

APPELLANT'S BRIEF

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IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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STATE OF SOUTH DAKOTA,

No. 30874

Plaintiff/Appellee,

v.

SEAN M. FRANKLIN,

Defendant/Appellant,

---

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

---

HONORABLE DAWN ELSHERE  
Circuit Court Judge

---

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Notice of Appeal Filed October 15, 2024

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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No. 30874

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STATE OF SOUTH DAKOTA,  
Plaintiff/Appellee,

vs.

SEAN M. FRANKLIN,  
Defendant/Appellant.

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PRELIMINARY STATEMENT

Defendant and Appellant, Sean Michael Franklin, will be referred to throughout this brief as “Franklin” or “Appellant”. The Appellee, State of South Dakota, will be referred to as “State” or “Appellee”. The transcript of the Status Hearing will be referred to as “S.H.” and the transcript of the Change of Plea & Sentencing Hearing will be referred to as “P.H.”.

JURISDICTIONAL STATEMENT

On September 17, 2024, Franklin appeared before the trial court and entered Guilty plea to Count 1: Aggravated Assault Against Law Enforcement Officer. Franklin was sentenced on September 17, 2024, as to Count I to ten (10) years in the South Dakota State Penitentiary with five (5) years suspended and credit for three hundred and fifty-eight (358) days previously served. Franklin was also ordered to pay fines, court costs and restitution to Brookings County for transportation costs. Judgment and Sentence was filed in the case on September 17, 2024.

Notice of Appeal was filed in each case on October 15, 2024. This Court has jurisdiction pursuant to SDCL 15-26A-3.

## STATEMENT OF LEGAL ISSUES

### **1. THE TRIAL COURT ERRED BY IMPOSING A PRISON SENTENCE AND NOT CONSIDERING ALL THE SENTENCING FACTORS AS OUTLINED BY SOUTH DAKOTA LAW.**

*State v. Berget*, 853 NW2d 45, 52 (SD 2014).

*State v. Holler*, 944 NW2d 339, 342 (SD 2020).

*State v. Pulfrey*, 548 NW2d 34, 38 (SD 1996).

## PROCEDURAL STATEMENT

An Indictment was filed with the Brookings County Clerk of Courts on October 13, 2023 charging Franklin with the following: Count 1: Aggravated Assault Against Law Enforcement Officer, Class 2 Felony, in violation of SDCL 22-18-1.1(4), 22-18-1.05; Count 2: Simple Assault Against Law Enforcement Officer, Class 6 Felony, in violation of SDCL 22-18-1(5); 22-18-1.05; and Count 3: Assault by Adult Prisoner in County Jail, Class 6 Felony, in violation of SDCL 22-18-29.

On October 16, 2023, an Arraignment was held and Franklin entered Not Guilty pleas to all charges.

On September 17, 2024, Franklin appeared before the trial court and entered a Guilty plea to Count 1 of the Indictment charging Aggravated Assault Against Law Enforcement Officer, Class 2 Felony, in violation of SDCL 22-18-1(4) and 22-18-1.05. On September 17, 2024, Franklin was sentenced as to Count 1 to ten (10) years in the South Dakota State Penitentiary with five (5) years suspended and credit for three hundred and fifty-eight (358) days previously served. Franklin was also ordered to pay fines, court costs and restitution to Brookings County for transportation costs. Judgment and Sentence was filed on September 17, 2024.

Notice of Appeal was filed on October 15, 2024. This Court has jurisdiction pursuant to SDCL 15-26A-3.

## STATEMENT OF FACTS

On October 3, 2023, Franklin was incarcerated at the Brookings County Detention Center when he began not complying with instructions and commands given to him. His behavior started to cause disruption within the jail; so, the officers took Franklin to an isolation cell where Franklin then turned and spit in the officer's face. In addition, Franklin also bit another correctional officer in the bicep, and another correctional officer suffered a concussion from being head butted and suffered a fractured rib during the altercation where Franklin punched and elbowed them in the rib cage.

## LEGAL ANALYSIS

### **1. THE TRIAL COURT ERRED BY IMPOSING A PRISON SENTENCE AND NOT CONSIDERING ALL THE SENTENCING FACTORS AS OUTLINED BY SOUTH DAKOTA LAW.**

"Circuit courts have broad discretion in sentencing." *State v. Holler*, 944 NW2d 339, 342 (SD 2020). Courts should consider the traditional sentencing factors of retribution, deterrence – both individual and general – rehabilitation and incapacitation. *State v. Pulfrey*, 548 NW2d 34, 38 (SD 1996). When considering these sentencing factors, "[o]ne ... is not preeminent over any of the others." *Id.* These factors are to be weighed "on a case-by-case basis" depending on the circumstances of the particular case. *State v. Toavs*, 906 NW2d 354, 357 (SD 2017).

