IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

No. 28501

STATE OF SOUTH DAKOTA,

Plaintiff / Appellee,

v.

ANTONIO D. LEDBETTER

Defendant / Appellant.

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

THE HONORABLE DOUGLAS HOFFMAN
CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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Notice of Appeal filed January 5, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES PAGE

STATUTES CITED:

CASES CITED:

IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

No. 27345

STATE OF SOUTH DAKOTA,

Plaintiff / Appellee,

v.

ANTONIO D. LEDBETTER

Defendant / Appellant

PRELIMINARY STATEMENT

In this brief, Appellant will be called "Defendant" or "Ledbetter." Two transcripts have been prepared. A transcript for the plea hearing held on August 18, 2017, will be referred to as "PT." The transcript for the sentencing hearing held on November 28, 2017, will be referred to as "ST." Documents from the settled record appended to this brief will be referred to as "App." All references will be followed by appropriate page designations.

JURISDICTIONAL STATEMENT

This appeal originates from a sentence entered by the Honorable Douglas Hoffman, Circuit Court Judge, Second Judicial Circuit, on November 28, 2017. The written Judgment and Sentence was filed by the Court on December 8, 2017. App 1. Defendant received a maximum sentence of imprisonment in the South Dakota State

Penitentiary of fifteen (15) years on each of three counts of aggravated assault, with previous jail time credit in the amount of four hundred thirteen (413) days granted. ST 43. No portion of the Court's sentence was suspended and each of the three counts were made to run consecutive to one another for a statutory maximum sentence of 45 years in the penitentiary. *Id.*

A Notice of Appeal was later filed by Ledbetter on January 5, 2018. App 2. This Court's jurisdiction is pursuant to SDCL § 23A-32-2.

STATEMENT OF THE CASE AND FACTS

The State charged Ledbetter in a nine count Indictment in October of 2016. The charges consisted of one count of aggravated kidnapping and eight counts of aggravated assault (domestic). Of the eight counts of aggravated assault, counts 2, 3 and 4 were charged in the alternative. Counts 5, 6, and 7 were also aggravated assault charges and were charged in the alternative. Counts 8 and 9 were two additional counts of aggravated assault. These were charged independently of one another.

The charged conduct arose from a domestic assault between Ledbetter and his then ex-girlfriend, Sarah Inboden (Inboden). The couple had recently split up and Inboden had secured a new residence and was trying to distance herself from Ledbetter. During the couples' relationship, Inboden became pregnant with Ledbetter's child. On the day in question, Ledbetter traveled to Inboden's residence to speak with her. The meeting resulted in a severe physical assault on Inboden that culminated with Ledbetter using a scissors to cut off the nipples of her left and right breasts. During this altercation, Inboden's normal breathing and blood circulation were compromised due to pressure on her throat and neck. Inboden was able to flee her residence and seek help from law

enforcement and medical personal. Her injuries required a hospital stay and reconstructive surgery.

Counsel for Defendant was appointed and a "not guilty" plea was entered to all charges. Counsel proceeded to have a psychological evaluation conducted on Ledbetter. Upon receiving the results, the parties moved forward with plea negotiations. During this process, relations between Ledbetter and counsel deteriorated and counsel filed a Motion seeking permission from the Court to have a co-counsel appointed. The court agreed and attorney John Hinrichs was appointed to assist with the case in June of 2017.

In early August 2017, the parties reached a potential plea agreement to resolve the case. Counsel for Defendant e-mailed the Court and State on August 14, 2017 to arrange an in-chambers meeting between State and Defense. App 4 at 3. The purpose of the meeting was to sit down with the Court and discuss the case to make sure the agreement was acceptable to the Court and the parties could move forward under its terms. The in-chambers meeting took place the next day on August 15, 2017. David Stuart, counsel for the Defendant, the State's Attorney, Thomas Wollman, and Judge Hoffman were present. The parties discussed the Defendant entering a plea to three counts of aggravated assault (domestic) with the balance of counts on the indictment being dismissed. In return, the State agreed to cap their argument for actual penitentiary time at 30 years and the Defendant was unable to argue for actual time less than 18 years. App 5 at 3. The point of the meeting was to discuss the agreement with the Court before counsel for defense submitted the offer to the Defendant. The parties wanted to make sure the terms of the plea agreement were acceptable to the Court and the Court was willing to sentence within the parameters of the cap on the State and the floor for the Defendant. The Court agreed and orally stated the plea agreement was acceptable.

Subsequently, Defendant executed a written Petition to Plead Guilty and Statement of Factual Basis. App 5. Four days after the in-chambers meeting, the document was filed with the Court during the Defendant's plea hearing.

On August 18, 2017, Ledbetter pled guilty to counts 3, 6, and 8 of the State's multi-count Indictment. The balance of counts on the Indictment were dismissed pursuant to the parties' plea agreement. Each count to which Ledbetter plead was for the crime of Aggravated Assault – Domestic, a Class 3 Felony (SDCL §22-18-1.1(2) and 25-10-1 for Counts 3 and 6, and SDCL §22-18-1.1(8) and 25-10-1 for Count 8). Following the entry of Defendant's pleas, the Court ordered a presentence investigation to be completed. Sentencing was set for November 28, 2017.

On November 28, 2017, the Honorable Douglas Hoffman, Circuit Court Judge, Second Judicial Circuit, sentenced Defendant to the South Dakota State Penitentiary for a maximum sentence of 15 years as to count 3 of the Indictment. As to count 6, Defendant was sentenced to 15 years in the penitentiary. As to count 8, Defendant was sentenced to 15 years in the penitentiary. Jail time credit in the amount of four hundred thirteen (413) days was granted. ST 43. No portion of the Court's sentence was suspended and each of the three counts were made to run consecutive to one another for a total sentence of 45 years in the penitentiary. *Id.*

At the conclusion of the Court's sentence, counsel for Defendant made an oral objection to the sentence imposed by the Court and noted, "There's been no previous indication by the Court that the Court was not otherwise satisfied with the terms under which it could sentence within that plea agreement. That in handing down this particular sentence, my client was not given the opportunity to withdraw the guilty plea with the sentence going outside of the contemplated plea agreement." ST 48. Counsel proceeded

to ask the Court to reconsider its sentence to be in compliance with the plea agreement. *Id.* The Court noted the objection and denied the request. *Id* 48-49. A written Judgment was filed by the Court on December 8, 2017. App 1.

Defense counsel subsequently filed a written Motion to Reconsider Sentence on January 3, 2018. App 6. In connection with this Motion, counsel addressed an email to the Court and State reviewing the meeting with the Court in chambers. App 4 at 5. Quoting from this email,

> I am asking the Court to reconsider its sentence. As argued previously, the State, as well as the victim was in agreement with a cap of 30 years and a floor of 18. Myself and Mr. Wollman presented this plea agreement to the Court in chambers. This was done before myself and Mr. Hinrichs continued our discussions with Mr. Ledbetter. We didn't want to present the offer to the defendant if it was not acceptable to the Court. I understand, this was not an agreed upon plea offer technically binding the court. However, we tried to be upfront with the Court in our discussions to determine whether this plea was acceptable and if the Court would be comfortable sentencing within this range.
>
> We were given the thumbs up by the Court and moved forward with discussing the plea agreement with Tony. Our client accepted and the plea was entered according to the agreement. *Id.*

The Court considered the Motion and filed its Memorandum and Order Denying Motion to Reconsider Sentence on January 5, 2018. App 7.

A Notice of Appeal was filed by Ledbetter on January 5, 2018. App 2. Ledbetter is currently incarcerated in the South Dakota State Penitentiary pursuant to the aforementioned judgment.

STANDARD OF REVIEW

Whether the circuit court accepted a binding plea agreement is a question of law reviewed de novo. *State v. Hale,* 2018 S.D. 9, ¶ 11; *State v. Shumaker,* 2010 S.D. 95, ¶ 5, 792 N.W.2d 174, 175.

ISSUES

1. Whether there was an implicit binding plea agreement upon the circuit court.

2. If there was a binding plea agreement, did the circuit court err by failing to enter a sentence in conformity with the terms of the plea agreement.

ARGUMENT

The State and Defendant reached a plea agreement that called for the Defendant to enter his guilty pleas to counts 3, 6, and 8 of the Indictment. Each count was for the charge of Aggravated Assault – Domestic, a Class 3 felony. In exchange for these pleas of guilty, the State would dismiss the remaining charges. The plea agreement contained an agreed-upon disposition. Specifically, a sentencing cap of 30 years actual time with the State able to argue for additional suspended time. Additionally, the agreement contemplated Defendant could not argue for actual time below a floor of 18 years. Other terms and conditions as well as the amount of suspended time was open to the Court.

Upon reaching this plea agreement, counsel for Defendant emailed the Court and copied the State requesting a time to conduct an in-chambers meeting between the parties and the Court. The email read:

> . . . The state and defense have reached a plea agreement in this case. The parties would like to sit down and discuss this case with the court prior to scheduling it for a plea *to make sure the agreement is acceptable to the court and we can move forward*.

> Given the effort that has been put forth working with this particular defendant, I think it will be best if we are all on the same page.
>
> What times would the court have available for a sit-down in chambers over the next few days? (Emphasis added). App 4 at 3.

The meeting between the Court and parties took place the following day. Present in chambers was Thomas Wollman, Lincoln County State's Attorney; David Stuart, counsel for Defendant; and Judge Doug Hoffman. The parties presented the plea agreement to the Court for its consideration and approval. The discussion was not on the record and took place informally. The State and Defendant advised the Court the agreement required the Defendant to plead guilty to three counts of aggravated assault. In exchange the State would dismiss the remaining charges. In return for these charging concessions, the plea agreement contained an agreed-upon disposition of a sentencing cap of 30 years actual time with the State able to argue for additional suspended time. Additionally, the agreement contemplated Defendant could not argue for actual time below a floor of 18 years. Other terms and conditions as well as the amount of suspended time was open to the Court.

The parties further discussed with the Court that the victim had been consulted and was in agreement with these terms. Also, defense counsel expressed that he did not want to present the offer to Defendant if it was unacceptable to the Court. Neither the State nor defense specifically addressed the Court that they intended the agreement to be a binding plea agreement under SDCL 23A-7-8(3). However, this intent was implied through the content of defense counsel's email to the Court; the discussion in chambers; common usage and practice of plea terms within the 2nd Circuit; and defense not wanting to present the agreement to the Defendant if unacceptable to the Court. Counsel for the

State and Defendant came away from this in-chambers meeting with the understanding that the Court had given the parties the "thumbs up" on the agreement. Defense counsel proceeded to discuss the plea agreement and its terms with Defendant.

Common usage and practice within the 2nd Circuit of the term "cap" – as in "cap of a suspended execution of sentence" or "cap of 10 years" means the parties have agreed upon the maximum sentence available to the Court and intend it to be binding upon the Court. The sheer volume of criminal cases handled within the 2nd Circuit has grown this custom and usage into an indispensable way to process cases efficiently. The State, defense attorneys and their clients rely upon this custom and usage. These terms of art when used to describe plea agreements have taken on specific meanings that all rely upon. In the case of a suspended execution cap, the State can request up to the maximum sentence available under the statute with all that time suspended. Defense counsel and the State understand that each can argue for the appropriate number of years within the statutory maximums and the Court will decide a sentence. But, that sentence will be fully suspended by the Court. The Court is bound by the suspended execution cap and cannot impose a penitentiary sentence without advising the parties and defendant that the plea agreement is rejected. If rejected, SDCL §23A-7-11 (Rule 11 (e)(4))[1] becomes applicable and the defendant is given the proper advisement and allowed to withdraw a plea. When the Court proceeds with the plea agreement, there is an understanding between the parties and the Court that the Court will sentence within or up to this cap.

[1] SDCL §23A-7-11. (Rule 11(e)(4)) Advice to parties as to rejection of plea agreement – Withdrawal of plea by defendant. If a court rejects the plea agreement, it shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in chambers, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, if a plea has been entered, and advise him that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may less favorable to him than that contemplated by the plea agreement.

A second example would involve a "cap of years." If the defendant pled to a Class 4 felony punishable by up to 10 years and the State and defense agreed to a "cap of 5 years," the parties intend to bind the Court to a maximum actual sentence of 5 years to the penitentiary. The Court could sentence to all five years, or impose an amount of actual and suspended time totaling 5 years. *State v. Shumaker,* at ¶ 3, 10 and 11. The one clarification on the "cap" in this scenario is whether the parties contemplate additional suspended time beyond the "cap" of actual time. *Id* at ¶ 3. If applicable, the State could argue for 10 years with 5 suspended in the above example. The court would then be in a position to impose additional suspended penitentiary time beyond the 5 year cap.

