

APPELLANT'S BRIEF

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

No. 31142

Plaintiff/Appellee,

v.

DALE REED VANCLEVE,

Defendant/Appellant,

APPEAL FROM THE CIRCUIT COURT
OF THE
THIRD JUDICIAL CIRCUIT
GRANT COUNTY, SOUTH DAKOTA

HONORABLE DAWN ELSHERE
Circuit Court Judge

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Notice of Appeal Filed July 17, 2025

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IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

No. 31142

STATE OF SOUTH DAKOTA,
Plaintiff/Appellee,

vs.

DALE REED VANCLEVE,
Defendant/Appellant.

PRELIMINARY STATEMENT

Defendant and Appellant, Dale R. Vancleve, will be referred to throughout this brief as “Vancleve” or “Appellant”. The Appellee, State of South Dakota, will be referred to as “State” or “Appellee”. The transcript of the Status Hearing will be referred to as “S.T.H.” and the transcript of the Change of Plea Hearing will be referred to as “C.H.” and the transcript of the Sentencing Hearing will be referred to as “S.H.”

JURISDICTIONAL STATEMENT

On May 6, 2025, Vancleve appeared before the trial court and entered Guilty plea to Count 2: Possession with Intent to Distribute a Controlled Substance. Vancleve was sentenced on July 1, 2025, to Count 2 to twelve (12) years in the South Dakota State Penitentiary with two (2) years suspended and credit for five (5) days previously served. Vancleve was also ordered to pay fines, court costs and fees. Judgment and Sentence was filed in the case on July 2, 2025.

Notice of Appeal was filed in each case on July 18, 2025. This Court has jurisdiction pursuant to SDCL 15-26A-3.

STATEMENT OF LEGAL ISSUES

1. THE TRIAL COURT ERRED IN FINDING THAT THE MANDATORY MINIMUM FOR A SECOND OFFENSE DISTRIBUTION APPLIED TO VANCLEVE.

Martinmaas v. Engelmann, 2000 SD 85.
United States v. Castleman, 572 US 157 (2014).
SDCL 22-42-2

PROCEDURAL STATEMENT

An Indictment was filed with the Grant County Clerk of Courts on March 12, 2024 charging Vancleve with the following: Count 1: Possession with Intent to Distribute Methamphetamine More than 5 Grams, Class 2 Felony, in violation of SDCL 22-42-4.3; Count 2: Possession with Intent to Distribute a Controlled Substance, Class 3 Felony with enhancement, in violation of SDCL 22-42-2, Count 3: Possession with Intent to Distribute a Controlled Substance, Class 3 Felony with enhancement, in violation of SDCL 22-42-2, Count 4: Distribution of a Controlled Drug or Substance in a Drug Free Zone, Class 4 Felony, in violation of SDCL 22-42-19(1), Count 5: Possession with Intent to Distribute More than One Ounce But Less Than Half Pound of Marijuana, Class 5 Felony, in violation of SDCL 22-42-7, Count 6: Unauthorized Possession of a Drug or Substance, Class 5 Felony, in violation of SDCL 22-42-5, Count 7: Unauthorized Possession of Controlled Drug or Substance, Class 5 Felony, in violation of SDCL 22-42-5, Count 8: Keeping Place for Use or Sale of Controlled Substances, Class 5 Felony, in violation of SDCL 22-42-10, Count 9: Possession of More Than Two Ounces But Less Than One-Half Pound of Marijuana, Class 6 Felony, in violation of SDCL 22-42-6, and Count 10: Possession of Drug Paraphernalia, Class 2 Misdemeanor, in violation of SDCL 22-42A-3.

On March 26, 2024, an Arraignment was held and Vancleve entered Not Guilty pleas to all charges.