"In order to determine the appropriate sentence, the sentencing court should acquire a thorough acquaintance with the character and history of the man before it." *Holler*, 944 NW2d at 344. The sentencing court should have access to "the fullest information possible concerning the defendant's life and characteristics. Information which should be available to the court includes general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record." *Id.*

This Court reviews a circuit court's sentencing decision for abuse of discretion. *Holler*, 944 NW2d 339, 342. "An abuse of discretion is a fundamental error in judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable." *Id.* "This Court, in turn, will not overturn the circuit court's abuse of discretion unless that 'error is demonstrated and shown to be prejudicial error.'" *State v. Berget*, 853 NW2d 45, 52 (SD 2014).

In pronouncing sentence in this case, the trial court failed to outline any of the sentencing factors as detailed above. In fact, the trial court on stated:

"Mr. Franklin, obviously the Court's very familiar and Mr. DeCastro (sic) is correct. I do think when you are compliant with your medication you have a lot to offer, but the reality is you're not compliant with your medication. And when you do that, you are dangerous to the public and you're dangerous to law enforcement and that is very much a concern for the Court. The Court needs to make sure the public is protected. And I know that you've been given opportunities to show that you can maintain your medication and be law-abiding, but the reality is that hasn't happened. "

*Transcript of Change of Plea and Sentencing Hearing, September 17, 2024, pgs. 13-14, lines 25-10.*

In this case, the circuit court abused its' discretion. The record shows the circuit court didn't consider any of the above sentencing factors when pronouncing sentence. The trial court mentioned that the court was familiar with Franklin, but never outlined why the court felt a lengthy prison sentence was appropriate, only that the court felt it needed to impose the sentence it did to "make sure the public is protected." *Id. at pg. 14, lines 6-7.*

## CONCLUSION

In the case at hand, the trial court failed to properly consider all the sentencing factors as outlined by South Dakota Law, therefore, the case must be remanded to the circuit court for resentencing.

Dated this 3<sup>rd</sup> day of March, 2025.

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

## CERTIFICATE OF SERVICE

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

Sarah Thorne  
Assistant Attorney General  
[atgservice@state.sd.us](mailto:atgservice@state.sd.us)

Dan C. Nelson  
Brookings County State's Attorney  
[DNelson@brookingscountysd.gov](mailto:DNelson@brookingscountysd.gov)

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

Dated this 3<sup>rd</sup> day of March, 2025.

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

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF BROOKINGS	)	THIRD JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA,	)	
	)	
Plaintiff,	)	CRI23-677
	)	
v.	)	JUDGMENT OF CONVICTION
	)	
SEAN M. FRANKLIN,	)	
	)	
Defendant.	)	
	)	

An Indictment was filed with this Court on the 13th day of October, 2023, charging the Defendant with the crime of Aggravated Assault Against Law Enforcement Officer (SDCL 22-18-1.1(4) and 22-18-1.05). The Defendant was arraigned on said Indictment on the 17th day of September, 2024. The Defendant, the Defendant's attorney, Manuel de Castro, and Austin Oxner, prosecuting attorney, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charges that had been filed against the Defendant. The Defendant pled guilty to the charge of Aggravated Assault Against Law Enforcement Officer (SDCL 22-18-1.1(4) and 22-18-1.05).

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

It is, therefore, the JUDGMENT of this Court that the Defendant is guilty of Aggravated Assault Against Law Enforcement Officer in violation of SDCL 22-18-1.1(4) and 22-18-1.05.

#### SENTENCE

On the 17th day of September, 2024, the Court asked the Defendant if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

ORDERED that the Defendant be imprisoned in the State Penitentiary of the State of South Dakota, Sioux Falls, South Dakota, at hard labor for the full term and period of ten (10) years, there to be kept, fed and clothed according to the rules and discipline governing the said penitentiary; and in addition thereto, shall pay court costs in the amount of \$116.50; provided however, the Court suspends execution of five (5) years of said sentence upon the following terms and conditions:

1. That the Defendant shall abide by all the rules and regulations of the South Dakota Board of Pardons and Parole.

2. That the Defendant remain a law abiding citizen and commit no federal state or local crime.

3. That the Defendant shall pay the fines and costs imposed.

4. That the fines, costs and court appointed attorney fees heretofore ordered paid shall be paid according to a schedule to be determined by the Department of Corrections while said Defendant is incarcerated, and according to a schedule to be determined by the Board of Pardons and Parole, should said Defendant make parole.

