

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

APPEAL NUMBER # 30747

STATE OF SOUTH DAKOTA

Plaintiff/Appellee

Vs.

#30747

CLINTON GLIDDEN

Defendant/Appellant

APPEAL FROM THE CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

ROBERTS COUNTY, SOUTH DAKOTA

THE HONORABLE MARSHALL LOVRIEN

CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

Dylan Kirchmeier
Roberts County State's Attorney
414 3rd Ave East
Sisseton, SD 57262
Attorney for Plaintiff/Appellee
Plaintiff/Appellee

Marty Jackley
Attorney General
1302 E Highway 14 #1
Pierre SD, 57501
Attorney for

Robert Doody
Attorney for Defendant/Appellant
PO Box 307
Sisseton SD, 57262

NOTICE OF APPEAL FILED ON JULY 9, 2024

TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....3

PRELIMINARY STATEMENT.....3-4

JURISDICTIONAL STATEMENT.....3

STATEMENT OF ISSUES AND RELEVANT CASES.....4-5

STATEMENT OF THE CASE AND FACTS.....5-7

MOTION STATEMENT.....7

ARGUMENT.....7-8

CONCLUSION.....8

CERTIFICATE OF COMPLIANCE.....9

CERTIFICATE OF SERVICE.....8-9

APPENDIX.....10

-11

TABLE OF AUTHORITIES

CASES

State v. Yeager, 2019 S.D. 12, 925 N.W.2d
105.....7-8

State v. Rice, 2016 S.D. 18, 877 N.W.2d
75.....7-8

State v. Bruce, 2011 S.D. 14, 796 N.W.2d
397.....7-8

PRELIMINARY STATEMENT

Throughout this brief, Defendant/Appellant Glidden will be referred to as “Glidden” and Plaintiff/Appellee state of South Dakota will be referred to as “State”. All references to the Settled Record for this action will be as “SR” followed by the page number. References to transcripts will be as follows Initial Appearance IP with page number; line number, Arraignment “AR” with page number; line number, Motions Hearing “MH” with page number ; line number. Change of Plea Hearing “CP” with page number ; line number. Sentencing Hearing “SH” with page number ; line number. “Appendix” will refer to the Judgment of Conviction and transcripts used in the appeal.

JURISDICTIONAL STATEMENT

On ,December 12, 2024 several complaints were file by the State, Roberts County. SR 10-16 , The complaints were for (1) Count of Driving While Under the Influence (2) Possession of Marijuana, Two Ounces or Less (3) Vehicular Battery-Domestic Violence (4) Possession of a Controlled Substance in Jail (5) Possession of a Controlled Substance in Schedule I or II (6) For Abuse of a Minor Child-Domestic Violence (7) Unauthorized Ingestion of a Controlled Substance in Schedule I or II. On February 11, 2021 an Information for a Habitual Criminal was also filed by the State. SR 67.

At Glidden's Initial Appearance he asked for a Court appointed Attorney and received Robert Doody by Order of the Court. SR 6.A preliminary hearing was held and all of the Charges were bond over to Circuit Court by the Magistrate this took place on February 1, 2022 SR 18. On April 23, 2021 Glidden bonded out of the Roberts County Detention Center. SR 87. This was after a continuance request was made Glidden that was granted on February 2, 2023. SR 104. On April 26, 2021 Glidden violated the 24/7 program and warrant was issued. SR 90. On May 30, 2024 an arraignment took place where Glidden accepted a plea offer. SR 380. A Pre-Sentence Investigation was done a sentencing date was set for July 1, 2024. SR 393.

Glidden received a 15 year prison sentence with 6 years suspended. SR 119. Glidden appeals his sentence and Judgment of Conviction to the South Dakota Supreme Court with Notice of Appeal being filed on July 9, 2024. Glidden argues that his sentence was an abuse of discretion as it did not equally weigh all of the factors the court took into consideration. Glidden seeks appeal by right in accordance with SDCL 15-26A-3 as a final judgment has been entered in this case and in accordance with SDCL 15-26A-4.

STATEMENT OF THE ISSUES AND RELEVANT CASES

- I. DID THE CIRCUIT COURT ABUSE ITS DISCRETION WHEN SENTENCING WHITE TO (15) FIFTEEN YEARS WITH (7) SEVEN YEARS.

Did Judge Lovrien error in sentencing Glidden (15) fifteen years with six (6) suspended by not considering the rehabilitation of Glidden.

Most relevant cases:

State v. Yeager, 2019 S.D. 12, 925 N.W.2d 105

State v. Rice, 2016 S.D. 18, 877 N.W.2d 75

State v. Bruce, 2011 S.D. 14, 796 N.W.2d 397

STATEMENT OF THE CASE AND FACTS

On November 30, 2020 was driving his car while under the influence of Methamphetamine with his child in an automobile. During the Preliminary Hearing testimony was heard that the automobile hit the back of a trailer and ramped it off of the back of the trailer landing in the median on Interstate Highway 29. SR 25-26. Testimony was also given that the child in the car was severely injured. SR 30. The Court also heard testimony regarding the possession of a small plastic bag that was found in the on Glidden and had the residue of methamphetamine. SR 50. The court took testimony from a Highway Patrol office that he found at the crash scene a bag of marijuana and Glidden looked impaired. SR 50. A urine sample take of Glidden and it came back positive for methamphetamine. SR 50. After argument the Magistrate Court bound all counts over except for Possession in jail of Scheduled. Drug over to the Circuit Court SR 54.