In our case, Ledbetter accepted the agreement and four days after the in-chambers meeting, Defendant entered his pleas of guilty on August 18, 2017. PT 10. In conjunction with this plea hearing, Defendant filed a written Petition to Give Up Rights and Plead Guilty. App 5. The document reviewed the Defendant's constitutional rights, consequences of pleading guilty, maximum penalties, voluntariness of plea (the plea agreement is set forth in this area); and a supporting factual basis statement. *Id.* During the plea hearing the parties presented the plea agreement to the Court. PT 2-3. The Court engaged in a colloquy with Defendant reviewing his rights. *Id* 4-7. It explained the maximum punishment and the nature and elements of the charges. At no time during the plea taking did the Court advise the Defendant that it was rejecting the plea agreement pursuant to SDCL 23A-7-11 (Rule 11(e)(4)). Just the opposite. During a conversation with defense counsel concerning whether the Defendant understood his rights, the Court remarked,

> DEFENSE COUNSEL: Yes, Your Honor. Additionally, I also mentioned to him the Court's ability to impose those counts consecutively.

> THE COURT: Correct. They're individual charges and so each one carries its individual maximum penalty, and you *could be sentenced as set forth in the plea agreement and the petition* on a consecutive basis with each one of those three counts. (Emphasis added). PT page 9.

Defendant entered his plea to all three counts of aggravated assault and the Court ordered a presentence investigation to be completed. Sentencing was scheduled for November 28, 2017. Court services met with the Defendant and prepared the presentence report for the Court and parties. Sentencing convened on November 28, 2017 as scheduled.

At the time of sentencing, the State presented testimony from the victim and made argument to the Court regarding the proper sentence to be imposed. Likewise, defense counsel made argument to the Court discussing Defendant's request for a sentence. During this argument, counsel noted,

> DEFENSE COUNSEL: It is a tough case to know what is going to be appropriate for a sentence, Judge. The plea agreement that we reached with the State contemplates a large amount of time. This is the first case that I have argued in which my arguments have been restricted to the floor where I can't argue below a certain number. That number is 18 years. . . . As you think about the ceiling or the cap that the State has, that they have agreed to as part of this plea agreement, it was 30 years. *The Court's job is to figure out the appropriate sentence between this floor and this cap.* There is an additional amount of time that can be suspended as part of this case that would continue supervision. Across these three counts, the Court has the ability to utilize up to 45 years of time. (Emphasis added). ST pages 11-12.

During the State's address to the Court, the prosecutor remarked,

> STATE: I submit to the Court that the facts outlined in this report, the facts by the victim, and even the statements by the defendant himself, warrant a sentence of 30 years.
>
> . . . *There is 30 years available to the Court* and I am asking the Court to impose every single day of it and to impose the additional 15 years [as suspended time]. (Emphasis added). ST page 30.

Both the State and Defendant contemplated an agreed upon sentence within the parameters of 18 and 30 years of penitentiary time. The discretion left to the Court was to decide what amount of actual time was appropriate within this range and whether additional suspended time would also be imposed. The State asked for an additional 15 years of suspended time in accordance with the agreement.

Following the Defendant exercising his right of allocution, the Court proceeded with imposing sentence. At no time during the sentencing hearing did the Court advise the Defendant that it was rejecting the plea agreement pursuant to SDCL 23A-7-11 (Rule 11(e)(4)). Consequently, Defendant persisted in his guilty plea and the Court imposed sentence. As previously stated, the Court imposed maximum statutory sentences of 15 years actual across each of the 3 counts. These sentences were made to run consecutively for a total sentence of 45 years of penitentiary time. No time was suspended. ST 42-43. The Court rejected the plea agreement and sentenced Mr. Ledbetter to a maximum sentence. This sentence exceeded the agreed-upon cap of 30 years by an additional 15 years of penitentiary time.

Upon the Court concluding its sentence, defense counsel noted an objection to preserve the record for Defendant,

DEFENSE COUNSEL: Thank you, Your Honor. For purposes of preserving the record on this file, the Court's sentence that was just entered was the maximum sentence across each of those three counts.

THE COURT: Yes.

DEFENSE COUNSEL: Your Honor, the previous plea agreement that was negotiated between the parties, that was a bargain[ed] for plea agreement. It had the cap of 30 years that the State could argue, it had the 18 years. As part of negotiating that plea agreement, the victim had been consulted.

Our understanding is that there was an acquiescence to the State's limit in their ability as to what they could argue for. So she was certainly consulted in those decisions.

There's been no previous indication by the Court that the Court was not otherwise satisfied with the terms under which it could sentence within that plea agreement. That in handing down this particular sentence, my client was not given the opportunity to withdraw the guilty plea with the sentence going outside of the contemplated plea agreement.

So for purposes of the record being established here today, we note those objections and ask the Court to reconsider its sentence such that it would be in compliance with the plea agreement that the parties have reached. ST 47-48.

The Court responded to defense counsel that its sentence was in compliance with the plea agreement that the parties reached. Essentially, that the plea agreement was binding between the parties, but non-binding upon the Court. ST 48-49.

ISSUE 1

WHETHER THERE WAS AN IMPLICIT BINDING PLEA AGREEMENT UPON THE CIRCUIT COURT.

Whether the circuit court accepted a binding plea agreement is a question of law reviewed de novo. *State v. Hale*, 2018 S.D. 9, ¶ 11, quoting, *State v. Shumaker*, 2010 S.D. 95, ¶5, 792 N.W.2d 174, 175. South Dakota Codified Law addresses plea agreements within Chapter 23A-7. Under SDCL 23A-7-8, the parties in a criminal matter may engage in discussions in an attempt to reach a plea agreement. Subsections (2) and (3) of this statute are applicable here. Under these subsections, the prosecutor has discretion to:

> (2) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court;
>
> (3) Agree that a specific sentence is the appropriate disposition of the case; or . . . *Id.*

This Court has routinely held that a plea agreement accepted under subsection (2) does not restrict the court's discretion when sentencing a defendant. *State v. Hale,* ¶ 11. However, a plea accepted under subsection (3) restricts the court to sentencing the defendant within the bounds of the plea agreement. *Id.* It is Defendant's contention that the plea agreement in this case falls under subsection (3) of SDCL 23A-7-8 because the parties negotiated an agreed disposition, rather than a recommended sentence. The court would have discretion between the floor of 18 years and the cap of 30 years penitentiary time. Additional suspended time could be argued by the State and imposed by the Court if it felt this time was warranted.

Once the State and Defendant reached a plea agreement in the case, there were only a couple options available to the parties. One was to contact the Clerk and schedule the matter for sentencing with no communication or input from the Court. This is common practice and represents how most cases proceed to the plea stage. In fact, provisions within SDCL 23A-7-8, set forth a court shall not participate in such plea discussions. The other option was to address the plea with the Court and discuss the binding nature of the terms. In this case, the parties proceeded with an in-chambers discussion with the Court. Had the parties intended this plea agreement to fall under subsection (2) of SDCL 23A-7-8, there would have been no reason to discuss the parameters of the plea ahead of a scheduled plea hearing with the Court. The agreement could have been outlined on the record and each party would make its respective recommendation at the time of sentencing. The Court would then proceed within its discretion to sentence within or outside of the parties' recommendations. Here, however, defense counsel approached the Court and requested the in-chambers meeting. The language of defense counsel's email specifically addressed the intent to gain the court's acceptance of the terms of the plea agreement:

> The parties would like to sit down and discuss this case with the court prior to scheduling it for a plea *to make sure the agreement is acceptable to the court and we can move forward*.
>
> Given the effort that has been put forth working with this particular defendant, I think it will be best if we are all on the same page. App 4 at 3.

The agreement was presented to the Court and inquiry was made as to whether it was acceptable to the Court. Following this colloquy between counsel and the court, it is

believed the parties left this meeting with an understanding that the Court was willing to sentence within the parameters of the ceiling and floor contemplated by the terms of the agreement. An implicit agreement had been reached. Thus, an agreed upon disposition and a binding plea agreement.

ISSUE TWO

IF THERE WAS A BINDING PLEA AGREEMENT, DID THE CIRCUIT COURT ERR BY FAILING TO ENTER A SENTENCE IN CONFORMITY WITH THE TERMS OF THE PLEA AGREEMENT.

This Court has recognized that generally circuit courts are not bound by plea agreements. *State v. Reaves,* 2008 S.D. 105, ¶ 7. "Nevertheless, if a trial court accepts a binding plea agreement, it is bound to honor its promise to sentence the defendant within the bounds of the agreement." *State v. Shumaker,* 2010 S.D. 95, ¶6, quoting *State v. Reaves,* 2008 S.D. 105, ¶ 7. Defendant urges this Court to find from the record the trial court implicitly accepted the terms of the parties' binding plea agreement. Further, the record is absent of any explicit rejection of the plea agreement by the Court. The Defendant was never advised of the requirements of SDCL 23A-7-11. It was not until the trial court had imposed a maximum sentence that Defendant became aware of the rejection of the agreement. This violated the Defendant's right to either withdraw or persist in his guilty plea. *Id.* The trial court's implicit acceptance of the plea agreement induced Defendant to waive his fundamental rights and plead guilty.

As such, there was an obligation for the trial court to sentence within the cap of 30 years and the floor of 18 years or properly advise that it was rejecting the plea agreement and afford the Defendant his right to withdraw his guilty plea. "[O]nce the defendant has given up his 'bargaining chip' by pleading guilty, due process requires that

the defendant's expectations be fulfilled." *State v. Hale*, 2018 S.D. 9, ¶19, quoting *State v. Waldner*, 2005 S.D. 11. Because the trial court did not reject the agreement at the time of meeting with counsel for the State and defense, did not reject the agreement at the time of the plea, and did not defer its decision to accept or reject the agreement, the trial court should be required to sentence Ledbetter within the bounds of the plea agreement.

CONCLUSION

Based on the foregoing arguments and authorities, Mr. Ledbetter respectfully prays this Court find the trial court accepted an implicit binding plea agreement requiring it to honor the promise to sentence the Defendant within the negotiated parameters. Further, based upon this error, it is requested this case be remanded with direction to the circuit court to resentence Defendant within the bounds of the plea agreement.

Respectfully submitted,

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RASMUSSEN, PROF. LLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of May, 2018, a true and correct copy of Appellant's Brief in the matter of *State of South Dakota v. Antonio D.*

Ledbetter, was served by electronic mail upon Patricia Archer, Assistant Attorney General at atgservice@state.sd.us.

Dated this 25th day of May, 2018.

PETERSON, STUART, RUMPCA &
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CERTIFICATE OF COMPLIANCE

In accordance with SDCL §15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word, and contains 4,670 words from the Preliminary Statement through the Conclusion. I have relied on the word count of a word-processing program to prepare this certificate.

Dated this 25th day of May, 2018.

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APPENDIX

Appendix Table of Contents

Page

APPENDIX

Appendix Table of Contents

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
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COUNTY OF LINCOLN) SECOND JUDICIAL CIRCUIT

State of South Dakota, 41CRI16-000632

Plaintiff,

vs. Judgment and Sentence

ANTONIO D. LEDBETTER,

Defendant.

An Indictment was filed with the Court on the 17th day of October, 2016, charging the Defendant with the crimes of Aggravated Kidnapping - Domestic, SDCL 22-19-1(3), 25-10-1; 3 alternative counts of Aggravated Assault - Domestic, SDCL 22-18-1.1(1) or (2) or (4), 25-10-1; 3 alternative counts of Aggravated Assault - Domestic, SDCL 22-18-1.1(1) or (2) or (4), 25-10-1; Aggravated Assault - Domestic, SDCL 22-18-1.1(8), 25-10-1; and Aggravated Assault - Domestic, SDCL 22-18-1.1(8), 25-10-1.

The Defendant was arraigned on the Indictment on the 24th day of October, 2016. The Defendant was present with counsel, David A. Stuart, and the State was represented by prosecuting attorney Thomas R. Wollman. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charges that had been filed against the Defendant.

On the 18th day of August, 2017, the Defendant returned before the Court with attorneys David A. Stuart and John Hinrichs. The State was represented by prosecuting attorney Thomas R. Wollman. The Defendant entered an oral plea of GUILTY to the charge that on or about the 11th day of October, 2016, in the County of Lincoln, State of South Dakota, ANTONIO D. LEDBETTER did commit

the public offenses of Aggravated Assault - Domestic, in violation of SDCL 22-18-1.1(2), 25-10-1, as charged in Count 3; Aggravated Assault - Domestic, in violation of SDCL 22-18-1.1(2), 25-10-1, as charged in Count 6; and Aggravated Assault - Domestic, in violation of SDCL 22-18-1.1(8), 25-10-1, as charged in Count 8.

It is the determination of this Court that the Defendant has been regularly held to answer for said offenses; that said pleas were voluntary, knowing and intelligent; that he was represented by competent counsel and that a factual basis exists for said pleas.

It is therefore the JUDGMENT of this Court that the Defendant is guilty of Aggravated Assault - Domestic, in violation of SDCL 22-18-1.1(2), 25-10-1; Aggravated Assault - Domestic, in violation of SDCL 22-18-1.1(2), 25-10-1; and Aggravated Assault - Domestic, in violation of SDCL 22-18-1.1(8), 25-10-1.