ORDERED that said Defendant shall reimburse Brookings County for the Court Appointed Attorneys fees of Manuel de Castro and Brookings County shall have a civil lien for said amount.

ORDERED that Defendant shall reimburse Brookings County for the transportation costs in the amount of \$736.77.

ORDERED that said Defendant receive credit of three hundred and fifty-eight (358) days for time previously served as a result of said offense.

ORDERED that said penitentiary sentence shall run consecutively to the sentences imposed on this date in file 05CRI21-611 for the offenses of Aggravated Assault (Domestic Violence) and Burglary in the Second Degree (Domestic Violence).

ORDERED that said Defendant stand committed to the Sheriff in and for Brookings County for transportation to the South Dakota State Penitentiary, Sioux Falls, South Dakota, to commence serving said penitentiary sentence.

Dated this 17th day of September, 2024, at Brookings, South Dakota.

BY THE COURT:

*Dawn M. Elshere*

\_\_\_\_\_  
Dawn Elshere  
Circuit Court Judge

ATTEST:

Attest:  
Ahmann, Angel  
Clerk/Deputy

\_\_\_\_\_  
Clerk of Courts



IN THE SUPREME COURT  
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STATE OF SOUTH DAKOTA,

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APPEAL FROM THE CIRCUIT COURT  
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THE HONORABLE DAWN ELSHERE  
Circuit Court Judge

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**APPELLEE'S BRIEF**

---

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AND APPELLEE

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Notice of Appeal filed October 15, 2024

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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No. 30874

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STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

SEAN M. FRANKLIN,

*Defendant and Appellant.*

---

**PRELIMINARY STATEMENT**

Franklin pled guilty to aggravated assault against law enforcement officer. The circuit court sentenced him to ten years in the state penitentiary with five years suspended. Franklin was ordered to pay court costs and reimburse Brookings County for court appointed attorneys' fees and transportation costs. Franklin appeals his sentence arguing the circuit court abused its discretion by not considering all the sentencing factors. However, the record shows the circuit court considered the fullest information possible when sentencing Franklin.

References to the Settled Record in Brookings County criminal file number 63CRI24-363 will be denoted "SR" followed by the appropriate page number(s). References to the Appellant's Brief will be denoted "AB" followed by the appropriate page number(s).

## **JURISDICTIONAL STATEMENT**

This is an appeal of a Judgment and Sentence entered by the Honorable Dawn Elshere, Circuit Court Judge, Third Judicial Circuit, Brookings County, South Dakota. SR:58-59. Judgment was timely entered on September 17, 2024, and Franklin filed a Notice of Appeal on October 15, 2024. SR:58-59, 71; SDCL 23A-32-15. Thus, this Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

## **STATEMENT OF THE LEGAL ISSUE AND AUTHORITIES**

### **I.**

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION  
WHEN SENTENCING FRANKLIN?

The circuit court did not rule on this issue.

- *State v. Caffee*, 2023 S.D. 51, 996 N.W.2d 351
- *State v. Klinetobe*, 2021 S.D. 24, 958 N.W.2d 734
- *State v. Rice*, 2016 S.D. 18, 877 N.W.2d 75

## **STATEMENT OF THE CASE**

Franklin was charged by Indictment with aggravated assault against law enforcement officer, in violation of SDCL 22-18-1.1(4) and 22-18-1.5; simple assault against law enforcement officer, in violation of SDCL 22-18-1(5); 22-18-1.5; and assault by adult prisoner in county jail, in violation of SDCL 22-18-26. SR:9-10.

On September 17, 2024, Franklin entered into a written plea agreement with the State where he agreed to pled guilty to aggravated assault against law enforcement officer. SR:55-57. The plea agreement

included the maximum possible penalties, an advisement of rights, and waiver by plea of guilty. *Id.* In exchange for Franklin’s plea, the State agreed to dismiss the remaining counts. *Id.* On the same date, a change of plea hearing was held, and Franklin confirmed he understood his rights outlined in the plea agreement. SR:88-101.

Franklin waived his right to a 48-hour delay, elected to not have an updated Presentence Investigation (PSI), and requested to proceed with sentencing. SR:96. The court granted Franklin’s request. SR:97.