At Glidden's arraignment he plead not guilty of all counts he had been charged with. SR 203. Numerous motions were filed by the State and by Glidden and they were all granted by the Honorable Judge Flemmer. SR 98 Likewise, all of the motions from the State were granted by the Court. SR. 96. Then on May 30, 2024 another arraignment was held this time in front of Judge Loverein. SR 258. Glidden this time accepted the State's plea offer and he pled to domestic violence and abuse or cruelty to a minor under the age of 7 with all other charges to be dropped. SR 266. Glidden went ahead and pled guilty after the Court had put him under oath. SR 272-273. A Pre Sentence Investigation was ordered and a sentencing date set. SR 273-274

At the July 1, 2024 the Pre-sentence Investigation was prepared and all parties acknowledged that they had received the report and were ready for sentencing. SH 2. The State call Julie Mikkelson to the stand to make a victim impact statement. SH 3; 1-25. She is Glidden's mother and guardian of the child that was hurt. SH; 3; 8-12. She described in detail the trauma the child has gone through. SH 4-5. She specifically stated "He has been through Hell" SH 5;1 Mikkelson went on to state she does not want Glidden to get a penitentiary sentence SH 5-6.

The State then began their argument. SH 6-8. At the closing of the argument the State requested fifteen (15) years with 2 suspended. SH 8;11-18. Next Defense Counsel open their argument up SH 8;18. Counsel pointed out that he is 34 year old and lives in Minnesota. SH 8;18-19. That he had work history and is capable of taking care of himself and other people SH 8;19-22 He is a graduate of high school in 2009 and that he has been employed in the past at several other businesses SH 8-9;23-1.

That since the incident he has been engaged SH 9;5. And even though his criminal record looked bad was given probation for all of them in Minnesota. SF 9;6-9. Counsel requested a penitentiary sentence of one year. SH 9 16-19.

Glidden then spoke to the Court. SH 10;2. Glidden admitted guilt and took responsibility SH 10;2-6. Glidden informed the Court that he has a drug problem SH 10 ; 7-10. Glidden stated he was ashamed of what happened SH 10;11-12.

The Court then began is discussion laying out the factors that the Court must take into count. SH 10;13-20 The Court then began discussing the background of Glidden and note some good things. PH 10-11;21 10. The Court went to discuss the lengthy criminal history SH 10-12. The Court stated that, "...this is far worse than the child abuse cases I've seen where somebody is driving drunk with a child in the car." SH 12;19-21. The Court goes on to state that it is looking achieve the goals of punishment, rehabilitation, and deterrence SH 14;20-23.

The Court also stated Glidden has a significant criminal history of 7 felonies and is only 34 years old. SH 14;10-14. Ultimately the Court sentenced Glidden to 15 years in the State penitentiary with 6 suspended with a fine, court costs and reimbursement of attorney fees. SH 15-16.

MOTION STATEMENT

Motions were filed by the State and Glidden. The defense filed the following: Motion to Allow the Filing of Additional Motions SR 69; Motion to Allow Defendant to Wear Street Clothes SR 70; Motion for State's Witnesses SR 71; Motion for Funds to Hire Private Investigator SR 72; Motion for Third Party Testing SR 73. The State their

following Motions: Motion for Notice and Discovery of Rule 404(b) Evidence SR 77; Motion to Allow Impeachment by Prior Convictions SR 78; Motion for Leave to file Additional Motions SR 80; State's Reciprocal Discovery Request. SR 81; Motion for Defendants Witnesses SR 83; Motion to Sequester Witnesses SR 84.

ARGUMENT

I. The Court Abused its Discretion in Sentencing Glidden to a Term of Fifteen Years with Six Suspended.

It is well established that “[c]ircuit courts exercise broad discretion in imposing sentences...*State v. Yeager*, 2019 S.D. 12, ¶ 11, 925 N.W.2d at 110. The court abuses its discretion when it makes a “fundamental error of judgment, a choice outside the range of permissible choices...” *State v. Rice*, 2016 S.D. ¶ 23, 877 N.W.2d at 83. “[A] sentence within the statutory maximum [generally] will not [be] disturbed on appeal.” *State v. Bruce*, 2011 S.D. 14 ¶ 28, 796 N.W.2d at 406. Before imposing a sentence, however, the court must become thoroughly acquainted with the character and history of the defendant by considering the “general moral character, mentality, habits social environment, tendencies, age, aversion or inclination to commit crime, life family, occupation, and previous criminal record [,] as well as the rehabilitative prospects of the defendant.” *State. v. Yeager*, 2019 S.D. 12, ¶ 12, 925 N.W.2d at 110.

The Court in weighing the factors placed more emphasis on the criminal past than any other element in needs to consider under *Yaeger*. No one single consideration can be taken and be the dominant reason for imposing a sentence. The Court in Glidden

did not consider his possibility at rehabilitation. Nor did it consider family life. Not all factors were weighed properly. The Court therefore abused its discretion in sentencing Glidden.