SENTENCE

On the 28th day of November, 2017, the Defendant was present before the Court with attorneys David A. Stuart and John Hinrichs, and the State was represented by Amanda D. Eden. The Court asked the Defendant if any cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court pronounced the following sentence:

AS TO AGGRAVATED ASSAULT - DOMESTIC, AS CHARGED IN COUNT 3:

IT IS ORDERED AND ADJUDGED by this Court that the Defendant, ANTONIO D. LEDBETTER, be imprisoned in the South Dakota State Penitentiary for a period of 15 years, there to be kept, fed and clothed according to the rules of said institution. It is further,

ORDERED, that the Defendant shall be granted credit toward the sentence imposed in Count 3 for 413 days previously served. It is further,

ORDERED, that this sentence shall be deemed to run consecutive to the sentences imposed herein for charges contained in Counts 6 and 8 of the Indictment. It is further,

ORDERED, that the Defendant shall pay $104.00 in court costs pursuant to a repayment plan as established by Parole Services.

AS TO AGGRAVATED ASSAULT - DOMESTIC, AS CHARGED IN COUNT 6:

IT IS ORDERED AND ADJUDGED by this Court that the Defendant, ANTONIO D. LEDBETTER, be imprisoned in the South Dakota State Penitentiary for a period of 15 years, there to be kept, fed and clothed according to the rules of said institution. It is further,

ORDERED, that this sentence shall be deemed to run consecutive to the sentences imposed herein for charges contained in Counts 3 and 8 of the Indictment. It is further,

ORDERED, that the Defendant shall pay $104.00 in court costs pursuant to a repayment plan as established by Parole Services.

AS TO AGGRAVATED ASSAULT - DOMESTIC, AS CHARGED IN COUNT 8:

IT IS ORDERED AND ADJUDGED by this Court that the Defendant, ANTONIO D. LEDBETTER, be imprisoned in the South Dakota State Penitentiary for a period of 15 years, there to be kept, fed and clothed according to the rules of said institution. It is further,

ORDERED, that this sentence shall be deemed to run consecutive to the sentences imposed herein for charges contained in Counts 3 and 6 of the Indictment. It is further,

ORDERED, that the Defendant shall pay $104.00 in court costs pursuant to a repayment plan as established by Parole Services.

IT IS FURTHER ORDERED, that the Defendant shall have no contact with Sara Kindvall or their child for a period of 45 years. It is further,

ORDERED, that the Defendant shall reimburse Lincoln County $9,879.38 in attorney fees, $71.40 for a transcript cost, and

$2,000.00 for the cost of an evaluation pursuant to a repayment plan as established by Parole Services. It is further,

ORDERED, that the Defendant shall pay restitution to Crime Victims Compensation in the amount of $3,051.71 pursuant to a repayment plan as established by Parole Services. It is further,

ORDERED, that Counts 1, 2, 4, 5, 7 and 9 contained in the Indictment, along with the charges contained in the Complaint, are hereby dismissed. It is further,

ORDERED, that the Defendant is hereby remanded into the custody of the Lincoln County Sheriff pending execution of this sentence.

Dated this 7 day of Dec., 2017.

BY THE COURT:

Douglas E. Hoffman - Circuit Court Judge

ATTEST:
Kristie Torgerson, Clerk of Courts
BY:
Alicia Hagen
Deputy Clerk

STATE OF SOUTH DAKOTA)		IN CIRCUIT COURT
) ss.		
COUNTY OF LINCOLN)		SECOND JUDICIAL DISTRICT

STATE OF SOUTH DAKOTA, Plaintiff,	)	Crim No. 16-632
vs.	)	NOTICE OF APPEAL
ANTONIO D. LEDBETTER, Defendant.	)	

TO: MARTY JACKLEY, South Dakota Attorney General, and TOM WOLLMAN, Lincoln County State's Attorney

NOTICE IS HEREBY GIVEN that Antonio D. Ledbetter, the above-named Defendant, hereby appeals the Judgment of Conviction in the above captioned matter. On the 18th day of August, 2017, the Defendant entered pleas to three counts of Aggravated Assault – Domestic as charged in Counts 3, 6, and 8 of the State's Indictment. Count 3 was in violation of SDCL 22-18-1.1 (2) and 25-10-1. Count 6 was in violation of SDCL 22-18-1.1 (2) and 25-10-1. Count 8 was in violation of SDCL 22-18-1.1 (8) and 25-10-1.

On November 28, 2017, Defendant was sentenced on Count 3 to 15 years in the South Dakota State Penitentiary with credit given in the amount of 413 days previously served. Defendant was sentenced on Count 6 to 15 years in the South Dakota State Penitentiary with credit given in the amount of 413 days previously served. Lastly, Defendant was sentenced on Count 8 to 15 years in the South Dakota State Penitentiary with credit given in the amount of 413 days previously served. Counts 3, 6, and 8 were made to run consecutive to one another for a total sentence of 45 years. A judgment and sentence was signed by the Honorable Douglas Hoffman and filed for record on the 8th day of December, 2017.

This appeal is taken from the whole of this sentence entered on December 8, 2017. This appeal is taken by an indigent Defendant, assigned counsel pursuant to §23A-40-6, and no filing fee need be paid and no undertaking need be furnished to perfect such appeal.

Dated this 5th day of January, 2018.

PETERSON, STUART, RUMPCA &
RASMUSSEN, Prof. LLC

David Stuart, Attorney for Defendant
124 N. 3rd Street
Beresford, SD 57004
(605)763-5024
david.petersonstuart@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Notice of Appeal was served on the following:

Marty Jackley
Attorney General's Office
1302 E. Highway 14, #1
Pierre, SD 57501

Tom Wollman
Lincoln County State's Attorney
104 N. Main, #200
Canton, SD 57013

by mailing said copy to him by United States Mail, first class postage prepaid thereon, on this 5th day of January, 2018.

David Stuart, Attorney for Defendant

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF LINCOLN	)	SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff	)	CRI #16-632
	)	**MOTION AND ORDER APPOINTING CO-COUNSEL**
TONY LEDBETTER, Defendant.	)	

COMES NOW, the Defendant, Tony Ledbetter, by and through his attorney of record, David A. Stuart, and respectfully moves this Court for an Order appointing Co-Counsel. In support of said motion, Defendant submits the following:

Defendant made a request for substitute counsel. His request was denied. Shortly thereafter, Defendant requested to discharge court appointed counsel and proceed pro se. This request was also denied. It would benefit the Defendant and court appointed counsel to have a co-counsel appointed for the Defendant to help work through current issues involving plea offers and jury trial.

Counsel has discussed this matter with attorney John Hinrichs and Mr. Hinrichs is willing to serve in a co-counsel role on this file.

WHEREFORE, Defendant respectfully prays that this Court grant an Order Appointing Co-Counsel.

Dated: June 29, 2017 Attorney for Defendant: */s/ David A. Stuart*

ORDER

The above-entitled matter, having been brought to the Court by defense counsel David A. Stuart, on this the 29th day of June, 2017, on Defense counsel's request for Co-Counsel, and the State of South Dakota being represented by Lincoln County State's Attorney, Thomas R. Wollman, and the State having no objection to said request:

FILED
JUN 30 2017
Lincoln County, S.D.
Clerk Circuit Court

IT IS HEREBY ORDERED, that John Hinrichs, Attorney at Law, is appointed as Co-Counsel on this file.

Dated this 29 day of June, 2017.

BY THE COURT:

Judge

ATTEST:
Kristi Torgerson, Clerk of Courts

By: Alicia Hague
Deputy

STATE OF SOUTH DAKOTA)		IN CIRCUIT COURT
) ss.		
COUNTY OF LINCOLN)		SECOND JUDICIAL DISTRICT

STATE OF SOUTH DAKOTA, Plaintiff,	)	Crim No. 16-632
vs.	)	STIPULATION TO SUPPLEMENT CIRCUIT COURT RECORD PURSUANT TO SDCL 15-26A-56
ANTONIO D. LEDBETTER, Defendant.	)	

COMES NOW, the attorneys for the parties to the above-entitled action and, pursuant to SDCL §15-26A-56, do hereby stipulate to the addition of the following documents to the circuit court record:

1. Printed record of an email authored by David Stuart dated August 14, 2017 at 12:28 p.m. and addressed to Judge Doug Hoffman and counsel for the parties (Attached as Exhibit A); and

2. Printed record of an email authored by David Stuart dated January 3, 2018 at 4:16 p.m. and addressed to Judge Doug Hoffman and counsel for the parties (Attached as Exhibit B).

The parties acknowledge the records are true and correct copies of written email communications among counsel and the court prior to the plea entered by the Defendant and a subsequent motion filed by defense requesting the circuit court to reconsider its sentence. The parties do not stipulate as to the meaning of the content of the messages, or any inferences to be drawn from them. It is stipulated a supplemental record may be approved and transmitted.

Dated this 26th day of April, 2018.

David A. Stuart
Peterson, Stuart, Rumpca & Rasmussen
124 N. 3rd Street
Beresford, SD 57004
(605) 763-5024 ph
david.petersonstuart@gmail.com

Dated this 26th day of April, 2018.

Thomas Wollman
Lincoln County State's Attorney
104 N. Main, #200
Canton, SD 57013
(605) 764-5732 ph
twollman@lincolncountysd.org

Gmail

David Stuart <david.petersonstuart@gmail.com>

DEFENDANT'S EXHIBIT A
PENGAD 800-631-6989

State v. Ledbetter

6 messages

David Stuart <david.petersonstuart@gmail.com> Mon, Aug 14, 2017 at 12:28 PM
To: Judge Hoffman <doug.hoffman@ujs.state.sd.us>, Tom Wollman <twollman@lincolncountysd.org>, John Hinrichs <John@hpslawfirm.com>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>

Judge Hoffman,

The state and defense have reached a plea agreement in this case. The parties would like to sit down and discuss this case with the court prior to scheduling it for a plea to make sure the agreement is acceptable to the court and we can move forward.

Given the effort that has been put forth working with this particular defendant, I think it will be best if we are all on the same page.

What times would the court have available for a sit-down in chambers over the next few days?

Hoffman, Judge Doug <Doug.Hoffman@ujs.state.sd.us> Mon, Aug 14, 2017 at 12:45 PM
To: David Stuart <david.petersonstuart@gmail.com>, Tom Wollman <twollman@lincolncountysd.org>, John Hinrichs <John@hpslawfirm.com>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>

Sometime tomorrow morning would be good, I only have one hearing at 9 and one at 10:30. Perhaps between those two?

From: David Stuart [mailto:david.petersonstuart@gmail.com]
Sent: Monday, August 14, 2017 12:29 PM
To: Hoffman, Judge Doug; Tom Wollman; John Hinrichs; Ronda Headrick; Becky Koller
Subject: [EXT] State v. Ledbetter

[Quoted text hidden]

John Hinrichs <John@hpslawfirm.com> Mon, Aug 14, 2017 at 2:03 PM
To: "Hoffman, Judge Doug" <Doug.Hoffman@ujs.state.sd.us>
Cc: David Stuart <david.petersonstuart@gmail.com>, Tom Wollman <twollman@lincolncountysd.org>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>

I will be unavailable tomorrow morning, but please meet without me if that time works for everyone else.

Sent from my iPhone
[Quoted text hidden]

David Stuart <david.petersonstuart@gmail.com> Mon, Aug 14, 2017 at 3:33 PM
To: "Hoffman, Judge Doug" <Doug.Hoffman@ujs.state.sd.us>
Cc: John Hinrichs <John@hpslawfirm.com>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>, Tom Wollman <twollman@lincolncountysd.org>

Judge, 11

Both Tom and I will be visiting with Commissioners tomorrow morning at 9. Not sure how long the meeting will go. We could certainly shoot you an email when we're about done and see if it would work to get together between your two

cases. Thanks for getting back to us.
[Quoted text hidden]

Hoffman, Judge Doug <Doug.Hoffman@ujs.state.sd.us> Mon, Aug 14, 2017 at 3:37 PM
To: David Stuart <david.petersonstuart@gmail.com>
Cc: John Hinrichs <John@hpslawfirm.com>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>, Tom Wollman <twollman@lincolncountysd.org>

Sure. I have time after the 10:30 case as well and am open over the lunch hour.

