

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

STATE OF SOUTH DAKOTA,	)	ORDER VACATING JUDGMENT
Plaintiff and Appellee,	)	OF CONVICTION
	)	
vs.	)	#29969
	)	
BOBBY SHAY ANDERSON,	)	
Defendant and Appellant.	)	
	)	

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Appellant, Bobby Anderson, was charged in this case with felony failure to appear after he was released on a charged misdemeanor offense in a prior proceeding, and he failed to appear for a scheduled court hearing on the charge. With the assistance of counsel, he pleaded guilty to felony failure to appear, and the court imposed a two-year penitentiary sentence on the same day. Anderson argued to the sentencing court that he was not guilty of a felony for failure to appear because he had been released on a misdemeanor charge of disorderly conduct. Anderson appealed his conviction to this Court.

The Court considered the initial briefs filed pursuant to *State v. Korth*, 2002 S.D. 101, 650 N.W.2d 528, in this matter, which asserted there were no meritorious issues. However, Anderson argued in the Part B portion of the brief that he could not have been convicted of a felony for failure to appear. After reviewing the

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record, this Court directed the parties to submit supplemental briefs on the adequacy of the factual basis for the felony conviction for failure to appear under SDCL 23A-43-31(1).

After considering the additional submissions, the Court concludes, pursuant to SDCL 15-26A-87.1(C), that it is manifest from the briefs and the record that the judgment of conviction and sentence is erroneous because it is clearly contrary to settled South Dakota law. Specifically, the circuit court failed to obtain an adequate factual basis as required under SDCL 23A-7-2, as no facts exist in the record to show that Anderson was released in connection with a charged felony as required by SDCL 23A-43-31(1). *See State v. Nachtigall*, 2007 S.D. 109, ¶ 9. 741 N.W.2d 216. Rather, the record affirmatively demonstrates that Anderson was released on a charged misdemeanor offense and his subsequent failure to appear could not constitute the offense of felony failure to appear under SDCL 23A-43-31(1). Therefore, it is

ORDERED that the judgment of conviction and sentence entered on March 22, 2022, for felony failure to appear in Jackson County CR No. 35-CRI22-000013 is reversed and vacated.

FURTHER ORDERED, that upon receipt of the Order from this Court, the Jackson County Clerk of Court shall immediately notify the

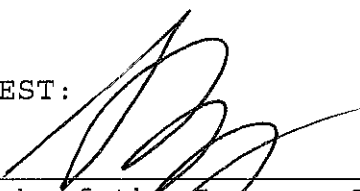
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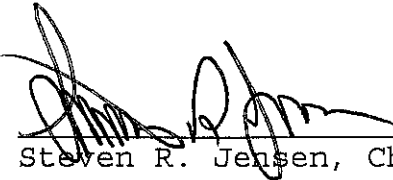
South Dakota Department of Corrections that the conviction and sentence for felony failure to appear has been vacated.

DATED at Pierre, South Dakota, this 12th day of May, 2023.

BY THE COURT:

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

  
Steven R. Jensen, Chief Justice

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Janine M. Kern,  
Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAY 12 2023

  
Clerk