On May 6, 2025, Vancleve appeared before the trial court and entered a Guilty plea to Count 2 of the Indictment charging Possession with Intent to Distribute a Controlled Substance, Class 3 Felony with enhancement, in violation of SDCL 22-42-2. On July 1, 2025, Vancleve was sentenced as to Count 2 t to twelve (12) years in the South Dakota State Penitentiary with two (2) years suspended and credit for five (5) days previously served. Vancleve was also ordered to pay fines, court costs and fees. Judgment and Sentence was filed on July 2, 2025.

Notice of Appeal was filed on July 17, 2025. This Court has jurisdiction pursuant to SDCL 15-26A-3.

STATEMENT OF FACTS

On February 9, 2024, Milbank Police Officers Braeden Johnson and Keifer Lesner received information that Vancleve was involved in dealing and received methamphetamine. Acting on this information Officer Lesner prepared an affidavit to support an arrest warrant, he then had the affidavit notarized; however, the notary signed, dated and provided the expiration date of his commission, the notary did not apply the notary stamp. The affidavit was presented to the Honorable Judge Means, who reviewed it and issued a search warrant for Vancleve's home. The warrant was signed and excused the same day, leading to the discovery of contraband and Vancleve's arrest. Vancleve was charged as outlined above, ultimately entered a Guilty plea and was sentenced to prison.

LEGAL ANALYSIS

1. THE TRIAL COURT ERRED IN FINDING THAT THE MANDATORY MINIMUM FOR A SECOND OFFENSE DISTRIBUTION APPLIED TO VANCLEVE.

“A trial court's interpretation of a statute is a question of law, reviewed by this Court de novo.” *Martinmaas v. Engelmann*, 2000 SD 85, P49, 612 NW2d 600, 611.

SDCL 22-42-2 provides in part:

Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony.

A violation of this section is a Class 3 felony if three or more of the following aggravating circumstances apply:

- (1) The person is in possession of three hundred dollars or more in cash;
- (2) The person is in possession of a firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3, and subdivision 22-1-2(8);
- (3) The person is in possession of bulk materials used for the packaging of controlled substances;
- (4) The person is in possession of a pill press;
- (5) The person is in possession of materials used to manufacture a controlled substance including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or
- (6) The person is in possession of drug transaction records or customer lists.

....

A first conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least ten years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section.

...

Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would be a violation of this section, and occurring within fifteen years prior to the date of the violation being charged, must be used to determine if the violation being charged is a second or subsequent offense.

...

A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

In this matter the trial court found that this was a second offense distribution for Van Cleve and that the mandatory minimum ten (10) years applied to the sentence. The trial court specifically noted:

“And I appreciate your counsel’s argument that the law is not well written or not clear necessarily about what that look-back period is, but according to the Court, I read it that there is no look-back period that’s limiting the Court in this matter.

The reference that’s made by Mr. De Castro (sic), I guess, is for another day with maybe the legislature about whether or not it’s unclear, but according to my reading of it, the conviction that you have stands and that makes this a second conviction.”

Transcript of Sentencing Hearing of July 1, 2025, pg. 8, lines 16-25.

It is undisputed that Van Cleve has a prior conviction for 22-42-2 in Roberts County on September 26, 2003, in file 54Cri03-000207A0. “This Court has followed the principal that in statutory construction, the legislature express words are to be given effect. See *Rushmore State Bank v. Kurylas, Inc.*, 424 NW2d 649, 657 (SD 1988) (stating that ‘the legislature said what it meant and meant what it said’) (citations omitted).”

State v. Vatne, 659 NW2d 380, 383 (SD 2003).