From: David Stuart [mailto:david.petersonstuart@gmail.com]
Sent: Monday, August 14, 2017 3:33 PM
To: Hoffman, Judge Doug
Cc: John Hinrichs; Ronda Headrick; Becky Koller; Tom Wollman
Subject: RE: [EXT] State v. Ledbetter

[Quoted text hidden]

David Stuart <david.petersonstuart@gmail.com> Mon, Aug 14, 2017 at 3:51 PM
To: "Hoffman, Judge Doug" <Doug.Hoffman@ujs.state.sd.us>
Cc: John Hinrichs <John@hpslawfirm.com>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>, Tom Wollman <twollman@lincolncountysd.org>

That sounds great. We will touch base after our meeting is over.
[Quoted text hidden]
--
David A. Stuart
Peterson, Stuart, Rumpca & Rasmussen, Prof. LLC
124 N. 3rd Street
Beresford, SD 57004
(605) 763-5024 ph
(605) 763-8034 fax

Gmail

David Stuart <david.petersonstuart@gmail.com>

State v. Tony Ledbetter (16-632)

3 messages

David Stuart <david.petersonstuart@gmail.com> Wed, Jan 3, 2018 at 4:16 PM
To: Judge Hoffman <doug.hoffman@ujs.state.sd.us>
Cc: Tom Wollman <twollman@lincolncountysd.org>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>

Judge Hoffman

As the Court is aware, Tony has requested counsel to pursue an appeal of the Court's judgment of conviction. Our office was appointed and I have the necessary paperwork ready to file. The judgment was entered 12-8-17. Our 30 days is quickly approaching. Before I file the Notice of Appeal, I wanted to present the attached Motion to the Court. If I don't submit the motion at this point and go ahead and file the appeal, I am of the opinion the circuit court will lose jurisdiction to the Supreme Court and we won't be able to have any further proceedings.

I am asking the Court to reconsider its sentence. As argued previously, the State, as well as the victim was in agreement with a cap of 30 years and a floor of 18. Myself and Mr. Wollman presented this plea agreement to the Court in chambers. This was done before myself and Mr. Hinrichs continued our discussions with Mr. Ledbetter. We didn't want to present the offer to the defendant if it was not acceptable to the Court. I understand, this was not an agreed upon plea offer technically binding the court. However, we tried to be upfront with the Court in our discussions to determine whether this plea was acceptable and if the Court would be comfortable sentencing within this range.

We were given the thumbs up by the Court and moved forward with discussing the plea agreement with Tony. Our client accepted and the plea was entered according to the agreement.

At sentencing, the Court exceeded the cap on the plea agreement by 15 years actual. This was a surprise to the Defense and State and a substantial departure. There was no prior indication by the Court that the plea agreement was going to be rejected. I had fully prepared my client for a sentence of 45 years with 15 suspended, the maximum amount pursuant to the agreement. Defense did not expect the court's sentence, nor did the State or victim.

I am trying to speak candidly with the Court about this matter and hope I am not overstepping my bounds. I am just trying to relate some of my thoughts about this case. The file was frustrating for all parties involved and was a difficult case to resolve. If the Supreme Court agrees with my client's arguments regarding Rule 11(e)(4), and sends this matter back down for further proceedings, the Defendant and victim are essentially back to square one. Mr. Ledbetter may end up trying this case if given the opportunity to withdraw his plea.

On behalf of Mr. Ledbetter, I am asking the Court to reconsider its sentence. Thank you for your consideration of this email and the attached Motion. I am filing the formal motion through Odyssey.

--

David A. Stuart
Peterson, Stuart, Rumpca & Rasmussen, Prof. LLC
124 N. 3rd Street
Beresford, SD 57004
(605) 763-5024 ph
(605) 763-8034 fax

Motion to Reconsider Sentence or Withdraw Guilty Plea.pdf
89K

Hoffman, Judge Doug <Doug.Hoffman@ujs.state.sd.us> Thu, Jan 4, 2018 at 8:44 AM
To: David Stuart <david.petersonstuart@gmail.com>
Cc: Tom Wollman <twollman@lincolncountysd.org>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>

13

Thank you. I will await Mr. Wollman's response, and then rule.

Douglas E. Hoffman

Circuit Court Judge

Second Judicial Circuit

104 N. Main

Canton, SD 57013

(605)987-9054

From: David Stuart [mailto:david.petersonstuart@gmail.com]
Sent: Wednesday, January 03, 2018 4:17 PM
To: Hoffman, Judge Doug
Cc: Tom Wollman; Ronda Headrick; Becky Koller
Subject: [EXT] State v. Tony Ledbetter (16-632)

[Quoted text hidden]

Hoffman, Judge Doug <Doug.Hoffman@ujs.state.sd.us> Fri, Jan 5, 2018 at 12:34 PM
To: David Stuart <david.petersonstuart@gmail.com>
Cc: Tom Wollman <twollman@lincolncountysd.org>, Ronda Headrick <rheadrick@lincolncountysd.org>, Becky Koller <becky.petersonstuart@gmail.com>

Dear Counsel,

I have been informed that the Defendant has filed his Notice of Appeal today. Accordingly, I will be filing my Memorandum Opinion and Order Denying the Motion to Reconsider today, so that the record is complete. Thank you.

Douglas E. Hoffman

Circuit Court Judge

Second Judicial Circuit

104 N. Main

Canton, SD 57013

(605)987-9054

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)ss	
COUNTY OF LINCOLN	)	SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

ANTONIO D. LEDBETTER,
a/k/a TONY D. LEDBETTER,

Defendant.

CRI. 16-632

PETITION TO PLEAD GUILTY
AND STATEMENT OF
FACTUAL BASIS

COMES NOW, Antonio D. Ledbetter, being represented by his court-appointed counsel, David A. Stuart and John Hinrichs, and petitions this Honorable Court for purposes of entering his pleas of guilty to Counts 3, 6 and 8 of the Indictment, filed October 17, 2016, charging him with three counts of Aggravated Assault - Domestic, Class 3 Felonies, in violation of SDCL 22-18-1.1(2) and 25-10-1 for Counts 3 and 6, and SDCL 22-18-1.1(8) and 25-10-1 for Count 8. Mr. Ledbetter, further, informs the Court as follows:

CONSTITUTIONAL RIGHTS

1. That he understands the constitutional rights and certain protections listed immediately below and that, by pleading guilty, he will be giving up those rights and protections:

(a) The right to a speedy, public trial;

(b) The right to have a jury of twelve people decide whether or not he is guilty;

(c) The right to have a lawyer represent him at trial;

(d) The presumption of his innocence which would protect him until such time, if ever at trial, the State proved his guilt beyond a reasonable doubt;

(e) At trial, a jury verdict of guilty would have to be unanimous;

(f) At trial, he would have the right against self-incrimination, that is, he could not be forced to testify, if he chose not to testify, the State could not comment to the jury on his failure to testify; and, if he so desired, the judge would instruct the jury that it cannot infer guilt from his failure to testify;

(g) At trial, the State would have to confront him with the witnesses upon whose testimony it relied to try to obtain conviction;

(h) The right to cross-examine witnesses against him through his lawyer; and,

(i) The right to present witnesses at trial to testify on his behalf, including the right to subpoena witnesses at State expense to force them to appear, if necessary, as witnesses at this trial.

CONSEQUENCES OF PLEADING GUILTY AND PROCEDURE

2. That he understands, further, the following additional consequences of pleading guilty:

(a) When he pleads guilty, there will not be a trial of any kind. By pleading guilty, he gives up his right to trial. By pleading guilty, it is the same as if he had been tried and found guilty by a jury.

(b) Before the Court can accept his plea of guilty, the Court must be satisfied that he, in fact, is guilty.

(c) Before the Court can accept his plea of guilty, the Court must be satisfied that he voluntarily is pleading guilty, and that he has not been threatened or promised anything to get him to plead guilty, outside of any bargained for plea agreement.

(d) If there are agreements between the State and him, the Court is not bound to accept any such agreements as to sentencing. In other words, if there are such agreements, including recommendations as to sentencing, the Court can either accept or reject any such agreements.

(e) After he pleads guilty, the Court will set a date for him to be sentenced. Between the date of his guilty plea and the date of his sentencing, the probation office will prepare a presentence investigation report. The report will contain information about his life and characteristics. At the time of his sentencing, the Court will use the report as part of its decision on an appropriate sentence. He also will have the right to subpoena witnesses and to present evidence at his sentencing hearing.

(f) His lawyers and he also have discussed the maximum and minimum sentences that apply to his case. He acknowledges that his lawyers' predictions are not binding on the Court and that the Court can give him any sentence up to the maximum sentence provided in the statute.

(g) At the time of sentencing, his lawyers will make a statement on his behalf. He also has the right to make a statement of his own to the Court before the Court imposes sentence upon him.

3. That he understands that the Court may require him to make appropriate restitution to any victim of the offense.

4. That he understands that his lawyers are not able to argue for probation or a suspended execution of sentence pursuant to terms of his plea agreement.

MAXIMUM PENALTY

5. That he understands the maximum penalty for each charge is 15 years imprisonment, a fine of up to $30,000.00, or both. Additionally, the Court may run these counts concurrent or consecutively. If run consecutively, the total imprisonment could total 45 years with a fine of $90,000.00.

VOLUNTARINESS OF PLEA

6. That his plea of guilty to be entered herein is voluntary, as further based on the following:

(a) That his plea of guilty is made voluntarily and completely of his own choice, free from any force or threats from anyone.

(b) That he has accepted the terms of a plea agreement negotiated between his attorneys and the State. The terms of such plea agreement call for a plea of guilty to Counts 3, 6, and 8 of the Indictment filed on October 17, 2016. In return for such pleas of guilty, the State has agreed to cap its argument for actual penitentiary time to 30 years. However, the State may request additional suspended prison time in addition to the 30 years actual. Lastly, Defense is not able to argue for any actual time less than 18 years actual penitentiary. The State has a cap of 30 years and the Defense has a floor of 18 years actual time.

(c) That no officer, attorney or agent has promised, suggested or predicted that he will receive a lighter sentence, or probation, or any other form of leniency if he pleads guilty.

(d) That the Judge has not made any suggestion to him as to what the actual sentence will be.

(e) That he is not under the influence of any kind of alcohol, medicine or drug that is, in the least way, interfering with his ability to think clearly and understand exactly what he is doing in confirming his understandings in this Petition to Plead Guilty and Statement of Factual Basis.

(f) That he is not pleading guilty for any reason other than the fact that he is guilty.

STATEMENT OF FACTUAL BASIS

7. That he confirms his attorney has gone over each of the foregoing matters with him; that he understands the foregoing matters; and, he wishes to plead guilty.

8. That on or about the 11th day of October, 2016, in the County of Lincoln, State of South Dakota, Antonio D. Ledbetter did commit the public offense of Count 3 (Aggravated Assault – Domestic) in that he did knowingly cause bodily injury to Sara Inboden with a dangerous weapon when he used a scissors to cut Sara Inboden's left breast. This act caused serious bodily injury to Ms. Inboden. Antonio Ledbetter and Sara Inboden had been in a significant romantic relationship during the past twelve months and were expecting a child.

9. That on or about the 11th day of October, 2016, in the County of Lincoln, State of South Dakota, Antonio D. Ledbetter did commit the public offense of Count 6 (Aggravated Assault – Domestic) in that he did knowingly cause bodily injury to Sara Inboden with a dangerous weapon when he used a scissors to cut Sara Inboden's right breast. This act caused serious bodily injury to Ms. Inboden. Antonio Ledbetter and Sara Inboden had been in a significant romantic relationship during the past twelve months and were expecting a child.

10. That on or about the 11th day of October, 2016, in the County of Lincoln, State of South Dakota, Antonio D. Ledbetter did commit the public offense of Count 8 (Aggravated Assault – Domestic) in that he did attempt to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck when Antonio Ledbetter was holding Sara Iboden on the floor of her apartment and using his forearm to apply pressure to Ms. Imboden's neck, chin, and facial area that impeded her normal breathing or circulation of blood. These events occurred during a struggle between Mr. Ledbetter and Ms. Inboden. Antonio Ledbetter and Sara Inboden had been in a significant romantic relationship during the past twelve months and were expecting a child.

11. That he understands that, if he has knowingly and intentionally made any false answers in this petition, his answers may be used against him in a prosecution for perjury or for making a false statement.

Signed in the presence of my attorney under penalty of perjury this 16th day of August, 2017.

Antonio D. Ledbetter, Defendant

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)ss	
COUNTY OF LINCOLN	)	SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

ANTONIO D. LEDBETTER,
a/k/a TONY D. LEDBETTER,

Defendant.

CRI. 16-632

MOTION TO RECONSIDER SENTENCE

COMES NOW, Antonio D. Ledbetter, being represented by his court-appointed counsel, David A. Stuart and motions this Court to reconsider the Judgment and Sentence orally entered on November 28, 2017 and filed by the Court on December 8, 2017. In support of the Motion, Defendant states:

1. On the 18th day of August, 2017, the Defendant entered pleas to three counts of Aggravated Assault – Domestic as charged in Counts 3, 6, and 8 of the State's Indictment. Count 3 was in violation of SDCL 22-18-1.1 (2) and 25-10-1. Count 6 was in violation of SDCL 22-18-1.1 (2) and 25-10-1. Count 8 was in violation of SDCL 22-18-1.1 (8) and 25-10-1.
2. In connection with the plea hearing, Defendant executed and filed a Petition to Plead Guilty and Statement of Factual Basis.
3. The plea agreement negotiated with the State was set forth at paragraph 6(c) of the written plea.
4. The terms of such plea agreement called for a plea of guilty to Counts 3, 6, and 8 of the Indictment filed on October 17, 2016. In return for such pleas of guilty, the State agreed to cap its argument for actual penitentiary time to 30 years. However, the State could request additional suspended prison time in addition to the 30 years

actual. Lastly, Defense was not able to argue for any actual time less than 18 years actual penitentiary. The State has a cap of 30 years and the Defense has a floor of 18 years actual time.

