

WEDNESDAY, APRIL 23, 2008  
10:00 A.M.

NO. 2

#24708

OAKLEY E. ENGESSER,  
Petitioner and Appellee,

vs.

ROBERT DOOLEY,  
Respondent and Appellant.

Ms. Sherri Sundem Wald  
Deputy Attorney General  
1302 E Hwy 14 Ste 1  
Pierre SD 57501-8501  
Ph: 773-3215

(FOR APPELLANT)

Ms. Rena M. Hymans  
Attorney at Law  
Rena M. Hymans, PC  
1134 Main Street Ste 1  
Sturgis SD 57785  
Ph: 720-9665

(FOR APPELLEE)

The Honorable Randall L. Macy  
Fourth Judicial Circuit  
Meade County

(CIV 06-578)

## STATEMENT OF LEGAL ISSUES

## I

WHETHER THE TRIAL COURT ERRED WHEN IT DENIED  
RESPONDENT'S MOTIONS TO DISMISS ON PROCEDURAL  
GROUNDS?

The habeas court denied Respondent's motions to  
dismiss Petitioner's untimely, successive  
application.

Jenner v. Dooley, 1999 S.D. 20, 590 N.W.2d 463

Ashker v. Class, 534 N.W.2d 66 (S.D. 1995)

SDCL 21-27-3.2

SDCL 21-27-16.1

## II

WHETHER THE HABEAS COURT ERRED WHEN IT GRANTED  
PETITIONER RELIEF BASED ON AN INEFFECTIVE  
ASSISTANCE OF COUNSEL CLAIM REJECTED IN  
PETITIONER'S FIRST HABEAS PROCEEDING?

The second habeas court found trial counsel was  
ineffective for his strategic decision to not  
call two disclosed witnesses, a claim rejected by  
the first habeas court.

Siers v. Class, 1998 S.D. 77, 581 N.W.2d 491

Boyles v. Weber, 2004 S.D. 31, 677 N.W.2d 531

Jackson v. Weber, 2001 S.D. 136, 637 N.W.2d 19