionally distressed, having recently learned of the

sexual abuse of my 10-year-old stepdaughter by her mother's boyfriend, and had been working with paint fumes.

Kolbeck coerced the plea, omitting a PSIR and failing to challenge the blood test's lack of GC-MS confirmation. On April 7, 2025, I filed the plea withdrawal motion and notice of appeal simultaneously to preserve my rights due to Kolbeck and Miles' delays (Affidavit, Page 23). On May 7, 2025, Kolbeck visited me in jail, pressuring me to drop the appeal, falsely claiming 120 days in jail due to unavailable EM, caused by Kolbeck's advice to use Glory House (programming ended May 13, 2025) and incorrect claim that Minnesota residency barred EM, despite eligibility within 60 miles (Affidavit, Page 23; Recording, May 7, 2025). Recordings show Kolbeck's failures, including an April 10, 2025, email post-release as counsel on March 31, 2025, advising jail time (Affidavit, Page 23). Recordings from April 4, 2025, capture Miles' "no call" analogy, dismissing the appeal, and a jail meeting confirms his "done all wrong" claim (Affidavit, Page 23). In June 2025, I filed motions for sentence clarification—after jail staff misinformed me post-31-day service that I must restart my 60-day sentence due to EM timing—and EM modification to allow softball participation for rehabilitation, but clerks, per Sabers' directive, held them for review without filing (clerk recordings, June 2025; Affidavit, Page 23). A complaint to the sheriff corrected the time-served error (Affidavit, Page 23). This conduct, with the 15-day service delay and Sarah Thorne's obstruction, hindered my plea withdrawal motion, which was initially docketed for a hearing but canceled upon recognition of the April 7, 2025, notice of appeal. On June 24, 2025, I faced resistance from Thorne, who was rude and evasive, and the Supreme Court clerk confirmed a July 14, 2025, deadline based on the AG's June 13 mailing claim, despite my June 19 receipt.

ARGUMENT

A. The Guilty Plea Was Involuntary Due to Coercion (Page 10)

The circuit court erred in accepting my guilty plea, which was coerced by ineffective counsel and judicial bias, violating due process under *Boykin v. Alabama*, 395 U.S. 238 (1969). The AG claims my plea was voluntary, citing my acknowledgment of the plea agreement and lack of objection (AG Brief, Page 10). However, my “no” response to whether I had questions (Transcript, Page 16) was equivocal, given my confusion, the court’s breach of the plea agreement (see Section C), and Kolbeck’s coercion (see Section B). Sabers’ bias—cutting me off (Transcript, Page 15, lines 5-7) and dismissing character letters (Transcript, Page 15)—further pressured the plea, rendering it involuntary. Plain error under SDCL 15-26A-60 warrants reversal.

B. Ineffective Assistance of Counsel Coerced the Guilty Plea (Page 12)

The AG argues ineffective assistance claims require habeas corpus (AG Brief, Page 7), but the record, bolstered by recordings, suffices for direct appeal. Kolbeck omitted a PSIR, failed to challenge the unverified 196 ng/mL blood test despite my Adderall use, neglecting to discuss the low level or need for GC-MS confirmation, despite knowing of the prescription, undermining the circumstantial factual basis and coercing my equivocal plea (see Section F) (Transcript, Page 8; Affidavit, Page 23). He advised a fraudulent South Dakota driver’s license, despite my Minnesota residency (Statement of Facts). His April 10, 2025, email, post-release as counsel on March 31, 2025, advised serving jail time (Affidavit, Page 23). On May 7, 2025, Kolbeck visited me in jail, pressuring me to drop the appeal, falsely claiming 120 days in jail due to unavailable

EM, caused by his advice to use Glory House (programming ended May 13, 2025) and incorrect claim that Minnesota residency barred EM, despite eligibility within 60 miles (Affidavit, Page 23; Recording, May 7, 2025). Recordings from April 4, 2025, capture Miles' "no call" analogy, dismissing the appeal, and a jail meeting confirms his "done all wrong" claim (Affidavit, Page 23). These failures violate *Strickland v. Washington*, 466 U.S. 668 (1984), rendering the plea involuntary (Boykin). Plain error under SDCL 15-26A-60 warrants reversal (*State v. Nelson*, 1998 S.D. 124, ¶ 7, 587 N.W.2d 439).