5. On November 28, 2017, Defendant was sentenced on Count 3 to 15 years in the South Dakota State Penitentiary with credit given in the amount of 413 days previously served. Defendant was sentenced on Count 6 to 15 years in the South Dakota State Penitentiary with credit given in the amount of 413 days previously served. Lastly, Defendant was sentenced on Count 8 to 15 years in the South Dakota State Penitentiary with credit given in the amount of 413 days previously served. Counts 3, 6, and 8 were made to run consecutive to one another for a total sentence of 45 years. A judgment and sentence was signed by the Honorable Douglas Hoffman and filed for record on the 8th day of December, 2017.
6. Upon the Court pronouncing its sentence, Defendant made an oral objection to the sentence being entered as being outside the contemplated plea agreement. Further, Defendant objected that he was not afforded an opportunity to withdraw his plea of guilty and asked the court to reconsider its sentence.
7. Pursuant to SDCL 23A-7-11 (Rule 11(e)(4)): " . . . If a court rejects the plea agreement, it shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in chambers, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, if a plea has been entered, and advise him that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to him than that contemplated by the plea agreement." (emphasis added).
8. The Court overruled the Defendant's oral objections following the pronouncement of its sentence and provided no opportunity for Defendant to withdraw his plea.
9. Defendant now asks this Court to reconsider its sentence and enter judgment and sentence within the confines of the contemplated plea agreement.
10. In the alternative, Defendant requests this Court follow SDCL 23A-7-11 (Rule 11(e)(4)) and 23A-27-11 (Rule 32(d)) and set aside its judgment of conviction and permit the Defendant to withdraw his plea of guilty to correct a manifest injustice.

Dated this 3rd day of January, 2018.

PETERSON, STUART, RUMPCA &
RASMUSSEN, Prof. LLC

/s/ David A. Stuart

David A. Stuart
Attorney for Defendant
124 N. 3rd Street
Beresford, SD 57004
605-763-5024 ph.
david.petersonstuart@gmail.com

STATE OF SOUTH DAKOTA | IN CIRCUIT COURT

COUNTY OF LINCOLN | SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,

vs.

ANTONIO D. LEDBETTER,
a/k/a TONY D. LEDBETTER,
Defendant.

CRI. 16-632

MEMORANDUM AND ORDER DENYING MOTION TO RECONSIDER SENTENCE

On August 18, 2017 the Defendant pled guilty to three counts of aggravated assault-domestic pursuant to a written Petition to Plead Guilty and Statement of Factual Basis which he had signed in the presence of his attorney on August 16, 2018 and was filed on the plea date. Under the heading CONSEQUENCES OF PLEADING GUILTY AND PROCEDURE at ¶2(d) the document clearly sets out that

> [The Defendant] understands … [i]f there are agreements between the State and him, the Court is not bound to accept any such agreements as to sentencing. In other words, if there are such agreements, including recommendations as to sentencing, the Court can either accept or reject any such agreements.

Paragraph 2(f) goes on to recite that "his lawyers and he have also discussed the maximum and minimum sentences that apply to his case. He acknowledges that his lawyers' predictions are not binding on the Court and that the Court can give him any sentence up to the maximum sentence provided in the statute."

Further, under the heading MAXIMUM PENALTY the Defendant acknowleged his understanding that "the maximum penalty for each charge is 15 years imprisonment, a fine of up to $30,000, or both. Additionally, the Court may run these counts concurrently or consecutively. If run consecutively, the total imprisonment could total 45 years with a fine of $90,000.00." Finally, under the heading VOLUNTARINESS OF PLEA, the defendant acknowledged that his plea was voluntary and based upon, among other things, his understanding that, as set forth in paragraph 6(d), "the Judge has not made any suggestion to him as to what the actual sentence will be." The document recites that it was signed "under penalty of perjury."

SDCL 23A-7-8(2) provides that a prosecuting attorney and a defense attorney may enter into a plea agreement wherein the prosecutor will agree to make a recommendation for a particular sentence, "with the understanding that such recommendation… shall not be binding upon the court." That is exactly the type of plea agreement that was entered by the parties in this case as set forth in the written Petition to Plead Guilty.

The Plea Agreement was followed in all respects. The State, as agreed, asked the Court to sentence the Defendant to 45 years in prison with 15 suspended, and the Defense argued that the sentence should be limited to 18 years in prison with the balance suspended. After considering the arguments of counsel, the Presentence investigation report, and the various other relevant sentencing factors under the law, the Court pronounced its sentence herein, which was, as expressly contemplated by the written Plea Agreement at ¶2(f) "the maximum sentence provided in the statute." At no time prior to the sentencing hearing did the Court make any "suggestion to [Defendant] as to what the actual sentence [would] be." Plea Agreement at ¶6(d). Thus, the Defendant was sentenced to the "MAXIMUM PENALTY" as expressly provided under ¶5 of the Plea Petition, which contemplated that "the total imprisonment could total 45 years." Under ¶2(f) Defendant acknowledged that his counsel advised him that at the sentencing "the Court could give him any sentence up to the maximum sentence provided in the statute" and that is what did in fact occur in this case. The Court considered the recommendations of counsel in the context of all the material sentencing considerations and then exercised its statutory authority to sentence the defendant outside of those recommendations because, as the Defendant expressly acknowledged in ¶2(d) of the Plea Petition, "the Court [was] not bound to accept any such agreements as to sentencing."

The Defendant is basing his Motion to Reconsider Sentence upon SDCL 23A-7-11, which provides that if the Court rejects a plea agreement, then it shall inform the parties and advise the Defendant on the record that the Court has chosen not to be bound by the plea agreement and give the Defendant an opportunity to withdraw his guilty plea, because if he persists in the guilty plea the sentence may be "less favorable to him than that contemplated by the plea agreement." This statute is inapposite because, as noted above, the Court did not reject the plea agreement, but rather accepted the plea agreement and sentenced the Defendant as contemplated by the plea agreement.

The South Dakota Supreme Court has held that recommended caps are not binding on a court and it isn't a rejection of a plea agreement when the court sentences above the cap which the State agreed to recommend. *See State v. Lee*, 560 NW 2d 552 (SD 1997); *State v. Rich*, 305 NW 2d 390 (1981).

At the sentencing hearing the Court canvassed the Defendant and he acknowledged his understanding of the written Plea Petition, and the maximum penalties he could be facing in the case if he changed his pleas from not guilty to guilty as to the three counts at issue herein. Both parties argued in accordance with the plea agreement and the Court sentence within the plea agreement. The asserted grounds for the Defendant's Motion to Reconsider Sentence are without merit. The Court's sentence herein is in all respects legal and proper.

ORDER

NOW, THEREFORE, the Defendant's Motion to Reconsider Sentence is in all things DENIED.

Dated this 5 day of June, 2018.

BY THE COURT:

Hon. Douglas R. Hoffman
Circuit Court Judge

ATTEST:
Kristie Torgerson, Clerk
By: Alicia Hagen
Deputy.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 28501

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

ANTONIO D. LEDBETTER,

Defendant and Appellant.

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

THE HONORABLE DOUGLAS E. HOFFMAN
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed January 5, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES CITED: **PAGE**

CASES CITED:

OTHER REFERENCES:

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 28501

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

ANTONIO D. LEDBETTER,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this appeal Defendant contends his plea agreement contained a sentence disposition that was binding on the court, and the court's sentence improperly exceeded the terms of the agreement.

Throughout this brief, Plaintiff and Appellee, State of South Dakota, is referred to as "State." Defendant and Appellant, Antonio D. Ledbetter, is referred to as "Defendant." The settled record below, Lincoln County Crim. No. 16-632, is denoted "SR," followed by the e-record pagination. Transcripts are cited as follows: Plea Hearing held August 18, 2017 ("PLEA") and Sentencing Hearing held November 28, 2017 ("SENT"), followed by the pertinent transcript page(s). The Appendix to this brief is cited as "APP."

JURISDICTIONAL STATEMENT

Defendant appeals, as a matter of right, from the Judgment and Sentence filed by the Honorable Douglas E. Hoffman, Circuit Court Judge, on December 8, 2017. Defendant filed a Notice of Appeal on January 5, 2018. This Court has jurisdiction pursuant to SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WAS THE COURT REQUIRED TO SENTENCE DEFENDANT WITHIN THE LIMITS REQUESTED BY THE PARTIES?

The trial court ruled the plea agreement was non-binding and did not restrict the court from imposing the maximum possible sentence. The court denied Defendant's motion to reconsider the sentence or withdraw his plea.

State v. Hale, 2018 S.D. 9, 907 N.W.2d 56

State v. Lee, 1997 S.D. 26, 560 N.W.2d 552

State v. Rich, 305 N.W.2d 390 (S.D. 1981)

State v. Shumaker, 2010 S.D. 95, 792 N.W.2d 174

SDCL 23A-7-8

SDCL 23A-7-9

SDCL 23A-7-11

STATEMENT OF THE CASE AND FACTS

A. Factual background.[1]

In 2016, Defendant and the victim, Sara Inboden, were involved in a romantic relationship. By autumn, Ms. Inboden had grown increasingly concerned about Defendant's threatening and aggressively controlling behavior towards her, and she broke off their dating relationship. Because she was pregnant with Defendant's child, Ms. Inboden was willing to maintain contact with Defendant.

On October 11, 2016, Defendant texted Ms. Inboden and insisted on seeing her. At that time she was twenty-three weeks pregnant. She eventually relented and agreed he could come to her apartment. Defendant arrived and demanded to know her plans for the evening and insisted that he be included. When Ms. Inboden told him no, Defendant punched her in the face with his fist, knocking her to the floor. He continued to repeatedly hit her and slam her head into the floor, causing her to lose consciousness. When she came to, she was bleeding from her right breast. Defendant had cut her nipple off with a pair of scissors.

Defendant's brutal attack continued. He was on top of Ms. Inboden, holding her down, as he cut off her left breast nipple as well.

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[1] Support for this factual background is found in the police reports (SR 6-25, 184-91), grand jury transcript (SR 34-55), the written Statement of Factual Basis for Defendant's plea (SR 103-04), and Ms. Inboden's statements to the court at sentencing (SR 440-49; SENT 16-25).

She screamed and tried to fight him off. Telling her to stop screaming or it would get worse, Defendant stuffed a blanket in Ms. Inboden's mouth and pinned her head to the floor with his forearm, choking her so she could not breathe. She passed out again. When she awoke, Defendant was across the room and she was able to get up and flee from the apartment.

As a result of Defendant's attack, Ms. Inboden suffered multiple bruises and injuries to her face, throat, arms and legs, as well as hermorrhaging in her eyes. She also suffered permanent disfiguring injuries to her breasts, and underwent reconstructive surgery.

B. Procedural history.

On October 17, 2016, a Lincoln County Grand Jury indicted Defendant on nine charges: one count of Aggravated Kidnapping, Second Degree-Domestic in violation of SDCL §§ 22-19-1.1(3), 25-10-1; three alternative counts of Aggravated Assault-Domestic in violation of SDCL §§ 22-18-1.1(1), (2), or (4), 25-10-1; three additional alternative counts of Aggravated Assault-Domestic in violation of SDCL §§ 22-18-1.1(1), (2), or (4), 25-10-1; and two separate counts of Aggravated Assault-Domestic in violation of SDCL §§ 22-18-1.1(8), 25-10-1. SR 28. He received court-appointed counsel, Mr. David Stuart, to represent him. Later, another attorney, Mr. John Hinrichs, was appointed as well.

The matter was set for jury trial before the Honorable Douglas E. Hoffman. On August 14, 2017, Mr. Stuart advised the court that the State and defense had "reached a plea agreement in this case." SR 500. Defense counsel sought a meeting with the prosecution and the court to get a sense of whether the plea agreement would be acceptable to the court. *Id.* This informal meeting apparently occurred sometime during the following few days. SR 502.