The concept of vagueness and uncertainty has been considered on several prior occasions in this state. In *State v. Primeaux*, 328 NW2d 256 (SD 1982), a case involving a crime of second degree murder, it was held:

A crime must be statutorily defined with definiteness and certainty. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process. A criminal statute must give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. (citations omitted)

328 NW2d at 258 (quoting from the prior decision of *State v. Bad Heart Bull*, 257 NW2d 715 (S.D. 1977)).

This same reasoning was followed in *State v. Big Head*, 363 N.W.2d 556 (S.D. 1985), a vehicular homicide case, wherein it was again held:

Statutes violate due process when the prohibited act or omission is expressed in terms so vague that reasonable people of ordinary intelligence might apply them differently. *Papachristou v. City of Jacksonville*, 405 US. 156, 92 S. Ct. 839 31 LE2d 110 (1972); *United States v. Harriss*, 347 US. 612, 74 S. Ct. 808, 98 LEd. 989

(1954). Criminal statutes must adequately apprise the public of the activity proscribed and must set out "explicit standards" for endorsement or, in other words, define the criminal offense with "sufficient definiteness." *Kolender v. Lawson*, 461 US 352, 103 S. Ct. 1855, 75 LE 2d 903 (1983); *Broadrick v. Oklahoma*, 413 US 601, 93 S. Ct. 2908, 37 LE2d 830 (1973). Most importantly here, the statutory language may not be so vague that selective or discriminatory enforcement is permitted. *Kolender, supra*; *Smith v. Goguen*, 415 US 566, 94 S. Ct. 1242, 39 LE2d 605 (1974); *Coates v. City of Cincinnati*, 402 US 611, 91 S. Ct. 1686, 29 LE2d 214 (1971).

363 NW2d at 559.

“It is realized that criminal laws represent a legislative balancing act in many instances. In an attempt to prohibit certain conduct, the laws are usually written in a fashion to give broad application to the type of conduct sought to be forbidden. There is nothing inherently wrong with a broad application; for otherwise, there would exist a criminal law for each specific act. What is not allowed are laws so general in nature that people of ordinary intelligence may apply them differently.”

State v. Dale, 439 NW2d, 98, 106. (SD 1989).

In this case SDCL 22-42-2 is ambiguous and a reading of it requires [this Court] to apply the rule of lenity and interpret the statute in his favor. *See United States v. Smith*, 756 F.3d 1070, 1075 (8th Cir 2014) ("The rule of lenity requires a criminal statute be construed in a defendant's favor where, 'after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the Court must simply guess as to what Congress intended.'") (quoting *United States v. Castleman*, 572 U.S. 157, 172-73, 134 S. Ct. 1405, 1416, 188 L. Ed. 2d 426 (2014)).

SDCL 22-42-2 states in part: “A second or subsequent conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least ten years, which sentence may not be suspended.” SDCL 22-42-2 then goes on to say: “Any conviction for, or plea of guilty to, an offense in another state which, if committed in this

state, would be a violation of this section, and occurring within fifteen years prior to the date of the violation being charged, must be used to determine if the violation charged is a second or subsequent offense.”

A careful reading of those two segments of SDCL 22-42-2 shows that the statute is ambiguous and that a non-resident, having a conviction that applied under SDCL 22-42-2 must have been convicted or plead guilty to the same within fifteen (15) years, while a resident, the trial court judge concluded, has no limitation on how old a prior conviction under SDCL 22-42-2 could be used to enhance the sentence to the ten (10) year mandatory minimum.

CONCLUSION

In conclusion, SDCL 22-42-2 is vague and the rule of lenity requires that the statute be construed in Van Cleve’s favor, therefore, Van Cleve asks this Court to remand the case for resentencing and instruct the trial court that the ten (10) year mandatory sentence does not apply in this case.

Dated this 7th day of November, 2025.

/s/ Manuel J. de Castro, Jr.
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Appellant, through counsel, hereby respectfully requests oral argument in the above-entitled matter.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served one (1) copy of Appellant's Brief upon the persons herein next designated all on the date below by email to said addresses, to wit:

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which email address is the last email address of the addressee known to the subscriber.

Dated this 7th day of November, 2025.

/s/Manuel J. de Castro, Jr.
Manuel J. de Castro, Jr.

five (5) days for pretrial detention in this matter; and that the defendant pays court costs in the sum of One Hundred Sixteen Dollars and Fifty Cents (\$116.50).