CONCLUSION

Wherefore, the plaintiff requests that his case be remanded to Circuit Court for re-sentencing.

Dated this 29 Day of October, 2024

/s/Robert J. Doody

Doody Law Office

PO Box 307

Sisseton, SD 57262

robert@doodylawoffice.com

CERTIFICATE OF SERVICE

I, Robert J. Doody, hereby state that I filed the above brief via UJS File & Serve to the following individuals:

Marty Jackley

Dylan Kirchmeier

Attorney General for South Dakota

Roberts County States Attorney

atgservice@state.sd.us

dylankirchmeier@gmail.com

Dated this 29th Day of October, 2024

/s/Robert J. Doody

CERTIFICATE OF COMPLIANCE

Robert J. Doody, one of the attorneys for Appellant, hereby certifies that the foregoing brief meets the requirements for proportionately spaced typeface in accordance with SDCL 15-26A-66(b) as follows:

- a. Appellant's brief does not exceed 32 pages;
- b. The body of Appellant's brief was typed in Times New Roman 12 point typeface; and
- c. Appellant's brief contains 2019 words, according to the word and character counting system in Microsoft Word used by the undersigned.

Dated this 29th day of October, 2024.

/s/Robert J. Doody

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

APPEAL NUMBER # #30747

STATE OF SOUTH DAKOTA

Plaintiff/Appellee

Vs.

#30747

CLINTON GLIDDEN

Defendant/Appellant

APPEAL FROM THE CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

ROBERTS COUNTY, SOUTH DAKOTA

APELLANTS APPENDIX

Dylan Kirchmeier
Roberts County State's Attorney
414 3rd Ave East
Sisseton, SD 57262
Attorney for Plaintiff/Appellee
Plaintiff/Appellee

Marty Jackley
Attorney General
1302 E Highway 14 #1
Pierre SD, 57501
Attorney for

Robert Doody
Attorney for Defendant/Appellant
PO Box 307
Sisseton SD, 57262

NOTICE OF APPEAL FILED ON JULY 9, 2024

Exhibit 1. The Judgment of Conviction and Sentence of the Court

Exhibit 2. Sentencing Hearing

.

STATE OF SOUTH DAKOTA)
) SS. IN CIRCUIT COURT
 COUNTY OF ROBERTS) FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,) 54CRI20-0000592
 Plaintiff,)
)
 Vs.) JUDGMENT OF CONVICTION AND
) SENTENCE OF THE COURT
 CLINTON ROY GLIDDEN,)
 Defendant.)
)

The Defendant herein, Clinton Roy Glidden, having been charged with the commission of a public offense, to-wit: Abuse of a Minor Less than Seven – Domestic Abuse, SDCL § 26-10-1 (class 3 felony), which offense is alleged to have occurred on November 30, 2020, by an Information filed with the Court on February 11, 2021, charging Defendant with the commission of said offense. Defendant was produced before the Honorable Jon S. Flemmer, Circuit Court Judge of the Fifth Judicial Circuit, Roberts County, South Dakota, at the Courthouse in Sisseton, Roberts County, South Dakota on February 11, 2021, at which time Defendant received a copy of the Information. Defendant was duly arraigned on said Information on February 11, 2021. The Defendant’s attorney, Robert Doody, and Roberts County State’s Attorney Dylan Kirchmeier appeared personally at the Roberts County Courthouse.

The Court advised Defendant of all constitutional and statutory rights pertaining to the charge that had been filed against Defendant, including but not limited to the right against self-incrimination, the right to confrontation of witnesses against Defendant, and the right to a jury trial. The Court further advised Defendant of the maximum penalty allowed by law. The Court found that Defendant understood these rights prior to the entry of a plea. Defendant entered a plea of not guilty to the Information charging the offense of Abuse of a Minor Less than Seven – Domestic Abuse, SDCL § 26-10-1 (class 3 felony).

Defendant requested to enter a change of plea. The Defendant, his attorney Robert Doody, and Roberts County State’s Attorney Dylan D. Kirchmeier appeared before the Honorable Marshall C. Lovrien on May 30, 2024. Defendant entered a plea of guilty to the Information charging the offense of Abuse of a Minor Less than Seven – Domestic Abuse, SDCL § 26-10-1 (class 3 felony). Sentencing was moved to a later date.

It is the determination of the Court that the Defendant has been regularly held for said offense, that the plea was voluntarily, knowingly and intelligently entered; that the Defendant was represented by competent counsel; that the Defendant understood the nature and consequences of the plea at the time the plea was entered, and that a factual basis existed for the plea.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED That Defendant Clinton Roy Glidden is guilty of Abuse of a Minor Less than Seven – Domestic Abuse, SDCL § 26-10-1 (class 3 felony).

On July 1, 2024, the parties once again appeared the Honorable Marshall C. Lovrien to receive the sentence. The Court asked Defendant if any legal cause existed to show why Judgment should not be pronounced.