On August 18, 2017, the parties appeared before Judge Hoffman for a change of plea hearing. Defendant appeared personally and with both counsel. At that time Mr. Stuart stated the plea agreement on the record:

> It will be a plea to Count Three, Count Six, and Count Eight. Each of those counts is a count of aggravated assault domestic. We provided the Court with a written petition to plead guilty as well as the statement of factual basis as laid out for those three counts. It also includes the plea agreement which is in return for those pleas, *the State has agreed at the time of sentencing, that it will not ask for any actual jail time beyond 30 years*, so it would be a cap of 30 years. The State is free to ask for additional suspended time, so as an example, could ask across those three counts for 45 years with 15 suspended. That would be within the terms of their agreement.
>
> Likewise, on the defense side, we have an agreement where there is a floor on the plea agreement. *We are not able to argue for anything less than 18 years.*

PLEA 2-3 (emphasis added). The prosecutor concurred with counsel's statement. *Id.* The document defense counsel provided the court was Defendant's "Petition to Plead Guilty and Statement of Factual Basis"

(hereafter "Petition"). *Id.* at 4; SR 100-04 (APP. 1-5). It contained numerous paragraphs detailing Defendant's acknowledgment of several points, including: his constitutional rights, the consequences of pleading guilty, the maximum possible penalty he faced as a result of the three charges, the terms of the plea agreement negotiated with the State, the voluntariness of his plea, the factual basis for the three charges, and his acknowledgement that he was in fact guilty of the three charges. *Id.* Notably, in Section 2 of the Petition regarding the consequences of pleading guilty and the procedure, Defendant acknowledged that he understood:

> (c) Before the Court can accept his plea of guilty, the Court must be satisfied that he voluntarily is pleading guilty, and that he has not been threatened or promised anything to get him to plead guilty, outside of any bargained for plea agreement.
>
> (d) *If there are agreements between the State and him, the Court is not bound to accept any such agreements as to sentencing.* In other words, if there are such agreements, including recommendations as to sentencing, the Court can either accept or reject any such agreements.
>
> . . .
>
> (f) His lawyers and he also have discussed the maximum and minimum sentences that apply to his case. He acknowledges that his lawyers' predictions *are not binding on the Court and that the Court can give him any sentence up to the maximum sentence provided in the statute.*

Petition, SR 101-02 (APP. 2-3) (emphasis added). Furthermore, in Section 5 of the Petition entitled Maximum Penalty, Defendant agreed

"[t]hat he understands the maximum penalty for each charge is 15 years imprisonment, a fine of up to $30,000.00, or both. Additionally, the Court may run these counts concurrent or consecutively. *If run consecutively, the total imprisonment could total 45 years* with a fine of $90,000.00." *Id.* (emphasis added).

In Section 6 of the Petition entitled Voluntariness of Plea, Defendant acknowledged his guilty plea is voluntary, and further:

> (b) That he has accepted the terms of a plea agreement negotiated between his attorneys and the State. The terms of such plea agreement call for a plea of guilty to Counts 3, 6, and 8 of the Indictment filed on October 17, 2016. In return for such pleas of guilty, the State has agreed to cap its argument for actual penitentiary time to 30 years. However, the State may request additional suspended prison time in addition to the 30 years actual. Lastly, Defense is not able to argue for any actual time less than 18 years actual penitentiary. The State has a cap of 30 years and the Defense has a floor of 18 years actual time.
>
> (c) That no officer, attorney, or agent has promised, suggested or predicted that he will receive a lighter sentence, or probation, or any form of leniency if he pleads guilty.
>
> (d) That the Judge has not made any suggestion to him as to what the actual sentence will be.

Id. at 102-03 (APP. 3-4). The Petition, signed by Defendant in the presence of his attorney under penalty of perjury, was dated August 16, 2017. *Id.*

At the plea hearing the court canvassed Defendant personally regarding his rights and the consequences of pleading guilty. PLEA 4-7.

Regarding the possible penalty, the court stated, "And as your attorney mentioned, the maximum penalty for each of those counts by statute is 15 years in prison and a $30,000 fine." *Id.* at 8. When the court asked if Defendant understood this, he responded, "Yes, sir." *Id.* The court asked Defendant's counsel if he had explained those matters, as set forth in the Petition, to which Mr. Stuart responded, "Yes, Your Honor. Additionally, I also mentioned to him the Court's ability to impose those counts consecutively." *Id.* at 8-9. The court then elaborated:

> Correct. They're individual charges and so each one carries its individual maximum penalty, and you could be sentenced as set forth in the plea agreement and the petition on a consecutive basis with each one of those three counts. So, Mr. Ledbetter, then, did you have any questions about any of those matters before we proceed to take your pleas here this afternoon?
>
> Defendant: No, sir.

Id. at 9.

Thereafter, Defendant entered pleas of guilty to the three counts identified in the Petition. Defendant admitted he committed aggravated assault by knowingly causing bodily injury to Ms. Inboden with a dangerous weapon by cutting her left breast (Count 3) and her right breast (Count 6) with scissors; for Count 8 Defendant admitted he committed aggravated assault by attempting to induce fear of death or imminent serious bodily harm by holding Ms. Inboden on the floor and using his forearm to apply pressure to her neck, chin, and facial area

that impeded her normal breathing or circulation of blood. *Id.* at 10; *see* Petition at SR 103 (APP. 4).

The court continued its colloquy with Defendant, including asking him, "[H]ave you been promised anything other than the plea agreement which is set forth in the written petition that has influenced your decision to plead guilty today?" Defendant responded, "No, sir." PLEA 11. After further inquiries to Defendant and his counsel, the court found Defendant had knowingly and intelligently waived his rights. *Id.* The court also found a factual basis existed and accepted Defendant's guilty pleas. *Id.* at 11-12. As contemplated in the Petition, the court ordered a presentence investigation and continued sentencing. *Id.* at 12-13.

On November 28, 2017, Defendant appeared before the court for sentencing, along with his attorneys. Defendant and the victim, Ms. Inboden, each addressed the court personally and counsel for both sides presented sentencing arguments. Defense counsel asked the court to impose a sentence of thirty years, with twelve years suspended, resulting in an actual penitentiary sentence of eighteen years. SENT 12. The State asked for a sentence of thirty years actual penitentiary time, with an additional fifteen years "to be suspended on top of that." *Id.* at 26, 30.

The trial court noted that counsel's sentencing arguments were consistent with the plea agreement, which the court said "was binding

upon the parties and restricted their level of argument as to what they would attempt to persuade the Court to impose for a sentence." *Id.* at 42. However, the court stated its belief that the plea agreement was "not binding upon the Court in terms of whether or not the Court could sentence the defendant to more or less than the plea agreement." *Id.* The court said it would "impose a sentence that exceeds that which has been recommended by the State of South Dakota under the plea agreement[.]" *Id.* at 42-43. The court considered all the facts and circumstances of the case and determined a maximum sentence on each count was warranted. The court sentenced Defendant to fifteen years for each count, with no time suspended and with the sentences to be served consecutively, for a total penitentiary sentence of forty-five years. *Id.* at 43. The court granted credit for time served in the amount of 413 days. *Id.*

After sentence was pronounced, Mr. Stuart objected and asked the court to reconsider. *Id.* at 47. He argued the plea agreement had a bargained-for sentence cap of thirty years, and that the court exceeded the sentence parameters of the plea agreement without providing Defendant the opportunity to withdraw his plea. *Id.* at 47-48. In response, the court stated the sentence was in compliance with the plea agreement. The court said the Petition made it quite clear that the court would retain sentencing discretion; that any sentencing predictions by defense counsel were not binding on the court; and that the court was

free to impose any sentence up to the maximum sentence provided by statute. *Id.* at 48-49. A written Judgment and Sentence was filed December 8, 2017. SR 395.

On January 3, 2018, Defendant filed a Motion to Reconsider Sentence or Withdraw Guilty Plea. SR 405, 502. He renewed his objection that the sentence exceeded what was contemplated in the plea agreement, and asked for resentencing consistent with the agreement. Alternatively, he sought to withdraw his guilty plea. *Id.*

On January 5, 2018, the court issued its written Memorandum and Order Denying Motion to Reconsider Sentence. SR 408-09 (APP. 6-7). The court ruled that the plea agreement called for sentence recommendations only, pursuant to SDCL 23A-7-8(2), which were not binding on the court. Citing several provisions of the Petition, the court determined it had the ability to impose the maximum sentence allowed by statute and was not bound to accept the parties' sentence recommendations. In response to Defendant's argument that he should have been allowed to withdraw his guilty plea because the court rejected the agreement, the court held it was not required to give Defendant that opportunity. According to the court, it did not reject the plea agreement, but imposed a sentence allowed by its terms. *Id.* Defendant filed a Notice of Appeal on January 5, 2018. SR 410.

ARGUMENT

BECAUSE THE PLEA AGREEMENT WAS A NON-BINDING AGREEMENT UNDER SDCL 23A-7-8(2), THE TRIAL COURT WAS NOT REQUIRED TO SENTENCE DEFENDANT WITHIN THE LIMITS REQUESTED BY THE PARTIES.

A. Introduction and standard of review.

On appeal, Defendant contends the plea agreement contained an agreed-upon disposition with a sentence "cap" of thirty years actual penitentiary time to be served, and that it falls under SDCL 23A-7-8(3). He asserts the court implicitly agreed to be bound by that agreement and therefore the court improperly exceeded the terms of the agreement when it imposed the maximum penitentiary sentence of forty-five years. The State submits that the plea agreement accepted by the court was a non-binding agreement under SDCL 23A-7-8(2), and therefore the court was not bound by the sentencing limits requested by the parties.

When a defendant challenges a court's sentence as being beyond the terms of a plea agreement, the issues that must be determined are what kind of plea agreement was involved, whether it was binding on the court, and whether the court accepted a binding plea agreement. How these questions are answered will determine the remedy, if any, that the defendant may have. Whether the trial court accepted a binding plea agreement is a question of law that this Court reviews de novo. *State v. Hale,* 2018 S.D. 9, ¶ 11, 907 N.W.2d 56, 59.

B. Plea agreements under SDCL 23A-7-8(2) that contain non-binding sentencing recommendations or requests are treated differently than agreed-disposition plea agreements under SDCL 23A-7-8(3), which are binding on the trial court if accepted.

It is well understood that prosecutors have the authority to engage in settlement discussions and reach plea agreements to resolve criminal cases. Under SDCL 23A-7-8 (Rule 11(e)(1))[2], a prosecutor may agree to do one or more of the following as part of a plea agreement:

> (1) Move for dismissal of other charges or not file additional charges arising out of a different occurrence;
> (2) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court;
> (3) Agree that a specific sentence is the appropriate disposition of the case; or
> (4) Perform other specified acts to be made a part of the agreement.

The parties have wide latitude in negotiating what their respective positions may be at the time of a defendant's sentencing. Inherent in this negotiation is the ability of the parties to agree to limitations on their respective sentencing positions. However, whether a court is then bound to actually impose a particular sentence—or to limit its usual

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[2] Many of South Dakota's statutes regarding plea agreements, enacted in 1978, mirrored Fed. R. Crim. P. 11 in effect at the time. 1978 S.D. Sess. Laws ch. 178, § 98 et seq. *See State v. Rich*, 305 N.W.2d 390, 392 (S.D. 1981) (citing *United States v. Sarubbi*, 416 F.Supp. 633 (D. N.J. 1976)). Since then, the federal rules have been amended several times. *See* Fed. R. Crim. P. 11, Advisory Committee Notes. The federal rules governing plea agreements are similar, but not identical, to South Dakota law.

sentencing discretion—depends on what type of plea agreement was involved and whether the court accepted that agreement.

Trial courts usually have broad discretion to decide the extent and kind of sentence to impose. *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83. Generally, courts are not bound by plea agreements made between parties. *State v. Shumaker*, 2010 S.D. 95, ¶ 6, 792 N.W.2d 174, 175. Plea agreements under SDCL 23A-7-8(2) are consistent with these general rules. As the language of subsection (2) indicates, parties who negotiate this kind of agreement are permitted to make bargained-for sentence recommendations (or an agreement by the prosecutor to not oppose a defendant's sentence request), with the understanding that the recommendations or requests are not binding on the court. A sentence recommendation under a subsection (2) agreement is just that: a *recommendation*. When a court accepts this type of plea agreement, the sentencing positions offered by the parties are non-binding on the court, and the court's broad sentencing discretion is not restricted. *Hale*, 2018 S.D. 9, ¶ 11, 907 N.W.2d at 59-60; *Shumaker*, 2010 S.D. 95, ¶ 6 n.1, 792 N.W.2d at 175 n.1 (noting that plea (recommendation) agreements under SDCL 23A-7-8(2) are non-binding, citing *Rich*, 305 N.W.2d 390, and *State v. Lee*, 1997 S.D. 26, 560 N.W.2d 552).