IT IS FURTHER ORDERED THAT the execution of two (2) years of imprisonment is hereby suspended upon the following conditions:

1. That the defendant pays the aforementioned court costs on a schedule established by the Department of Corrections;
2. That the defendant abides by the Department of Corrections;
3. That the defendant reimburses the Attorney General's Office for the cost of the drug test in the sum of Three Hundred Twenty-nine Dollars (\$329.00) as ordered.

IT IS FURTHER ORDERED that the Court reserves the right to amend any and all of the terms of this Order at any time.

7/2/2025 8:23:29 AM

BY THE COURT:

Attest:
Schuelke, Cathy
Clerk/Deputy



Daunmitcher

Judge of Circuit Court

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31142

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

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APPEALS FROM THE CIRCUIT COURT
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THE HONORABLE DAWN M. ELSHERE
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed July 18, 2025

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31142

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DALE REED VANCLEVE,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Appellant, Dale Reed Vancleve, is referred to as “Vancleve.” Appellee, the State of South Dakota, is referred to as “State.”

References to documents are designated as follows:

Settled Record (Grant County Criminal File No. 24-22) SR
Change of Plea Hearing Transcript (May 6, 2025)..... CP
Sentencing Transcript (July 1, 2025)ST
Vancleve’s Appellant’s Brief AB

JURISDICTIONAL STATEMENT

On July 2, 2025, the Honorable Dawn M. Elshere, Circuit Court Judge, Third Judicial Circuit, entered a Judgment of Conviction in *State of South Dakota v. Dale Reed Vancleve*, Grant County Criminal File Number 24-22. SR 57-58. Vancleve filed his Notice of Appeal on July 18, 2025. SR 93. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE MANDATORY MINIMUM SENTENCE APPLIED TO VANCLEVE'S CONVICTION?

The circuit court found Vancleve was subject to the mandatory minimum sentence.

State v. Armstrong, 2020 S.D. 6, 939 N.W.2d 9

State v. Long Soldier, 2023 S.D. 37, 994 N.W.2d 212

SDCL 22-42-2

STATEMENT OF THE CASE

The Grant County Grand Jury indicted Vancleve on the following counts:

- Count 1: Possession with the Intent to Distribute Methamphetamine (more than five grams), contrary to SDCL 22-42-4.3, a Class 2 felony;
- Count 2: Possession with Intent to Distribute a Controlled Substance, contrary to SDCL 22-42-2, a Class 3 felony;
- Count 3: Possession with Intent to Distribute a Controlled Substance, contrary to SDCL 22-42-2, a Class 3 felony;*
- Count 4: Distribute a Controlled Drug or Substance in a Drug Free Zone, contrary to SDCL 22-42-19(1), a Class 4 felony;
- Count 5: Possession with Intent to Distribute More Than One Ounce but Less Than Half Pound of Marijuana, contrary to SDCL 22-42-7, a Class 5 felony;
- Count 6: Unauthorized Possession of a Controlled Drug or Substance, contrary to SDCL 22-42-5, a Class 5 felony;
- Count 7: Unauthorized Possession of a Controlled Drug or Substance, contrary to SDCL 22-42-5, a Class 5 felony;

* Vancleve had a prior conviction for Possession with the Intent to Distribute, making both Counts 2 and 3 Class 3 felonies. SR 19-23.

- Count 8: Keeping a Place for Use or Sale of Controlled Substances, contrary to SDCL 22-42-10, a Class 5 felony;
- Count 9: Possession of More Than Two Ounces But Less Than One-Half Pound of Marijuana, contrary to SDCL 22-42-6, a Class 6 felony;
- Count 10: Possession of Drug Paraphernalia, contrary to SDCL 22-42A-3, a Class 2 misdemeanor.

SR 19-23.

Vancleve filed a motion to suppress arguing law enforcement's affidavit in support of a request for a search warrant was invalid. SR 35-36. The circuit court denied the motion. SR 52-55.