C. The Court Breached the Plea Agreement (Page 14)

The circuit court breached the plea agreement by imposing a 60-day jail term instead of the agreed SIS with four months' EM, violating SDCL 23A-7-14. The AG claims the court had discretion to impose jail time (AG Brief, Page 11). However, the plea agreement explicitly included an SIS with EM (Transcript, Page 12), which I accepted, expecting no jail time. Sabers' imposition of 60 days, stating, "I can only send you to jail for 120 days," and "If I had pen time today available I would use it" (Transcript, Page 16), directly contravened the agreement. This breach rendered the plea involuntary (*Santobello v. New York*, 404 U.S. 257 (1971)). The court's failure to honor the agreement warrants reversal under SDCL 15-26A-60.

D. Judicial Bias Invalidated the Proceedings (Page 16)

The AG claims Sabers' remarks—"No, he's not" to my father's character letter, "He got doped up on meth and got behind the wheel and could have killed people," and "I think this is dangerous. I think this is scary. If I had pen time today available I would use it" (AG Brief, Page 12; Transcript, Pages 15-16)—reflect mere views not constituting disqualifying prejudice under

State v. Hoadley, 2002 S.D. 109, ¶ 32, 651 N.W.2d 249, and my complaint does not warrant review (AG Brief, Page 12). This is baseless. I filed a recusal motion, which Sabers denied, preserving review under SDCL 15-26A-60 (Affidavit, Page 23). These remarks show partiality under Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), mischaracterizing a 196 ng/mL methamphetamine level as “doped up” when it’s insufficient for impairment, unlike alcohol DUIs (State v. Scott, 2024 S.D. 27, ¶ 25, 7 N.W.3d 320), and threatening penitentiary time despite prison overcrowding, suggesting railroading. Sabers cut me off (Transcript, Page 15, lines 5-7), assumed alcohol use (Transcript, Page 5), and suppressed my explanation of the circumstantial, unverified blood test, coercing an equivocal plea (see Section F). Her failure to rule on my motions for sentence clarification and EM modification, held for review without filing (clerk recordings, June 2025; Affidavit, Page 23), and inaction on my plea withdrawal motion despite retained jurisdiction (see Section E) compound bias. Kolbeck’s May 7, 2025, jail visit, pressuring me to drop the appeal (Affidavit, Page 23; Recording, May 7, 2025), exacerbates this. The Nelson test (Nelson, 1998 S.D. 124, ¶ 7, 587 N.W.2d 439) is met: (1) error—Sabers’ bias, Kolbeck’s coercion (recordings show PSIR omission, Adderall neglect, April 10, 2025, email, May 7, 2025, jail visit; Affidavit, Page 23; Strickland); Miles’ misconduct (April 4, 2025, recordings; Affidavit, Page 23); (2) plain—violating standards; (3) substantial rights—Class 6 felony harm (Boykin); (4) fairness, integrity, reputation—eroded (Scott). My recusal attempt and April 7, 2025, counsel pursuit (Affidavit, Page 23; Jensen, 2003 S.D. 55, ¶ 14, 662 N.W.2d 643) confirm exceptional circumstances. Reversal is warranted.

E. The Motion to Withdraw Was Hindered by Procedural Delays and Counsel Misconduct

(Page 18)

The AG claims my contention that the court erred by failing to offer plea withdrawal, violating due process and SDCL 23A-27-11, is invalid because the notice of appeal divested trial court jurisdiction, rendering the motion unaddressable, and this court cannot review a “non-existent ruling” (AG Brief, Page 13). This is misleading. I filed the plea withdrawal motion and notice of appeal simultaneously on April 7, 2025, to preserve my rights against Kolbeck and Miles’ deliberate delays (Affidavit, Page 23). A hearing on the plea withdrawal motion was scheduled and placed on the docket but was immediately canceled upon recognition of the April 7, 2025, notice of appeal, which divested the circuit court of jurisdiction over the plea withdrawal (State v. Sieler, 1996 S.D. 114, ¶ 7, 554 N.W.2d 477). However, SDCL 23A-7-15 permits plea withdrawal for manifest injustice, and the circuit court retained jurisdiction over collateral matters before the appeal was recognized. Sabers’ failure to address the motion prior to the appeal’s recognition, despite its docketing, violated SDCL 23A-27-11 and due process (Boykin v. Alabama, 395 U.S. 238 (1969)). Her inaction on my recent motions for sentence clarification—filed after jail staff misinformed me post-31-day service that I must restart my 60-day sentence due to EM timing—and EM modification to allow softball for rehabilitation, both submitted in June 2025 but held by Sabers for review without filing (clerk recordings, June 2025; Affidavit, Page 23), further demonstrates bias. The “non-existent ruling” argument fails, as the court’s failure to hold the scheduled hearing, compounded by Kolbeck’s coercion of an equivocal plea based on a circumstantial, unverified factual basis (see Section F), is reviewable under plain error (State v. Nelson, 1998 S.D. 124, ¶ 7, 587 N.W.2d 439). Kolbeck coerced the plea by omitting a PSIR, ignoring my Adderall use, and neglecting to discuss the 196 ng/mL methamphetamine level or need for GC-MS confirmation (Transcript, Page 8; Affidavit, Page 23). On May 7, 2025, Kolbeck