Pursuant to the plea agreement, the State deferred to the court for sentencing. Defense counsel requested the court to “consider not imposing the maximum time that’s allotted[,]” and asked the court “to fashion some type of sentence that [] ensures that [Franklin] takes those medications as necessary[.]” SR:99. The circuit court listened to the arguments and sentenced Franklin to ten years in the South Dakota State Penitentiary with five years suspended and credit for 358 days previously served. SR:100-01. Franklin was ordered to pay court costs and reimburse Brookings County for court appointed attorneys’ fees and transportation costs. *Id.*

### **STATEMENT OF THE FACTS**

On October 3, 2023, at approximately 7:00 a.m., Franklin was incarcerated at the Brookings County Detention Center. SR:95. Franklin became noncompliant with staff as Correctional Officers attempted to move him back to his cell. *Id.* Franklin’s behavior started

to cause disruption within the jail; so, the Officers took Franklin into an isolation cell. *Id.* During the incident, Franklin spit in an Officer's face; bit another Officer in the bicep; and head butted, punched, and elbowed another Officer in the rib cage causing them to have a concussion and a fractured rib. *Id.*

## **ARGUMENT**

### **I.**

#### **THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN SENTENCING FRANKLIN.**

Franklin challenges his sentence as an abuse of discretion. “An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.” *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (internal citation omitted). Additionally, this Court has stated, “it is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence.” *State v. Toavs*, 2017 S.D. 93, ¶ 14, 906 N.W.2d 354, 358 (quoting *State v. Blair*, 2006 S.D. 75, ¶ 20, 721 N.W.2d 55, 61). It comes as a consequence of these circumstances that a sentence within the statutory maximum generally will not be disturbed on appeal. *Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83 (internal citation omitted).

A circuit court possesses “broad discretion when deciding the extent and kind of punishment to be imposed.” *Id.* In determining an

appropriate sentence, “[c]ourts should consider the traditional sentencing factors of retribution, deterrence—both individual and general—rehabilitation, and incapacitation.” *State v. Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d 351, 360 (quoting *State v. Klinetobe*, 2021 S.D. 24, ¶ 28, 958 N.W.2d 734, 741). Courts should weigh these factors “on a case-by-case basis” and may determine “which theory is accorded priority” in a particular case. *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360 (internal citation omitted).

Here, the circuit court did not abuse its discretion in sentencing Franklin. Franklin requested to proceed to sentencing and forwent an updated PSI. SR:96. The circuit court stated it is “well aware of Mr. Franklin” because it had previously reviewed Franklin’s PSI from his prior file and spoke to the court service officer about Franklin. SR:97. In considering Franklin’s circumstances, the circuit court stated:

Mr. Franklin, obviously the Court’s very familiar and Mr. DeCastro (sic) is correct. I do think when you are compliant with your medication you have a lot to offer, but the reality is you’re not compliant with your medication. And when you do that, you are dangerous to the public and you’re dangerous to law enforcement and that is very much a concern for the Court. The Court needs to make sure the public is protected. And I know that you’ve been given opportunities to show that you can maintain your medication and be law-abiding, but the reality is that hasn’t happened.

SR:99-101. Such commentary illustrates the circuit court’s familiarity with Franklin. This statement indicates that the court considered the

traditional sentencing factors of retribution, deterrence, incapacitation, and rehabilitation in making in sentencing Franklin.

Franklin pled guilty to aggravated assault against law enforcement officer, which is a Class 2 felony. SR:58; SDCL 22-18-1.1(4) and 22-18-1.5. Franklin's maximum penalty was twenty-five years imprisonment, and a \$50,000 fine. The circuit court sentenced Franklin to ten years in the South Dakota State Penitentiary with five years suspended and credit for 358 days previously served. Franklin was ordered to pay court costs and reimburse Brookings County for court appointed attorneys' fees and transportation costs. Franklin's sentence was within the statutory maximum; therefore, his sentence should not be disturbed on appeal. *See Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83.

Franklin contends the circuit court failed to properly consider all the sentencing factors outlined by South Dakota law. AB:4-5. Franklin does not identify what sentencing factor the circuit court failed to consider. Presumably Franklin is arguing the court failed to consider mitigating circumstances. However, even if mitigating circumstances were found, the circuit court retains discretion in sentencing. *See Klinetobe*, 2021 S.D. 24, ¶ 41, 958 N.W.2d at 744 ("the mere presence of mitigating evidence does not entitle a defendant to a diminished sentence, but rather forms a part of the larger sentencing record, all of which the sentencing court must consider."). Contrary to Franklin's

statement, it is clear from the record that the circuit court listened to counsels' arguments and determined no mitigating circumstance existed.

Because the circuit court properly considered the sentencing factors, the circuit court did not abuse its discretion in sentencing Franklin.

### **CONCLUSION**

The State requests this Court affirm Franklin's Judgment of Conviction.

Respectfully submitted,

**MARTY J. JACKLEY**  
**ATTORNEY GENERAL**

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### **CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 1,189 words.

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

Dated this 18th day of March 2025.