There being no cause offered, the Court pronounced the following sentence:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED That Clinton Roy Glidden pay the statutory court costs of \$116.50, that he pay a fine of \$500.00, that he reimburse Roberts County in the amount of \$265.00 for the cost of the blood testing, that he pay the South Dakota Drug Control Fund in the amount of \$170.00 for the cost of drug testing, that he repay Roberts County for the cost of his court-appointed attorney’s fees, and that he be incarcerated in the South Dakota State Penitentiary for a period of fifteen (15) years.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that six (6) years of the penitentiary sentence be suspended on conditions that Defendant:

1. Provide a DNA sample to law enforcement as required by law, if the same has not already been done.
2. Pay the costs and testing costs that were imposed herein while he is under the supervision of the South Dakota Department of Corrections.
3. Repay Roberts County for the cost of his court-appointed attorney’s fees while he is under the supervision of the Department of Corrections.
4. Abide by and follow all rules and regulations of the South Dakota Department of Corrections while incarcerated, or under its supervision on parole or suspended sentence.

The Court recommends that the Department of Corrections afford Defendant opportunities for chemical dependency evaluations, treatment and aftercare during the time Defendant is under the supervision of the Department of Corrections.

IT IS FURTHER ORDERED that the Defendant be granted credit for the one hundred eighty-seven (187) days spent in custody at the Roberts County Jail through July 1, 2024, as well as credit for any time spent awaiting transport to the Penitentiary.

IT IS FURTHER ORDERED that the charges of Vehicular Battery – Domestic Violence, SDCL § 22-18-36, Possession of a Controlled Substance in Schedule I or II, SDCL §22-42-5, Unauthorized Ingestion of a Controlled Substance in Schedule I or II, SDCL § 22-42-5.1, Driving Under the Influence – 2nd Offense, SDCL § 32-23-3, Possession of Marijuana – Two Ounces or Less, SDCL § 22-42-6, Illegal Lane Change, SDCL § 32-26-6, and a part II Information alleging the Defendant to be a Habitual Offender, in this file be dismissed pursuant to an agreement between the Defendant and the State.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant stand committed to the custody of the South Dakota Department of Corrections pending execution of the Judgment and sentence.

BY THE COURT:

7/3/2024 9:51:49 AM

Attest:
Guy, Brenda
Clerk/Deputy





CIRCUIT COURT JUDGE

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
 2 COUNTY OF ROBERTS) FIFTH JUDICIAL CIRCUIT

3

4

5 _____)
 State of South Dakota,)
)
 6 Plaintiff,)
) Sentencing Hearing
 7 vs.)
)
 8 Clinton Roy Glidden,)
) 54CRI20-000592
 9 Defendant.)
 _____)
)

10

11 BEFORE: **THE HONORABLE MARSHALL LOVRIEN**
 Circuit Court Judge
 12 Sisseton, South Dakota
 July 1, 2024, at 11:53 a.m.

13

14

15 APPEARANCES:

16 For the Plaintiff: **DYLAN D. KIRCHMEIER**
 Roberts County State's Attorney
 17 414 3rd Avenue East
 Sisseton, South Dakota 57262

18

19 For the Defendant: **ROBERT J. DOODY**
 Doody Law Office
 20 P.O. Box 307
 Sisseton, South Dakota 57262

21

22

23

24

25

1 (WHEREUPON, the following proceedings were duly had:)

2 THE COURT: This is a hearing in the case of the State of
3 South Dakota versus Clinton Glidden, criminal file 20-592.
4 The defendant is personally present in court this morning,
5 along with his attorney Robert Doody. And the State is
6 represented by Roberts County State's Attorney Dylan
7 Kirchmeier. This is the time and place that's been set
8 for a sentencing in this matter.

9 Mr. Glidden, have you received and reviewed a copy of
10 the presentence investigation report in this matter, along
11 with various letters of support on your behalf that were
12 submitted through Mr. Doody?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is that true for counsel for both sides?

15 MR. KIRCHMEIER: Yes, Your Honor.

16 MR. DOODY: Yes, Your Honor.

17 THE COURT: I, too, have received that document and those
18 attachments and reviewed them.

19 Are there any corrections that need to be made to the
20 presentence investigation report, Mr. Doody?

21 MR. DOODY: No, Your Honor.

22 THE COURT: Mr. Kirchmeier?

23 MR. KIRCHMEIER: I don't believe so, Judge.

24 THE COURT: Does either side have anything by way of
25 evidence?

1 MR. KIRCHMEIER: Your Honor, pursuant to Marsy's Law, I
2 believe Julie Mikkelson who is the legal guardian of the
3 victim in this matter would like to speak.

4 THE COURT: Come on up, ma'am. And, ma'am, I'm going have
5 you take a seat right there and talk in that microphone so
6 that the court recording system can capture everything you
7 want to say.

8 JULIE MIKKELSON: My name is Julie Mikkelson, Clinton
9 Glidden's mother and Collin Glidden's grandmother, legal
10 guardian. I have been asked to write a victim impact
11 statement and also a letter on behalf of my son. Well,
12 what do I do? Well, here it is.

13 On November 30, 2020, Clinton fell asleep at the
14 wheel of his pickup with Collin as a passenger. Collin
15 was flown to Fargo, then to Minneapolis. He received a
16 large scalp wound, wound to the right side of his head,
17 degloving of the right arm, partial amputation to his
18 right index finger, and severed tendons in the right arm.

19 He had to have skin grafting done to his right arm
20 from his right leg. I spent the next 50 days by his side.
21 Then he was released into my care for another 40 days due
22 to his mother's drug abuse issues.