visited me in jail, pressuring me to drop the appeal (Affidavit, Page 23; Recording, May 7, 2025). Kolbeck ejected me from his office on March 25, 2025, after agreeing to file the motion (Affidavit, Page 23). Recordings from April 4, 2025, capture Miles' "no call" analogy, dismissing the appeal, and a jail meeting confirms his "done all wrong" claim (Affidavit, Page 23). These violate *Strickland v. Washington*, 466 U.S. 668 (1984). The 15-day service delay (June 4 to June 19, 2025) and Thorne's rude conduct on June 13, 16, and 24, 2025, obstructed relief (Affidavit, Page 23; *Martinez v. Ryan*, 566 U.S. 1 (2012)). Sabers' bias (Transcript, Pages 15-16) and plea breach (Transcript, Page 16) establish injustice. Plain error under SDCL 15-26A-60 warrants reversal and a hearing.

F. The Factual Basis Was Insufficient Due to Unreliable Evidence (Page 20)

The AG claims the record supports my plea, asserting that, with "experienced legal counsel," I admitted driving "high on meth" with methamphetamine and amphetamine in my system, did not dispute facts when asked, discussed my "bad addiction" and "lapse in judgment," and confirmed the factual basis's accuracy, thus no plain error occurred (AG Brief, Page 15). This is baseless. My plea was not a voluntary admission of guilt but a coerced procedural step in a plea deal, misrepresented by Kolbeck, who failed to discuss the 196 ng/mL methamphetamine level or Adderall's role, despite knowing of the prescription (Affidavit, Page 23). My failure to object is excusable due to Kolbeck's ineffective assistance—failing to challenge the unverified blood test lacking GC-MS confirmation (*State v. Scott*, 2024 S.D. 27, ¶ 25, 7 N.W.3d 320)—and Sabers' bias, suppressing my explanation (Transcript, Page 15, lines 5-7; see Section D). These constitute exceptional circumstances under *State v. Nelson*, 1998 S.D. 124, ¶ 7, 587 N.W.2d 439. The State's evidence is entirely circumstantial, relying on officer observations (fidgeting, dilated

pupils, bloodshot eyes) without direct proof of impairment, explained by my Adderall use, paint exposure, and emotional distress from learning of the sexual abuse of my 10-year-old stepdaughter by her mother's boyfriend at the time of the stop (Statement of Facts). Sabers' inflammatory "doped up on meth" remark (Transcript, Page 15) mischaracterizes the low 196 ng/mL level, insufficient for impairment, unlike alcohol DUIs. My flat feet likely caused the walk-and-turn failure (Statement of Facts). My "no" response when asked if I disputed facts was equivocal, coerced by Kolbeck's misrepresentation and Sabers' pressure, rendering the plea involuntary (Boykin v. Alabama, 395 U.S. 238 (1969)). No evidence supports a "bad addiction" or "relapse"; Kolbeck's narrative ignored my three-year sobriety (Statement of Facts). The indictment's reading did not establish each DUI 3rd element, as the factual basis relied on unverified, circumstantial evidence, violating SDCL 23A-7-2. Kolbeck's inaction (see Section B), Sabers' failure to address my plea withdrawal motion (see Section E), and her withholding of my June 2025 motions (Affidavit, Page 23) compound this error. The Nelson test is met: (1) error—deficient factual basis, counsel's coercion, judicial bias; (2) plain—violating SDCL 23A-7-2; (3) substantial rights—Class 6 felony harm (Boykin); (4) fairness, integrity, reputation—eroded (Scott). Plain error under SDCL 15-26A-60 warrants reversal and a new trial.

CONCLUSION (Page 22)

The circuit court's acceptance of my coerced plea, based on ineffective counsel, judicial bias, a breached plea agreement, and an insufficient factual basis, violated due process and South Dakota law. The court's failure to address my plea withdrawal motion, compounded by

procedural delays and counsel misconduct, further prejudiced me. This Court should reverse the conviction, vacate the plea, and remand for a new trial or a hearing on the plea withdrawal motion.