On the other hand, a plea agreement under SDCL 23A-7-8(3) reflects the parties' agreement that a specific sentence (an "agreed

disposition")—whether it is the type of sentence, length, or some other bargained-for sentence terms—is the appropriate resolution of the case. The negotiated sentence in an agreed-disposition plea agreement under subsection (3) is intended to be binding on the court, as opposed to merely a recommendation. *See, e.g., State v. Reaves*, 2008 S.D. 105, 757 N.W.2d 580 (agreement with sentence cap of fifteen years was presented as a binding agreement by the parties). This is demonstrated by the language of subsection (3), which omits any references to recommendations, requests, or the non-binding nature of sentencing positions, as in subsection (2). Of course, a court always has discretion whether to accept any plea agreement. SDCL 23A-7-9. But if the court accepts a subsection (3) plea agreement containing an agreed-disposition sentence, then it becomes binding and the court must impose a sentence within the parameters of the agreement's terms. *Hale*, 2018 S.D. 9, ¶ 11, 907 N.W.2d at 60; *Shumaker*, 2010 S.D. 95, ¶ 6, 792 N.W.2d at 175.

C. To determine whether a plea agreement is a non-binding agreement under subsection (2) or a binding agreement under subsection (3), this Court looks to the language of the agreement and other evidence provided in the court record.

Ideally, the type of plea agreement and an indication of whether the court is bound to impose a sentence within the parameters of the agreement will be expressly stated. *Hale*, 2018 S.D. 9, ¶ 13, 907 N.W.2d at 60. For example, in *Kleinsasser v. Weber*, the written plea agreement expressly stated that the State's request for a fifty-to-eighty

year cap was a non-binding recommendation under SDCL 23A-7-8(2). At the plea hearing the trial court canvassed the defendant, who orally confirmed his understanding. *Kleinsasser*, 2016 S.D. 16, ¶¶ 19, 30, 877 N.W.2d 86, 93, 96.

Similarly, in *State v. Rich*, the defendant signed a plea agreement entitled "Waiver of Rights and Plea," in which the State agreed to recommend a sentence range of five to six years imprisonment. The agreement contained language stating the defendant understood the court would not be bound by the terms of the plea agreement, and could impose the maximum statutory sentence and fine. The defendant orally confirmed this understanding during the hearings. At sentencing, the trial court exceeded the State's recommended sentence and imposed the maximum penalty of ten years. This Court affirmed after concluding the plea agreement fell within SDCL 23A-7-8(2). *Rich*, 305 N.W.2d at 391-93.

In other cases, in the absence of express language in the agreement itself, this Court has relied on the context provided in the record to determine the nature of the plea agreement and whether a trial court, either implicitly or explicitly, agreed to be bound to impose a particular sentence. In *State v. Lee*, counsel orally presented a plea agreement at the plea hearing. It included the State's agreement to recommend "a cap of a suspended execution" at sentencing, and the defendant was able to recommend some other disposition. The court

canvassed the defendant, who acknowledged he understood the court was not bound by the recommendations and could impose actual penitentiary time. *Lee,* 1997 S.D. 26, ¶¶ 2-3, 560 N.W.2d at 553. After the court imposed a three-to-seven year penitentiary sentence and rejected the defendant's subsequent motion to withdraw his guilty plea, the defendant appealed. This Court determined, based on the record of the proceedings, that the plea agreement's reference to a suspended execution cap was a non-binding recommendation only, consistent with SDCL 23A-7-8(2), and not a binding agreed disposition under subsection (3). *Id.* at ¶¶ 1, 7-8, 560 N.W.2d at 553-54.

Moreover, in *State v. Shumaker* the parties negotiated an agreement with a sentencing cap of three years in the penitentiary. On the record, the trial court stated it was required by the plea agreement to impose no more than three years "lock up time" in the penitentiary. The trial court remarked, "That's the agreement. I'll live with it." *Shumaker,* 2010 S.D. 95, ¶ 7, 792 N.W.2d at 176. On appeal, this Court determined that, based on the trial court's language, it had accepted a binding plea agreement. *Id.* This Court noted there was no indication in the record that "the plea agreement was the non-binding type of plea agreement under SDCL 23A-7-8(2) that was present in *State v. Rich*[.]" *Id.* at ¶ 6 n.1, 792 N.W.2d at 175 n.1.

In *State v. Hale*, the parties negotiated an agreement that contemplated a suspended execution of sentence cap, with probation

but no actual penitentiary time. Although there was no explicit language in the agreement indicating the parties intended the trial court to be bound to this sentence, this Court found the plea hearing transcript reflected the court's recognition of the agreement's binding effect and the sentence restrictions imposed on the court. *Hale*, 2018 S.D. 9, ¶¶ 13, 17, 907 N.W.2d at 60-61. Unlike the facts in *Lee*, the trial court in *Hale* stated at the plea hearing that it was limited by the agreement and could not impose an actual penitentiary sentence, but county jail time and probation only. *Id.* Based on this record, this Court held the plea agreement was a binding agreed-disposition agreement under SDCL 23A-7-8(3). *Id.* The Court found the context of the trial court's statements informed the defendant that the court had implicitly accepted the plea agreement and agreed to sentence him within the bounds of the agreement. *Id.* at ¶¶ 17-18.

C. If the parties have a non-binding recommendation agreement under SDCL 23A-7-8(2), a trial court's imposition of a sentence beyond the recommendations of the parties does not constitute a rejection of the plea agreement, and therefore the defendant is not entitled to withdraw his plea.

SDCL 23A-7-9 states that any plea agreement reached by the parties must be disclosed to the court "at the time the plea is offered." The statute further explains that "[t]hereupon the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report." *Id.* Under SDCL 23A-7-11,

> If a court rejects the plea agreement, it shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in chambers, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, if a plea has been entered, and advise him that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to him than that contemplated by the plea agreement.

As previously discussed, if a court accepts a binding agreement establishing an agreed sentence disposition under SDCL 23A-7-8(3), it must honor that agreement and sentence the defendant within the parameters contemplated by its terms. If the court rejects this type of agreement, it must provide the defendant the notice and advisements under SDCL 23A-7-11 and the opportunity to withdraw his guilty plea, if a plea has been entered.

That is not true, however, for cases involving a non-binding recommendation agreement under SDCL 23A-7-8(2). A court that accepts this type of plea agreement may still exercise its discretion to impose a sentence beyond what was requested or recommended by the parties. This is because "it is part of the agreement itself that the parties understand that the court is not bound by the recommendation or request. Non-acceptance of the request is not a rejection of the agreement[.]" *Shumaker*, 2010 S.D. 95, ¶ 6, n.1, 792 N.W.2d at 175, n.1 (citing *Rich* and *Lee, supra*). As the *Shumaker* Court explained, if the court accepts a subsection (2) agreement, but then does not follow

the recommendation, the defendant has no right to withdraw his guilty plea under SDCL 23A-7-11. *Id.*

D. In this case, based on the Petition and the plea hearing record, Defendant's plea agreement contained only a recommended sentence that was not binding on the court, and therefore it falls under SDCL 23A-7-8(2), not subsection (3).

The context of the proceedings below reveals that Defendant's plea agreement was a non-binding agreement containing sentence recommendations or requests under SDCL 23A-7-8(2). Thus, the trial court was not limited by the sentencing requests made by the parties pursuant to the agreement. The agreement's terms, as recited in Defendant's Petition, were that the State "agreed to cap its argument for actual penitentiary time to 30 years. However, the State may request additional suspended prison time in addition to the 30 years actual." SR 102 (APP. 3). For his part, Defendant agreed he could not "argue for any actual time less than 18 years actual penitentiary," describing it as a "floor." *Id.* At the plea hearing, Defendant's counsel further described the agreement, saying the State agreed "that it will not ask for any actual [penitentiary] time beyond 30 years, so it would be a cap of 30 years." PLEA 3. The State was free to ask for additional suspended time beyond that. *Id.*

The above recitations—which include terms such as "argue," "request," and "ask" when describing the parties' contemplated sentencing positions—are indicative of non-binding recommendations

and requests consistent with the language in SDCL 23A-7-8(2). More importantly, as in *Lee* and *Rich*, other indicia in the record clearly and explicitly show that the sentencing positions offered by the parties were not binding on the court.

Much of this evidence is found in the Petition unilaterally signed by Defendant (under penalty of perjury) and presented to the court. SR 100-104 (APP. 1-5). The document thoroughly covers several important topics relevant to the taking of a guilty plea. Among other matters, Defendant specifically acknowledged he understood the court was not bound to accept any agreements between the State and him, including recommendations as to sentencing. *See* Paragraph 2(d). He also stated he understood the maximum possible sentences that apply, "that his lawyers' predictions about sentencing are not binding on the Court *and that the Court can give him any sentence up to the maximum provided in the statute*." *See* Paragraph 2(f) (emphasis added). Notably, the Petition also contains Defendant's understanding that the maximum penalty for each charge was fifteen years imprisonment, and if run consecutively, "the *total imprisonment* could total 45 years." *See* Paragraph 5 (emphasis added). In addition, the record of the plea hearing reveals the trial court canvassed Defendant personally about the Petition and his plea. This includes a discussion of the maximum possible penalty of fifteen years for each count, and the court's ability to impose those sentences to run consecutively. PLEA 8-9.

The statements in the Petition and at the plea hearing are explicit and unambiguous. There is nothing about them that indicates the court would be limited when imposing sentence. There is no language requiring the court to be bound by the parties' sentencing arguments; in fact, just the opposite is true. All of this record evidence makes this case distinguishable from the facts in *Shumaker* and *Hale*, and on point with *Lee* and *Rich*.

Notwithstanding the totality of this record evidence, Defendant essentially asks this Court to disregard this information and *infer* that the plea agreement contained an agreed disposition. He seeks a ruling from this Court that the trial court *implicitly* agreed to be bound to a sentence limitation of thirty years actual penitentiary time.

In support of his claims, Defendant brief discusses a purported "common usage and practice" within the Second Judicial Circuit concerning plea agreements. He claims there is a local understanding of the meaning of a sentencing "cap" and plea agreements containing sentencing caps are intended to be binding on the court. This Court evaluates an issue based on the record before it, and that record is clear. Moreover, an assessment of the nature of a plea agreement must be decided on a case-by-case basis. As shown by this Court's prior decisions, these types of cases are highly fact-specific. The fact a plea agreement references a sentencing cap is not dispositive. Whether it is

binding on the trial court depends on other language used in the proceedings, as illustrated by a comparison of *Shumaker* and *Lee, supra.*

Defendant's brief also refers to an informal in-chambers meeting his counsel and the prosecutor apparently had with the court days prior to the plea hearing. His counsel indicated it was to get a sense whether the plea agreement counsel had negotiated would be acceptable to the court.[3] SR 500. Defendant's brief contains several claims of what was purportedly discussed during this meeting, and what "understandings" he and the prosecutor allegedly had as a result. While there is no record of that meeting for this Court to review, Defendant suggests the court had given counsel an indication the plea agreement was acceptable to the court. There is nothing particularly significant about that. When the actual plea agreement was presented at the plea hearing, the court obviously found the agreement was acceptable because it did not reject the agreement but moved forward and accepted Defendant's guilty pleas.

In the Petition Defendant expressly acknowledged that "the Judge has not made any suggestion to him as to what the actual sentence will be." *See* Paragraph 6(d). When the court asked Defendant whether he

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[3] The plea agreement had already been developed by counsel, and the court was not involved in their negotiations. The meeting did not violate the provision in SDCL 23A-7-8 that precludes a court from participating in plea bargain discussions between the parties. *See State v. Bolger*, 332 N.W.2d 718 (S.D. 1983) (refusing to adopt strict application of this provision that would prohibit any pre-hearing exchange between counsel and the court regarding a plea agreement).

had been promised anything, other than what was set forth in the written Petition, that influenced his decision to plead guilty, Defendant told the court "No, sir." PLEA 11.

Whatever discussions may have happened leading up to the plea hearing, the critical (and dispositive) discussions are those that occurred on the record, with Defendant, at the plea hearing. It was then that the parties presented the court with the final memorialization of the plea agreement and Petition, and the court canvassed Defendant personally regarding his understanding of the agreement and the consequences of his plea. This included, specifically, Defendant's understanding of the possible penalty the court could impose.

It is telling that, when presented with Defendant's Petition and plea agreement at the hearing, the court expressed no uncertainty or confusion about the court's obligations or its ability to impose the maximum possible penalty. The court made no statements about being bound to a particular sentence, or having limits on its sentencing discretion, as the courts did in *Shumaker* and *Hale*. There is simply no basis for this Court to find that the trial court implicitly agreed to be bound.

Based on the totality of the record before this Court, Defendant's claims that the trial court improperly sentenced him beyond the terms of the plea agreement have no merit. The plea agreement fell within SDCL 23A-7-8(2) and allowed the parties to make their respective

sentence recommendations and requests. But these requests were not binding on the court. The court's non-acceptance of the sentencing requests and its imposition of the maximum sentence did not constitute a rejection of the plea agreement. Defendant is not entitled to resentencing or to withdraw his plea.

CONCLUSION

The State respectfully requests that the trial court's Judgment and Sentence be affirmed.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Patricia Archer
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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 5,711 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2010.

Dated this 12th day of July, 2018.

/s/Patricia Archer
Patricia Archer
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of July, 2018, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Antonio D. Ledbetter* was served via electronic mail upon David A. Stuart, counsel for Appellant, at david.petersonstuart@gmail.com.