/s/ Renee Stellagher

Renee Stellagher  
Assistant Attorney General

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 18, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Sean M. Franklin* was served electronically through Odyssey File and Serve upon Manuel J. De Castro, Jr. at mdecastro1@yahoo.com.

/s/ Renee Stellagher

Renee Stellagher  
Assistant Attorney General

APPELLANT'S REPLY BRIEF

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IN THE SUPREME COURT  
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Notice of Appeal Filed October 15, 2024

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STATE OF SOUTH DAKOTA,  
Plaintiff/Appellee,

vs.

SEAN M. FRANKLIN,  
Defendant/Appellant.

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PRELIMINARY STATEMENT

Defendant and Appellant, Sean Michael Franklin, will be referred to throughout this brief as “Franklin” or “Appellant”. The Appellee, State of South Dakota, will be referred to as “State” or “Appellee”. The transcript of the Status Hearing will be referred to as “S.H.” and the transcript of the Change of Plea & Sentencing Hearing will be referred to as “P.H.”.

JURISDICTIONAL STATEMENT

On September 17, 2024, Franklin appeared before the trial court and entered Guilty plea to Count 1: Aggravated Assault Against Law Enforcement Officer. Franklin was sentenced on September 17, 2024, as to Count I to ten (10) years in the South Dakota State Penitentiary with five (5) years suspended and credit for three hundred and fifty-eight (358) days previously served. Franklin was also ordered to pay fines, court costs and restitution to Brookings County for transportation costs. Judgment and Sentence was filed in the case on September 17, 2024.

Notice of Appeal was filed in each case on October 15, 2024. This Court has jurisdiction pursuant to SDCL 15-26A-3.

## STATEMENT OF LEGAL ISSUES

### **1. THE TRIAL COURT ERRED BY IMPOSING A PRISON SENTENCE AND NOT CONSIDERING ALL THE SENTENCING FACTORS AS OUTLINED BY SOUTH DAKOTA LAW.**

*State v. Berget*, 853 NW2d 45, 52 (SD 2014).  
*State v. Holler*, 944 NW2d 339, 342 (SD 2020).

## STATEMENT OF FACTS

Appellant hereby incorporates his previously set for State of Facts.

## LEGAL ANALYSIS

### **1. THE TRIAL COURT ERRED BY IMPOSING A PRISON SENTENCE AND NOT CONSIDERING ALL THE SENTENCING FACTORS AS OUTLINED BY SOUTH DAKOTA LAW.**

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

“In order to determine the appropriate sentence, the sentencing court should acquire a thorough acquaintance with the character and history of the man before it.” *Holler*, 944 NW2d at 344. The sentencing court should have access to “the fullest information possible concerning the defendant’s life and characteristics. Information which should be available to the court includes general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record.” *Id.*

This Court reviews a circuit court’s sentencing decision for abuse of discretion. *Holler*, 944 NW2d 339, 342. “An abuse of discretion is a fundamental error in judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.” *Id.* “This Court, in turn, will not overturn the circuit court’s abuse of discretion unless that ‘error is demonstrated and shown to be prejudicial error.’” *State v. Berget*, 853 NW2d 45, 52 (SD 2014).

In pronouncing sentence in this case, the trial court failed to outline any of the sentencing factors as detailed above. In fact, the trial court on stated:

“Mr. Franklin, obviously the Court’s very familiar and Mr. DeCastro (sic) is correct. I do think when you are compliant with your medication you have a lot to offer, but the reality is you’re not compliant with your medication. And when you do that, you are dangerous to the public and you’re dangerous to law enforcement and that is very much a concern for the Court. The Court needs to make sure the public is protected. And I know that you’ve been given opportunities to show that you can maintain your medication and be law-abiding, but the reality is that hasn’t happened. “

*Transcript of Change of Plea and Sentencing Hearing, September 17, 2024, pgs. 13-14, lines 25-10.*

In this case, the circuit court abused its’ discretion. The record shows the circuit court didn’t consider any of the above sentencing factors when pronouncing sentence. The trial court mentioned that the court was familiar with Franklin, but never outlined why the court felt a lengthy prison sentence was appropriate, only that the court felt it needed to impose the sentence it did to “make sure the public is protected.” *Id. at pg. 14, lines 6-7.*

## CONCLUSION

In the case at hand, the trial court failed to properly consider all the sentencing factors as outlined by South Dakota Law, therefore, the case must be remanded to the circuit court for resentencing.

Dated this 28<sup>th</sup> day of April, 2025.

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

## CERTIFICATE OF SERVICE

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

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

Dated this 28<sup>th</sup> day of April, 2025.

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