AFFIDAVIT (Page 23)

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA

I, Steven Jon Esselink, being first duly sworn, depose and say:

I am the pro se appellant in the above-entitled matter.

I received the appellee's brief on June 19, 2025, at 12:14 PM CDT, a 15-day delay from its filing on June 4, 2025. On June 13, 2025, I attempted to contact the AG's office, leaving a message for Sarah Thorne, who refused to return the call. On June 16, 2025, Thorne was rude but mailed another copy, received June 19, 2025. On June 24, 2025, Thorne answered, was rude, hung up, and avoided further calls, prompting a voicemail denouncing her conduct. The Supreme Court clerk confirmed a July 14, 2025, deadline, citing a June 13 mailing, despite my June 19 receipt.

Recordings from April 4, 2025, capture Christopher Miles' "no call" analogy, dismissing my appeal, and a jail meeting confirms his "done all wrong" claim, encouraging abandonment.

Recordings of Ryan Kolbeck from May 7, 2025, show he pressured me to drop the appeal, falsely claiming 120 days in jail due to unavailable EM, caused by his advice to use Glory House (programming ended May 13, 2025) and incorrect claim that my Minnesota residency barred

EM, despite eligibility within 60 miles. Kolbeck omitted a PSIR, failed to challenge the unverified 196 ng/mL blood test despite my Adderall use, neglecting to discuss the low level or need for GC-MS confirmation, despite knowing of the prescription, and advised a fraudulent South Dakota driver's license. His April 10, 2025, email, after ceasing as counsel on March 31, 2025, advised serving jail time. On April 7, 2025, I filed the plea withdrawal motion and notice of appeal simultaneously to preserve my rights due to Kolbeck and Miles' delays. A hearing on the plea withdrawal motion was scheduled and placed on the docket but was immediately canceled upon recognition of the April 7, 2025, notice of appeal. Kolbeck ejected me from his office on March 25, 2025, after agreeing to file the motion. In June 2025, I filed motions for sentence clarification—after jail staff misinformed me post-31-day service that I must restart my 60-day sentence due to EM timing—and EM modification to allow softball for rehabilitation, but clerks, per Sabers' directive, held them for review without filing (clerk recordings, June 2025). A complaint to the sheriff corrected the time-served error. The court failed to address these motions despite retained jurisdiction over collateral matters.

Issues of bias, blood test reliability, and plea breach emerged at the March 24, 2025, hearing, with no prior opportunity to raise them. Sabers' alcohol assumption (Transcript, Page 5), denial of impairment context, remarks that I "got doped up on meth and got behind the wheel and could have killed people" and would face penitentiary time if available, calling the case "dangerous" and "scary" (Transcript, Pages 15-16), and cutting me off (Transcript, Page 15, lines 5-7) prejudiced the case. I moved to recuse Sabers for bias, which she denied.

I affirm under penalty of perjury that the foregoing is true and correct.

Dated this 27th day of June, 2025.



/s/ Steven Jon Esselink

405 S Main Ave

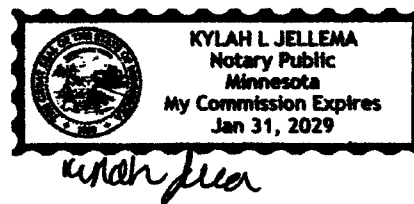
Hills, MN 56138

612-270-2702

Subscribed and sworn to before me this 27th day of June, 2025.

Notary Public, State of Minnesota

My commission expires: Jan 31, 2029



CERTIFICATE OF SERVICE (Page 25)

I, Steven Jon Esselink, certify that on June 27, 2025, I served a true and correct copy of the foregoing Appellate Brief and Affidavit upon the following parties by certified mail:

- South Dakota Attorney General's Office

1302 E Hwy 14, Suite 1

Pierre, SD 57501

- Minnehaha County State's Attorney

415 N Dakota Ave

Sioux Falls, SD 57104

/s/ Steven Jon Esselink

Dated: June 27, 2025

CERTIFICATE OF COMPLIANCE (Page 26)

I, Steven Jon Esselink, certify that this brief complies with SDCL 15-26A-66, containing 3,250 words, excluding the table of contents, table of authorities, and certificates, as calculated by standard word processing software. The brief is formatted in Times New Roman, 12-point font, double-spaced, with 1-inch margins.

Dated this 27th day of June, 2025.