Vancleve entered a guilty to Count 2 of the Indictment. CP 6. The State dismissed the remaining counts. SR 56. Before he entered his guilty plea, the circuit court advised Vancleve that he was subject to a mandatory minimum sentence of ten years. CP 4. To which he said he understood. CP 5.

At the sentencing hearing, Vancleve argued that the mandatory minimum sentence does not apply to him. ST 5. He did not believe his crime was a second offense per SDCL 22-42-2 because his first offense occurred more than fifteen years prior. ST 4. The circuit court found that there was not an applicable look-back period for the enhancement and sentenced Vancleve to twelve years in prison, with two years suspended. ST 8-9.

STATEMENT OF FACTS

On February 9, 2024, law enforcement received information from an individual that Vancleve was involved with drugs. SR 74 (sealed document). The individual stated she snorted two lines of cocaine at Vancleve's residence, and he had a mound of methamphetamine on the table. SR 74 (sealed document). She stated that Vancleve stored his drugs in a safe located in the basement, hidden behind a picture frame embedded in the wall near the pool table. SR 74 (sealed document). She also said she witnessed Vancleve sell narcotics, and he sold narcotics to her daughter. SR 74 (sealed document).

Law enforcement obtained a search warrant for Vancleve's residence. SR 7. The search revealed three bags of methamphetamine, one bag of cocaine, multiple hypodermic needles, multiple digital scales, spoons with residue, a THC vape, several methamphetamine pipes, multiple bags of marijuana, multiple iPhones, \$3,060 in cash, a jar with white crystal-like substance, a grinder, a mirror with residue, a Budweiser picture with lines of cocaine on it, glass vials with white residue, mini measuring cups, a Bushmaster AR 15 rifle with ammunition, a magazine for an AR 15 rifle, brass knuckles, a white bottle covered with tinfoil containing a white powder, and a "large amount" of baggies. SR 8.

ARGUMENT

THE MANDATORY MINIMUM SENTENCE APPLIED TO VANCLEVE'S CONVICTION.

A. Background.

Vancleve argues he was not subject to the mandatory minimum sentence because his first conviction under SDCL 22-42-2 was outside the fifteen-year look-back period. But the look-back period did not apply to Vancleve's case and therefore, he was subject to the mandatory minimum sentence.

B. Standard of review.

Issues of "statutory interpretation are subject to de novo review." *State v. Waldner*, 2024 S.D. 67, ¶ 18, 14 N.W.3d 229, 236 (quoting *In re Implicated Individual*, 2023 S.D. 16, ¶ 11, 989 N.W.2d 517, 521).

C. Vancleve was subject to the mandatory minimum sentence.

"The purpose of statutory interpretation is to discover legislative intent." *State v. Long Soldier*, 2023 S.D. 37, ¶ 11, 994 N.W.2d 212, 217 (quoting *State v. Bettelyoun*, 2022 S.D. 14, ¶ 16, 972 N.W.2d 124, 129). The starting point is always the statute's language, and this Court defers to the "text whenever possible." *Long Soldier*, 2023 S.D. 37, ¶ 11, 994 N.W.2d at 217 (internal citations omitted). "When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed." *State v. Armstrong*, 2020 S.D. 6, ¶ 16,

939 N.W.2d 9, 13 (quoting *State v. Myrl & Roy's Paving, Inc.*, 2004 S.D. 98, ¶ 6, 686 N.W.2d 651, 654).

SDCL 22-42-2 prohibits the unauthorized distribution and possession of Schedule I or II controlled substances. It reads, in part:

Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony...

A second or subsequent conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least ten years, which sentence may not be suspended...

Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would be a violation of this section, and occurring within fifteen years prior to the date of the violation being charged, must be used to determine if the violation being charged is a second or subsequent offense...

SDCL 22-42-2.

The plain reading of SDCL 22-42-2 is that the fifteen-year look-back period only applies to out-of-state convictions. “Any conviction for...an offense *in another state* which, if committed in this state, would be a violation of this section, *and* occurring within fifteen years prior to the date of the violation being charged, must be used to determine if the violation being charged is a second or subsequent offense.”

