

COLBY SPAIN,

Defendant and Appellant

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

IN THE SUPREME COURT

JAN 18 2022

STATE OF SOUTH DAKOTA

Shif A. Johnson Legal
Clerk

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

ORDER DIRECTING ISSUANCE OF
JUDGMENT OF AFFIRMANCE

vs.

#29629

COLBY SPAIN,
Defendant and Appellant.

The Court considered all of the briefs filed in the above-entitled matter, together with the appeal record, and concluded pursuant to SDCL 15-26A-87.1(A), that it is manifest on the face of the briefs and the record that the appellant failed to establish plain error and prejudice, now, therefore, it is

ORDERED that an order affirming the Judgment of the circuit court be entered forthwith.

The Court declines to consider the merits of Appellant's ineffective assistance of counsel claim because the record on direct appeal does not afford an adequate basis to review the performance of trial counsel. [(See *State v. Vortherms*, 2020 S.D. 67, ¶30, 952 N.W.2d 113, 120).]

DATED at Pierre, South Dakota, this 18th day of January, 2022.

BY THE COURT:

ATTEST

Steven R. Jensen, Chief Justice

Clerk of the Supreme Court
(SEAL)

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Janine M. Kern, Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.