23 Since his release, Collin has had eight laser
24 treatments, six finger release with pins placed then
25 removed, and one scalp surgery. He will still need finger

1 release surgeries after growing spurts. He also has to
2 have tendon repair surgery around age nine as it's a
3 one-time try. And if therapy is not done, it will not
4 work and cannot be redone.

5 As skin grafting does not grow with you, you will
6 encounter additional issues down the road. Sounds like
7 the last laser treatment in April was probably be the last
8 one as it doesn't seem to be doing any more improvement.
9 Things were such a routine for Collin that he asked me the
10 other day, "When is my next surgery?"

11 Due to all the surgeries, therapy, and recovery time,
12 Collin has missed out or been delayed. Going to the lake
13 had to be held off until the cast, stitches, or laser
14 treatment had healed. Riding bike was pretty much behind
15 a year until the arm and hand was healed enough to be able
16 to use it without the risk of injuring it more.

17 He missed a fair amount of school having to go to
18 Minneapolis for surgeries and follow-ups, which puts him
19 behind or misses out on things the other kids do.

20 Two years ago he was removed from his mother's care
21 for the same issues, so he was placed into my care at that
22 time. As of February 2023, I now have full custody, legal
23 and physical custody of Collin.

24 Although this has nothing to do with Clinton's case,
25 I want you to know what Collin has been through in his

1 short eight years. He has been through hell. He has been
2 without one or both parents more than with them. Collin
3 has recovered very well, but does deal with some PTSD
4 issues. When he sees a flatbed trailer, he relives the
5 accident all over again. But through it all, Collin has
6 been a real trooper. He has not once blamed his daddy for
7 what has happened.

8 Since the accident, Clinton has chose to go down the
9 wrong path in dealing with it. Clinton has had some
10 struggles over the years, given second chances, but
11 unfortunately were not the right fit for him.

12 Clinton can be a good person. Clinton can be a good
13 daddy, and Clinton can be a hard worker. But mentally and
14 emotionally, these last three years have taken a toll on
15 him.

16 Do I think Clinton has to pay his dues for what he
17 has done? Absolutely. Do I think sitting behind bars for
18 X amount of years will do it? Absolutely not. I'm afraid
19 that will take him down further. Clinton needs help
20 emotionally, mentally, drug abuse, anger management.

21 Clinton and I have never had a good relationship, but
22 I have stood by him through it all with a lot of tough
23 love and hope that some day we can have the relationship I
24 so much want.

25 Please, I want and need my son back and Collin

1 desperately needs his daddy back. I really don't want to
2 see him go to jail. He's been there, did boot camp, none
3 of which has helped. I would like you to consider getting
4 him the help he needs in a court-ordered long-term
5 inpatient treatment facility where he can get what he
6 needs.

7 Thank you very much for your time and consideration.

8 THE COURT: Thank you, ma'am.

9 Mr. Kirchmeier, any other evidence?

10 MR. KIRCHMEIER: I don't believe so, Judge.

11 THE COURT: Mr. Doody, any evidence the defense wishes to
12 present?

13 MR. DOODY: No, Your Honor.

14 THE COURT: Comments, Mr. Kirchmeier?

15 MR. KIRCHMEIER: First off, Judge, the State would request
16 reimbursement to the South Dakota Drug Control Fund in the
17 amount of \$170 for testing costs and also reimbursement to
18 Roberts County in the amount of \$265 for the drawing and
19 testing of the blood sample.

20 Your Honor, I don't think it could be said any better
21 than Ms. Mikkelson said it. Mr. Glidden completely robbed
22 his son of his entire childhood based upon his actions.

23 Now, I take issue with the characterization that it
24 was Mr. Glidden nodding off at the wheel that caused the
25 accident. Because when the Court looks at the blood

1 sample that was taken in this matter, Mr. Glidden still
2 had 582 nanograms per milliliter of methamphetamine
3 traveling through his bloodstream at the time -- well, a
4 couple hours after the accident.

5 Now, normally, when we have someone with a blood
6 sample with the presence of methamphetamine, it's usually
7 no higher than say 60 or 70 if they've used within the
8 last three to four days.

9 What the number of almost 600 says to me is that the
10 use was closer in time to the accident and that it's very
11 likely that Mr. Glidden was, in fact, still under the
12 influence of methamphetamine when he was operating the
13 car, which led to it ramping off of a tilt trailer,
14 hitting the ground, rolling multiple times, scalping the
15 young child in the car, as well as de-gloving his one arm.

16 The Court was provided with the colored photos of the
17 injuries that were sustained by Collin. Judge, I wouldn't
18 wish that upon my worst enemy, especially a young child.
19 The -- Collin has been robbed of being able to do things
20 with his friends. He's been robbed of normal childhood
21 experiences. And it's all because of his father's
22 methamphetamine use.

23 While this case has been pending as noted in the PSI,
24 Mr. Glidden has not changed his behavior one bit. Not
25 only was he absconding from this case, a warrant was

1 active for well over a year. While he was absconding, he
2 was convicted of three additional felonies in the State of
3 Minnesota bringing his lifetime felony count to seven.

4 Now, we've had people here today that were arrested
5 for misdemeanors while they were out on bond and the Court
6 found that that was an aggravating circumstance as far as
7 a prison sentence is concerned. Being arrested and
8 convicted of three separate felonies while absconding from
9 a domestic violence violent felony in another state is
10 very alarming.

