

to the sentencing hearing transcript will be designated as "SH" followed by the appropriate page number.

JURISDICTIONAL STATEMENT

Korth appeals from final judgments of conviction for distribution of a controlled substance and possession of a controlled substance. Sentence was imposed on July 9, 2001, and separate judgments were entered and filed on July 11, 2001, from the Court of Judge Thomas L. Trimble, Seventh Judicial Circuit Court, Rapid City, Pennington County, South Dakota. R 35-44. An amended judgment on the possession charge was entered and filed on August 6, 2001. R 47-52. Appeal is by right pursuant to SDCL §23A-32-2. Notice of appeal was filed on August 10, 2001. R 58.

STATEMENT OF LEGAL ISSUE

- I. SHOULD THIS COURT REQUIRE APPELLATE COUNSEL TO FILE AN ADEQUATE "ANDERS BRIEF" TO ACCOMPANY HIS WITHDRAWAL MOTION.

JURISDICTIONAL STATEMENT

This brief stems from an Order served upon this counsel by the South Dakota Supreme Court to address the issue of whether this Court should require Appellant Counsel to file an adequate "Anders Brief" Anders v. California, 386 US 738, 87 SCT 1396; 18 LEd2d 493 (1967) as an advocate on behalf of Appellant as a condition to allow counsel to withdraw. Robinson v. Black, 812 F2d 1084, 1086-87 (8th Cir 1989); see also, Evan v. Clarke, 868 F2d 267, 268 (8thCir 1989).

LEGAL ISSUES PRESENTED

WHETHER APPELLANT COUNSEL MUST FILE AN ADEQUATE "ANDERS BRIEF" AS AN ADVOCATE ON BEHALF OF APPELLANT AS A CONDITION TO ALLOW COUNSEL TO WITHDRAW.

This Court has not ruled on this issue.

WHETHER APPELLANT COUNSEL SHOULD BE ABLE TO FILE AN "ANDERS BRIEF" INSTEAD OF FULLY BRIEFING EVERY APPEAL INCLUDING THOSE APPEALS WHICH COUNSEL HAS INVESTIGATED, RESEARCHED, AND DEEMED TO BE WITHOUT MERIT.

This Court has held in the positive.

STATEMENT OF CASE AND FACTS

The defendant and appellant, Sheila Steele, was stopped on or about April 1, 2001 at approximately 1455 hours by a Pennington County Deputy Sheriff in Pennington County because she was driving a white Toyota pickup without license plates. The Officer observed a marijuana pipe, in