SDCL 22-42- 2 (emphasis added). This establishes the criteria for determining which out-of-state convictions count toward classifying an offense as a second or subsequent one, thereby triggering the mandatory minimum sentence.

In comparison, a second or subsequent conviction under SDCL 22-42-2, in-state convictions “shall be punished by a mandatory sentence in a state correctional facility of at least ten years, which sentence may not be suspended...” It is void of any look-back period. To read that the fifteen-year look-back period also applies to in-state convictions requires this Court to read additional language into the statute, which is something this Court does not do. *See Ibrahim v. Dep’t. of Pub. Safety*, 2021 S.D. 17, ¶ 13, 956 N.W.2d 799, 803 (“We presume the Legislature does not insert surplusage into its enactments. Also, this court will not construe a statute in a way that renders parts to be surplusage.” (quoting *Hollman v. S.D. Dep’t of Soc. Servs.*, 2015 S.D. 21, ¶ 9, 862 N.W.2d 856, 859)).

Vancleve states that SDCL 22-42-2 is ambiguous because in-state convictions and out-of-state convictions are treated differently. And because of that, this Court is required to “apply the rule of lenity and interpret the statute in his favor.” AB 6. But the rule of lenity only applies “when a criminal statute contains a grievous ambiguity or uncertainty and only if, after seizing everything from which aid can be derived, the court can make no more than a guess as to what [the

Legislature] intended.” *United States v. Zielinski*, 128 F.4th 961, 964 (8th Cir. 2025) (quoting *Ocasio v. United States*, 578 U.S. 282, 295 n.8, (2016)).

But this Court does not need to guess as to what the Legislature intended because the plain reading of SDCL 22-42-2 is not ambiguous. The Legislature included a look-back period for out-of-state convictions but not for in-state convictions. “This Court’s rule of statutory interpretation “is that the Legislature said what it meant and meant what it said *from the text of the statute.*” *Farm Bureau Life Ins. v. Dolly*, 2018 S.D. 28, ¶ 12, 910 N.W.2d 196, 201 (quoting *Benson v. State*, 2006 S.D. 8, ¶ 72 n.15, 710 N.W.2d 131, 159 n.15). Because the plain language of SDCL 22-42-2 is clear and unambiguous, the rule of lenity does not apply. If Vancleve does not agree with the plain language of the statute, his remedy is with the Legislature and not this Court. SDCL 22-42-2 clearly and unambiguously states the look-back period only applies to out-of-state convictions and not for previous convictions for this statute; therefore, Vancleve was subject to the mandatory minimum sentence.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 1,599 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 365.

Dated this 9th day of December 2025.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 9, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Dale Reed Vancleve* was served via electronic mail upon Manuel J. de Castro at mdecastro1@yahoo.com.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

APPELLANT'S REPLY BRIEF

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

No. 31142

Plaintiff/Appellee,

v.

DALE REED VANCLEVE,

Defendant/Appellant,

APPEAL FROM THE CIRCUIT COURT
OF THE
THIRD JUDICIAL CIRCUIT
GRANT COUNTY, SOUTH DAKOTA

HONORABLE DAWN ELSHERE
Circuit Court Judge

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Notice of Appeal Filed July 17, 2025

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IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

No. 31142

STATE OF SOUTH DAKOTA,
Plaintiff/Appellee,

vs.

DALE REED VANCLEVE,
Defendant/Appellant.

PRELIMINARY STATEMENT

Defendant and Appellant, Dale R. Vancleve, will be referred to throughout this brief as “Vancleve” or “Appellant”. The Appellee, State of South Dakota, will be referred to as “State” or “Appellee”. The transcript of the Status Hearing will be referred to as “S.T.H.” and the transcript of the Change of Plea Hearing will be referred to as “C.H.” and the transcript of the Sentencing Hearing will be referred to as “S.H.”