11 Based upon the terrible, terrible facts of this
12 situation, as well as the way that Mr. Glidden has behaved
13 while out on bond, Your Honor, the State would recommend
14 to the Court a penitentiary sentence of 15 years with two
15 of those years being suspended.

16 THE COURT: Thank you, Mr. Kirchmeier.

17 Comments, Mr. Doody?

18 MR. DOODY: Yes, Your Honor. Mr. Glidden is a 34-year-old
19 male. He lives in Windom, Minnesota. He has some work
20 history, which came out in the presentence investigation.
21 So he is capable of earning a living for himself and for
22 his son and other children that he's taken care of.

23 He is a graduate from Windom High School in 2009.
24 He's been employed, as I mentioned earlier, at Service
25 Master, Frederick Seeds, Tri-State Gen, and Glidden

1 Construction.

2 His financial situation isn't the best in the world,
3 but it looks like he can afford his bills and pay for
4 them. He is also engaged.

5 Since this incident, he became engaged. The --
6 although the past criminal history is significant, it
7 should be noted that the State of Minnesota, knowing many
8 of these things, gave him probation on all of his cases,
9 including the three most recent cases.

10 Judge, Mr. Glidden has also received numerous letters
11 of support, even the testimony today for the victim
12 indicated that they did not want Mr. Glidden removed from
13 the child's life, that it is important for the child that
14 Mr. Glidden stay in touch with the child.

15 Is there a methamphetamine use problem? Absolutely.
16 But I think those issues can be properly addressed outside
17 of the confines of the state penitentiary. My client is
18 requesting a penitentiary sentence of one year with credit
19 for eight months.

20 'THE COURT': Thank you, Mr. Doody.

21 Mr. Glidden, is there anything you'd like to say on
22 your own behalf? You don't have to, of course, but you
23 can if you'd like. And I would note that I have read the
24 comments that you included with the presentence
25 investigation report. Is there anything else you'd like

1 to say?

2 THE DEFENDANT: Yeah. I don't deny anything that's been
3 said here today. Do I need help? Yes. I've been to
4 prison twice in Minnesota, jail time numerous over there
5 for anywheres from a month to six. And, obviously, it's
6 been more of a problem than maybe going to treatment.

7 I'm not against going treatment for a long-term
8 period of time. If given the opportunity, I would
9 definitely try to make the best of it, better than what
10 I've been doing for basically my whole life.

11 I'm -- it's -- I'm ashamed of what I did to my son.
12 I didn't go out that day to try and hurt him.

13 THE COURT: Thank you, sir. Well, I am required to
14 acquire a thorough acquaintance with the character and
15 history of the person before me by considering the
16 defendant's general moral character, mentality, habits,
17 social environment, tendencies, age, aversion or
18 inclination to commit crime, life, family, occupation, and
19 previous criminal record, as well as the rehabilitative
20 prospects of the defendant. And I have done so here.

21 Mr. Glidden is 34 years old. He has pled guilty to
22 child abuse of a child less than seven years old at the
23 time the offense was committed. He's been in custody for
24 over 150 days as of today's date.

25 As Mr. Doody did correctly note, Mr. Glidden did

1 graduate from Windom High School back in 2009. He is not
2 currently employed, but has been employed previously.
3 When asked how drugs and alcohol have affected his life,
4 Mr. Glidden indicated, quote, "In almost every way
5 possible," end quote.

6 I would agree with that. Mr. Glidden told the
7 presentence writer that he did complete a chemical
8 dependency evaluation but that there were no treatment
9 recommendations made for him. I find that hard to
10 believe, preposterous, frankly.

11 THE DEFENDANT: Your Honor, if I may, that was because at
12 the time I was in -- I was in custody for six months and I
13 only based it off so long and because I'd been sober for
14 six months in jail. That's what she told me.

15 THE COURT: Mr. Glidden has seven felony convictions.
16 He's been to prison two times. Those felonies include
17 distribution of marijuana from 2012, theft of a motor
18 vehicle from 2012, he received 10 years of probation and
19 was revoked and sent to prison for eight months. Then in
20 2018, he was convicted of possessing a firearm while being
21 a convicted felon. He received probation on that offense,
22 but then he was sent to prison.

23 In 2023, he was convicted of first-degree damage to
24 property, put on five years of probation in Minnesota. In
25 March of this year there's an offense of fleeing a police

1 officer in a motor vehicle. He was put on three years of
2 probation there. Again, that's also out of Minnesota.
3 And then in May of this year, there's a theft of a vehicle
4 out of Minnesota. He was placed on five years of
5 probation for that.

6 Of significance, as far as the Court's concerned,
7 Mr. Glidden was on bond for the present case that he
8 appears before me on when the three felonies he pled
9 guilty to were committed, those being the ones from
10 Minnesota in February of 2023, March of this year, and May
11 of this year.

12 Mr. Glidden, your mother did an outstanding job, as
13 far as I'm concerned, advocating for your child and for
14 you. I don't dispute for a moment that you didn't intend
15 to hurt your child that day. And I recognize that
16 whatever sentence and punishment I impose on you will
17 probably never be as bad as the punishment you're going to
18 impose on yourself because of the guilt that you have.