/s/Patricia Archer
Patricia Archer
Assistant Attorney General

APPENDIX

Table of Contents

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)ss	
COUNTY OF LINCOLN	)	SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

ANTONIO D. LEDBETTER,
a/k/a TONY D. LEDBETTER,

Defendant.

CRI. 16-632

PETITION TO PLEAD GUILTY
AND STATEMENT OF
FACTUAL BASIS

COMES NOW, Antonio D. Ledbetter, being represented by his court-appointed counsel, David A. Stuart and John Hinrichs, and petitions this Honorable Court for purposes of entering his pleas of guilty to Counts 3, 6 and 8 of the Indictment, filed October 17, 2016, charging him with three counts of Aggravated Assault - Domestic, Class 3 Felonies, in violation of SDCL 22-18-1.1(2) and 25-10-1 for Counts 3 and 6, and SDCL 22-18-1.1(8) and 25-10-1 for Count 8. Mr. Ledbetter, further, informs the Court as follows:

CONSTITUTIONAL RIGHTS

1. That he understands the constitutional rights and certain protections listed immediately below and that, by pleading guilty, he will be giving up those rights and protections:

(a) The right to a speedy, public trial;

(b) The right to have a jury of twelve people decide whether or not he is guilty;

(c) The right to have a lawyer represent him at trial;

(d) The presumption of his innocence which would protect him until such time, if ever at trial, the State proved his guilt beyond a reasonable doubt;

(e) At trial, a jury verdict of guilty would have to be unanimous;

(f) At trial, he would have the right against self-incrimination, that is, he could not be forced to testify, if he chose not to testify, the State could not comment to the jury on his failure to testify; and, if he so desired, the judge would instruct the jury that it cannot infer guilt from his failure to testify;

(g) At trial, the State would have to confront him with the witnesses upon whose testimony it relied to try to obtain conviction;

(h) The right to cross-examine witnesses against him through his lawyer; and,

(i) The right to present witnesses at trial to testify on his behalf, including the right to subpoena witnesses at State expense to force them to appear, if necessary, as witnesses at this trial.

CONSEQUENCES OF PLEADING GUILTY AND PROCEDURE

2. That he understands, further, the following additional consequences of pleading guilty:

(a) When he pleads guilty, there will not be a trial of any kind. By pleading guilty, he gives up his right to trial. By pleading guilty, it is the same as if he had been tried and found guilty by a jury.

(b) Before the Court can accept his plea of guilty, the Court must be satisfied that he, in fact, is guilty.

(c) Before the Court can accept his plea of guilty, the Court must be satisfied that he voluntarily is pleading guilty, and that he has not been threatened or promised anything to get him to plead guilty, outside of any bargained for plea agreement.

(d) If there are agreements between the State and him, the Court is not bound to accept any such agreements as to sentencing. In other words, if there are such agreements, including recommendations as to sentencing, the Court can either accept or reject any such agreements.

(e) After he pleads guilty, the Court will set a date for him to be sentenced. Between the date of his guilty plea and the date of his sentencing, the probation office will prepare a presentence investigation report. The report will contain information about his life and characteristics. At the time of his sentencing, the Court will use the report as part of its decision on an appropriate sentence. He also will have the right to subpoena witnesses and to present evidence at his sentencing hearing.

(f) His lawyers and he also have discussed the maximum and minimum sentences that apply to his case. He acknowledges that his lawyers' predictions are not binding on the Court and that the Court can give him any sentence up to the maximum sentence provided in the statute.

(g) At the time of sentencing, his lawyers will make a statement on his behalf. He also has the right to make a statement of his own to the Court before the Court imposes sentence upon him.

3. That he understands that the Court may require him to make appropriate restitution to any victim of the offense.

4. That he understands that his lawyers are not able to argue for probation or a suspended execution of sentence pursuant to terms of his plea agreement.

MAXIMUM PENALTY

5. That he understands the maximum penalty for each charge is 15 years imprisonment, a fine of up to $30,000.00, or both. Additionally, the Court may run these counts concurrent or consecutively. If run consecutively, the total imprisonment could total 45 years with a fine of $90,000.00.

VOLUNTARINESS OF PLEA

6. That his plea of guilty to be entered herein is voluntary, as further based on the following:

(a) That his plea of guilty is made voluntarily and completely of his own choice, free from any force or threats from anyone.

(b) That he has accepted the terms of a plea agreement negotiated between his attorneys and the State. The terms of such plea agreement call for a plea of guilty to Counts 3, 6, and 8 of the Indictment filed on October 17, 2016. In return for such pleas of guilty, the State has agreed to cap its argument for actual penitentiary time to 30 years. However, the State may request additional suspended prison time in addition to the 30 years actual. Lastly, Defense is not able to argue for any actual time less than 18 years actual penitentiary. The State has a cap of 30 years and the Defense has a floor of 18 years actual time.

(c) That no officer, attorney or agent has promised, suggested or predicted that he will receive a lighter sentence, or probation, or any other form of leniency if he pleads guilty.

(d) That the Judge has not made any suggestion to him as to what the actual sentence will be.

(e) That he is not under the influence of any kind of alcohol, medicine or drug that is, in the least way, interfering with his ability to think clearly and understand exactly what he is doing in confirming his understandings in this Petition to Plead Guilty and Statement of Factual Basis.

(f) That he is not pleading guilty for any reason other than the fact that he is guilty.

STATEMENT OF FACTUAL BASIS

7. That he confirms his attorney has gone over each of the foregoing matters with him; that he understands the foregoing matters; and, he wishes to plead guilty.

8. That on or about the 11th day of October, 2016, in the County of Lincoln, State of South Dakota, Antonio D. Ledbetter did commit the public offense of Count 3 (Aggravated Assault – Domestic) in that he did knowingly cause bodily injury to Sara Inboden with a dangerous weapon when he used a scissors to cut Sara Inboden's left breast. This act caused serious bodily injury to Ms. Inboden. Antonio Ledbetter and Sara Inboden had been in a significant romantic relationship during the past twelve months and were expecting a child.

9. That on or about the 11th day of October, 2016, in the County of Lincoln, State of South Dakota, Antonio D. Ledbetter did commit the public offense of Count 6 (Aggravated Assault – Domestic) in that he did knowingly cause bodily injury to Sara Inboden with a dangerous weapon when he used a scissors to cut Sara Inboden's right breast. This act caused serious bodily injury to Ms. Inboden. Antonio Ledbetter and Sara Inboden had been in a significant romantic relationship during the past twelve months and were expecting a child.

10. That on or about the 11th day of October, 2016, in the County of Lincoln, State of South Dakota, Antonio D. Ledbetter did commit the public offense of Count 8 (Aggravated Assault – Domestic) in that he did attempt to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck when Antonio Ledbetter was holding Sara Iboden on the floor of her apartment and using his forearm to apply pressure to Ms. Imboden's neck, chin, and facial area that impeded her normal breathing or circulation of blood. These events occurred during a struggle between Mr. Ledbetter and Ms. Inboden. Antonio Ledbetter and Sara Inboden had been in a significant romantic relationship during the past twelve months and were expecting a child.

11. That he understands that, if he has knowingly and intentionally made any false answers in this petition, his answers may be used against him in a prosecution for perjury or for making a false statement.

Signed in the presence of my attorney under penalty of perjury this 16th day of August, 2017.

Antonio D. Ledbetter, Defendant

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF LINCOLN	SECOND JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff, vs. ANTONIO D. LEDBETTER, a/k/a TONY D. LEDBETTER, Defendant.	CRI. 16-632 MEMORANDUM AND ORDER DENYING MOTION TO RECONSIDER SENTENCE

On August 18, 2017 the Defendant pled guilty to three counts of aggravated assault-domestic pursuant to a written Petition to Plead Guilty and Statement of Factual Basis which he had signed in the presence of his attorney on August 16, 2018 and was filed on the plea date. Under the heading CONSEQUENCES OF PLEADING GUILTY AND PROCEDURE at ¶2(d) the document clearly sets out that

> [The Defendant] understands ... [i]f there are agreements between the State and him, the Court is not bound to accept any such agreements as to sentencing. In other words, if there are such agreements, including recommendations as to sentencing, the Court can either accept or reject any such agreements.

Paragraph 2(f) goes on to recite that "his lawyers and he have also discussed the maximum and minimum sentences that apply to his case. He acknowledges that his lawyers' predictions are not binding on the Court and that the Court can give him any sentence up to the maximum sentence provided in the statute."

Further, under the heading MAXIMUM PENALTY the Defendant acknowleged his understanding that "the maximum penalty for each charge is 15 years imprisonment, a fine of up to $30,000, or both. Additionally, the Court may run these counts concurrently or consecutively. If run consecutively, the total imprisonment could total 45 years with a fine of $90,000.00." Finally, under the heading VOLUNTARINESS OF PLEA, the defendant acknowledged that his plea was voluntary and based upon, among other things, his understanding that, as set forth in paragraph 6(d), "the Judge has not made any suggestion to him as to what the actual sentence will be." The document recites that it was signed "under penalty of perjury."

SDCL 23A-7-8(2) provides that a prosecuting attorney and a defense attorney may enter into a plea agreement wherein the prosecutor will agree to make a recommendation for a particular sentence, "with the understanding that such recommendation... shall not be binding upon the court." That is exactly the type of plea agreement that was entered by the parties in this case as set forth in the written Petition to Plead Guilty.

The Plea Agreement was followed in all respects. The State, as agreed, asked the Court to sentence the Defendant to 45 years in prison with 15 suspended, and the Defense argued that the sentence should be limited to 18 years in prison with the balance suspended. After considering the arguments of counsel, the Presentence investigation report, and the various other relevant sentencing factors under the law, the Court pronounced its sentence herein, which was, as expressly contemplated by the written Plea Agreement at ¶2(f) "the maximum sentence provided in the statute." At no time prior to the sentencing hearing did the Court make any "suggestion to [Defendant] as to what the actual sentence [would] be." Plea Agreement at ¶6(d). Thus, the Defendant was sentenced to the "MAXIMUM PENALTY" as expressly provided under ¶5 of the Plea Petition, which contemplated that "the total imprisonment could total 45 years." Under ¶2(f) Defendant acknowledged that his counsel advised him that at the sentencing "the Court could give him any sentence up to the maximum sentence provided in the statute" and that is what did in fact occur in this case. The Court considered the recommendations of counsel in the context of all the material sentencing considerations and then exercised its statutory authority to sentence the defendant outside of those recommendations because, as the Defendant expressly acknowledged in ¶2(d) of his Plea Petition, "the Court [was] not bound to accept any such agreements as to sentencing."

The Defendant is basing his Motion to Reconsider Sentence upon SDCL 23A-7-11, which provides that if the Court rejects a plea agreement, then it shall inform the parties and advise the Defendant on the record that the Court has chosen not to be bound by the plea agreement and give the Defendant an opportunity to withdraw his guilty plea, because if he persists in the guilty plea the sentence may be "less favorable to him than that contemplated by the plea agreement." This statute is inapposite because, as noted above, the Court did not reject the plea agreement, but rather accepted the plea agreement and sentenced the Defendant as contemplated by the plea agreement.

The South Dakota Supreme Court has held that recommended caps are not binding on a court and it isn't a rejection of a plea agreement when the court sentences above the cap which the State agreed to recommend. *See State v. Lee*, 560 NW 2d 552 (SD 1997); *State v. Rich*, 305 NW 2d 390 (1981).

At the sentencing hearing the Court canvassed the Defendant and he acknowledged his understanding of the written Plea Petition, and the maximum penalties he could be facing in the case if he changed his pleas from not guilty to guilty as to the three counts at issue herein. Both parties argued in accordance with the plea agreement and the Court sentence within the plea agreement. The asserted grounds for the Defendant's Motion to Reconsider Sentence are without merit. The Court's sentence herein is in all respects legal and proper.

ORDER

NOW, THEREFORE, the Defendant's Motion to Reconsider Sentence is in all things DENIED.

Dated this 5 day of Jan., 2018.

BY THE COURT:

Hon. Douglas E. Hoffman
Circuit Court Judge

ATTEST:
Kristie Torgerson, Clerk
By: Alicia Hagen
Deputy.

Gallagher, Sarah

From: David Stuart <david.petersonstuart@gmail.com>
Sent: Saturday, July 28, 2018 10:57 AM
To: ClerkBriefs; ATG Service; Tom Wollman
Subject: [EXT] State v. Antonio D. Ledbetter (Criminal Appeal 27345)

Categories: Red Category

Ms. Jameson-Fergel, Mr. Jackley, Ms. Archer, and Mr. Wollman:

The Defendant/Appellant considers this matter fully submitted. The deadline for filing our reply brief was 7-27-18. Appellant rests on the previously submitted brief and will not be filing additional argument by way of reply brief.

Should you have any questions, please do not hesitate to contact me. Thank you.

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