JURISDICTIONAL STATEMENT

On May 6, 2025, Vancleve appeared before the trial court and entered Guilty plea to Count 2: Possession with Intent to Distribute a Controlled Substance. Vancleve was sentenced on July 1, 2025, as to Count 2 to twelve (12) years in the South Dakota State Penitentiary with two (2) years suspended and credit for five (5) days previously served. Vancleve was also ordered to pay fines, court costs and fees. Judgment and Sentence was filed in the case on July 2, 2025.

Notice of Appeal was filed in each case on July 18, 2025. This Court has jurisdiction pursuant to SDCL 15-26A-3.

STATEMENT OF LEGAL ISSUES

1. THE TRIAL COURT ERRED IN FINDING THAT THE MANDATORY MINIMUM FOR A SECOND OFFENSE DISTRIBUTION APPLIED TO VANCLEVE.

State v. Primeaux, 328 NW2d 256 (SD 1982).
United States v. Castleman, 572 US 157 (2014).
SDCL 22-42-2

PROCEDURAL STATEMENT

An Indictment was filed with the Grant County Clerk of Courts on March 12, 2024 charging Vancleve with the following: Count 1: Possession with Intent to Distribute Methamphetamine More than 5 Grams, Class 2 Felony, in violation of SDCL 22-42-4.3; Count 2: Possession with Intent to Distribute a Controlled Substance, Class 3 Felony with enhancement, in violation of SDCL 22-42-2, Count 3: Possession with Intent to Distribute a Controlled Substance, Class 3 Felony with enhancement, in violation of SDCL 22-42-2, Count 4: Distribution of a Controlled Drug or Substance in a Drug Free Zone, Class 4 Felony, in violation of SDCL 22-42-19(1), Count 5: Possession with Intent to Distribute More than One Ounce But Less Than Half Pound of Marijuana, Class 5 Felony, in violation of SDCL 22-42-7, Count 6: Unauthorized Possession of a Drug or Substance, Class 5 Felony, in violation of SDCL 22-42-5, Count 7: Unauthorized Possession of Controlled Drug or Substance, Class 5 Felony, in violation of SDCL 22-42-5, Count 8: Keeping Place for Use or Sale of Controlled Substances, Class 5 Felony, in violation of SDCL 22-42-10, Count 9: Possession of More Than Two Ounces But Less Than One-Half Pound of Marijuana, Class 6 Felony, in violation of SDCL 22-42-6, and Count 10: Possession of Drug Paraphernalia, Class 2 Misdemeanor, in violation of SDCL 22-42A-3.

On March 26, 2024, an Arraignment was held and Vancleve entered Not Guilty pleas to all charges.

On May 6, 2025, Vancleve appeared before the trial court and entered a Guilty plea to Count 2 of the Indictment charging Possession with Intent to Distribute a Controlled Substance, Class 3 Felony with enhancement, in violation of SDCL 22-42-2. On July 1, 2025, Vancleve was sentenced as to Count 2 to twelve (12) years in the South Dakota State Penitentiary with two (2) years suspended and credit for five (5) days previously served. Vancleve was also ordered to pay fines, court costs and fees. Judgment and Sentence was filed on July 2, 2025.

Notice of Appeal was filed on July 17, 2025. This Court has jurisdiction pursuant to SDCL 15-26A-3.

STATEMENT OF FACTS

Appellant hereby incorporates his previously set forth Statement of Facts as if set out in full.

LEGAL ANALYSIS

1. THE TRIAL COURT ERRED IN FINDING THAT THE MANDATORY MINIMUM FOR A SECOND OFFENSE DISTRIBUTION APPLIED TO VANCLEVE.

Appellant hereby incorporates his previously set forth Legal Analysis and supplements the same with the following.

SDCL 22-42-2 provides in part:

Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony.