19 But this is far worse than the child abuse cases I've
20 seen where somebody is driving drunk with a child in a
21 car. The investigative reports in this matter include the
22 highway patrol summaries and those note that investigation
23 on the scene and witness statements revealed that the
24 vehicle driven by the defendant was traveling north on
25 Interstate 29 at approximately 80 miles per hour.

1 The witnesses stated that they observed the vehicle
2 drift all over the road and watched as it struck a tilt
3 trailer on the side of the road. The vehicle vaulted off
4 the trailer, landed on its roof, skidded across the
5 interstate, rolled approximately three times before coming
6 to rest on its wheels. During that crash, the child who
7 was four years old at the time was partially ejected from
8 the vehicle. And his injuries were significant.

9 Trooper Miller in his report writes that the young
10 boy, the victim in this case, was being held by his father
11 the defendant. And Trooper Miller noticed the right arm
12 of the child was mangled. The flesh and skin had been
13 de-gloved from the elbow to the hand exposing muscle
14 tissue, tendons, and bone.

15 Trooper Miller also noted that the four-year-old
16 child had a severe head injury and was bleeding from the
17 head. The skin had been scraped away and Trooper Miller
18 could see parts of the skull that were exposed. In fact,
19 the injuries were so severe that Collin was life-flighted
20 to Sanford in Fargo and he was further life-flighted to
21 the Hennepin County Hospital for life-threatening
22 injuries. Frankly, it's a miracle, sir, that Collin is
23 still alive.

24 I agree with Mr. Kirchmeier. Your son has been
25 robbed of a lot of things that children should get to do

1 because of your actions. This is not an unfortunate case
2 of a car accident which happens where people drive and
3 tires blow out or other car accidents happen. This was a
4 result of you using drugs and almost killing your
5 four-year-old son.

6 Again, it's a miracle that he's alive. And everybody
7 in this courtroom is extremely happy for that. But he has
8 had to endure medical treatment after medical treatment.
9 He has been robbed of things that any child should get to
10 do. The one person who was supposed to protect him was
11 you, sir, and you failed to do that.

12 It is not lost on me the comments of your mother as
13 your mother and of your son's guardian. I recognize that
14 if I sentence you to any term of years in the penitentiary
15 that takes you away from your son. And that affects him.
16 Frankly, the person I want to affect the least in this in
17 a negative way is your son.

18 But part of a sentence also has to deter the public.
19 And it has to send a message that if you engage in this
20 kind of conduct there's going to be consequences. And so
21 the question is what is a sentence that is sufficient but
22 not greater than necessary to achieve the goals of
23 punishment, rehabilitation, and deterrence.

24 I'll be perfectly candid with you, Mr. Glidden. This
25 is a very difficult case for me, probably one of the most

1 difficult I've had since I've been on the bench because of
2 whatever I do ultimately affects your son. Your son
3 should have his dad there growing up, but you made choices
4 that affect that.

5 The day you chose to drive on the interstate with
6 your son in the vehicle under the influence, you not only
7 took your life and your son's life into your hands, but
8 you took the lives of everybody else on the road in your
9 hands.

10 You have a significant criminal history, as far as
11 I'm concerned, seven felonies. You're 34 years old and
12 you have seven felonies. And as far as I'm concerned, you
13 just don't seem to learn from the chances you've been
14 given. The underlying facts of this are egregious to me.
15 The fact that while you were on bond for this case you
16 picked up three new separate felony charges in Minnesota,
17 all of that leads to the fact that I don't think you're a
18 good candidate for supervision.

19 And so it's going to be the judgment and sentence of
20 the Court that you are sentenced to 15 years of custody in
21 the state penitentiary. I am going to suspend six of
22 those years. You're going to get credit for time served
23 up to today's date.

24 You're going to be assessed a fine of \$500, court
25 costs of \$116.50. You're going to need to repay for

1 testing costs the amount of \$170 and repay the county for
2 \$265 or, I should say, in the amount of \$265 for other
3 costs.

4 You'll need to provide a sample of your DNA if you
5 have not done so already. You're going to need to repay
6 Roberts County for the cost of any court-appointed
7 attorney's fees.

8 The conditions of your suspended time are going to be
9 that you follow the rules and regulations of the
10 Department of Corrections. I am going to give you credit
11 for time served up to today's date.

12 Mr. Kirchmeier, anything I missed that you thought I
13 was going to cover?

14 MR. KIRCHMEIER: The domestic violence assessment, Judge.

15 THE COURT: Thank you, Mr. Kirchmeier.

16 That would also be a condition of your sentence.

17 Anything else, Mr. Kirchmeier?

18 MR. KIRCHMEIER: No.

19 THE COURT: Mr. Doody?

20 MR. DOODY: No, Your Honor.

21 THE COURT: All right. Good luck to you, sir. We're in
22 recess in this matter.

23 (WHEREUPON, the foregoing proceedings were concluded.)

24

25

1 IN CIRCUIT COURT)
2 :SS TRANSCRIBER'S CERTIFICATE
3 COUNTY OF ROBERTS)
4

5 I, Kelli Lardy, Official Court Reporter in the
6 Fifth Judicial Circuit of the State of South Dakota, hereby
7 certify that the transcript of proceedings in the
8 above-entitled action is a true and accurate transcript of
9 the electronic recording of the proceedings.