A violation of this section is a Class 3 felony if three or more of the following aggravating circumstances apply:

- (1) The person is in possession of three hundred dollars or more in cash;
- (2) The person is in possession of a firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3, and subdivision 22-1-2(8);
- (3) The person is in possession of bulk materials used for the packaging of controlled substances;

- (4) The person is in possession of a pill press;
- (5) The person is in possession of materials used to manufacture a controlled substance including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or
- (6) The person is in possession of drug transaction records or customer lists.

....

A first conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least ten years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section.

...

Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would be a violation of this section, and occurring within fifteen years prior to the date of the violation being charged, must be used to determine if the violation being charged is a second or subsequent offense.

...

A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

Appellant argues that the statute above is vague and punishes an in-state offender more harshly than an out-of-state offender due to the vagueness of the “look back period” for prior convictions of the same nature.

The concept of vagueness and uncertainty has been considered on several prior occasions in this state. In *State v. Primeaux*, 328 NW2d 256 (SD 1982), a case involving a crime of second degree murder, it was held:

A crime must be statutorily defined with definiteness and certainty. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process. A criminal statute must give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. (citations omitted)

328 NW2d at 258 (quoting from the prior decision of *State v. Bad Heart Bull*, 257 NW2d

715 (S.D 1977)).

This same reasoning was followed in *State v. Big Head*, 363 N.W.2d 556 (S.D. 1985), a vehicular homicide case, wherein it was again held:

Statutes violate due process when the prohibited act or omission is expressed in terms so vague that reasonable people of ordinary intelligence might apply them differently. *Papachristou v. City of Jacksonville*, 405 US. 156, 92 S. Ct. 839 31 LE2d 110 (1972); *United States v. Harriss*, 347 US. 612, 74 S. Ct. 808, 98 LEd. 989 (1954). Criminal statutes must adequately apprise the public of the activity proscribed and must set out "explicit standards" for endorsement or, in other words, define the criminal offense with "sufficient definiteness." *Kolender v. Lawson*, 461 US 352, 103 S. Ct. 1855, 75 LE 2d 903 (1983); *Broadrick v. Oklahoma*, 413 US 601, 93 S. Ct. 2908, 37 LE2d 830 (1973). Most importantly here, the statutory language may not be so vague that selective or discriminatory enforcement is permitted. *Kolender, supra*; *Smith v. Goguen*, 415 US 566, 94 S. Ct. 1242, 39 LE2d 605 (1974); *Coates v. City of Cincinnati*, 402 US 611, 91 S. Ct. 1686, 29 LE2d 214 (1971).

363 NW2d at 559.

In this case SDCL 22-42-2 is ambiguous and a reading of it requires [this Court] to apply the rule of lenity and interpret the statute in his favor. *See United States v. Smith*, 756 F.3d 1070, 1075 (8th Cir 2014) ("The rule of lenity requires a criminal statute be construed in a defendant's favor where, 'after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the Court must simply guess as to what Congress intended.'") (quoting *United States v. Castleman*, 572 U.S. 157, 172-73, 134 S. Ct. 1405, 1416, 188 L. Ed. 2d 426 (2014)).

A careful reading of SDCL 22-42-2 shows that the statute is ambiguous and that a non-resident, having a conviction that applied under SDCL 22-42-2 must have been convicted or plead guilty to the same within fifteen (15) years, while a resident, the trial court judge concluded, has no limitation on how old a prior conviction under SDCL 22-42-2 could be used to enhance the sentence to the ten (10) year mandatory minimum.

CONCLUSION

In conclusion, SDCL 22-42-2 is vague and the rule of lenity requires that the statute be construed in Van Cleve's favor, therefore, Van Cleve asks this Court to remand the case for resentencing and instruct the trial court that the ten (10) year mandatory sentence does not apply in this case.

Dated this 20th day of February, 2026.

/s/Manuel J. de Castro, Jr.

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Appellant, through counsel, hereby respectfully requests oral argument in the above-entitled matter.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served one (1) copy of Appellant's Reply Brief upon the persons herein next designated all on the date below by email to said addresses, to wit:

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Dated this 20th day of February, 2026.

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