10 Dated this 23rd day of August, 2024.

11
12
13
14 /s/ Kelli Lardy

15 KELLI LARDY, RPR
16 My Commission Expires: 10/21/28
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30747

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

CLINTON ROY GLIDDEN,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
ROBERTS COUNTY, SOUTH DAKOTA

THE HONORABLE MARSHALL C. LOVRIEN
CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

MARTY J. JACKLEY
ATTORNEY GENERAL

Erin E. Handke
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

Robert J. Doody
Doody Law Office
P.O. Box 307
Sisseton, SD 57262
Telephone: (605) 698-3060
Email: robert@doodylawoffice.com

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed July 9, 2024

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT.....	1
JURISDICTIONAL STATEMENT	1
STATEMENT OF LEGAL ISSUE AND AUTHORITIES.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
ARGUMENT	
THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT IMPOSED A FIFTEEN-YEAR PRISON SENTENCE AND SUSPENDED SIX YEARS.....	5
CONCLUSION.....	9
CERTIFICATE OF COMPLIANCE.....	10
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

STATUTES CITED:	PAGE
SDCL 22-18-36.....	2
SDCL 22-42-5	2
SDCL 22-42-5.1.....	2
SDCL 22-42-6	2
SDCL 23A-32-2	2
SDCL 24-11-47(2).....	2
SDCL 25-10-34.....	2
SDCL 26-10-1	2
SDCL 32-23-1	2

CASES CITED:

<i>State v. Arabie</i> , 2003 S.D. 57, 663 N.W.2d 250	6
<i>State v. Blair</i> , 2006 S.D. 75, 721 N.W.2d 55	5
<i>State v. Bruce</i> , 2011 S.D. 14, 796 N.W.2d 397.....	5, 6
<i>State v. Chipps</i> , 2016 S.D. 8, 874 N.W.2d 475.....	5
<i>State v. Delehoy</i> , 2019 S.D. 30, 929 N.W.2d 103	5
<i>State v. Holler</i> , 2020 S.D. 28, 944 N.W.2d 339	2, 5
<i>State v. Klinetobe</i> , 2021 S.D. 24, 958 N.W.2d 734	6
<i>State v. Lemley</i> , 1996 S.D. 91, 552 N.W.2d 409	8
<i>State v. McKinney</i> , 2005 S.D. 74, 699 N.W.2d 460	6
<i>State v. Mitchell</i> , 2021 S.D. 46, 963 N.W.2d 326.....	2, 6

State v. Rice, 2016 S.D. 18, 877 N.W.2d 75.....2, 5, 6
State v. Toavs, 2017 S.D. 93, 906 N.W.2d 3542, 5, 8

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30747

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

CLINTON ROY GLIDDEN,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Appellant, Clinton Roy Glidden, is referred to as “Glidden.” Appellee, the State of South Dakota, is referred to as “State.”

References to documents are designated as follows:

Settled Record (Roberts County Criminal File
No. 20-592) SR

Preliminary Hearing Transcript (December 15, 2020)..... PH

Sentencing Transcript (July 1, 2024)ST

Glidden’s Brief.....GB

All document designations are followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

Glidden appeals the Judgment of Conviction entered by the Honorable Marshall C. Lovrien, Circuit Court Judge, Fifth Judicial Circuit, on July 3, 2024. SR 233-35. Glidden filed his Notice of Appeal

on July 9, 2024. SR 238. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT IMPOSED A FIFTEEN-YEAR PRISON SENTENCE AND SUSPENDED SIX YEARS?

The circuit court sentenced Glidden to fifteen years in prison, with six years suspended, after he pleaded guilty to one count of Abuse or Cruelty to A Minor, Less Than Seven Years of Age (Domestic).

State v. Holler, 2020 S.D. 28, 944 N.W.2d 339

State v. Mitchell, 2021 S.D. 46, 963 N.W.2d 326

State v. Rice, 2016 S.D. 18, 877 N.W.2d 75

State v. Toavs, 2017 S.D. 93, 906 N.W. 2d 354

STATEMENT OF THE CASE

The State charged Glidden by Complaint with:

- Abuse or Cruelty to A Minor, Less Than Seven Years of Age (Domestic), contrary to SDCL 26-10-1 and 25-10-34, a Class 3 felony;
- Vehicular Battery (Domestic Abuse), contrary to SDCL 22-18-36 and 25-10-34, Class 4 felony;
- Possession of a Controlled Substance While in Jail, contrary to SDCL 24-11-47(2), a Class 4 felony;
- Possession of a Controlled Substance, contrary to SDCL 22-42-5, a Class 5 felony;
- Unauthorized Ingestion of a Controlled Substance, contrary to SDCL 22-42-5.1, a Class 5 felony;
- Driving under the Influence, contrary to SDCL 32-23-1, a Class 1 misdemeanor; and
- Possession of Marijuana, contrary to SDCL 22-42-6, a Class 1 misdemeanor.

SR 10-16. The State also filed an Information, alleging Glidden was a habitual offender with four prior felony convictions. SR 67.

The parties reached a plea agreement and Glidden pleaded guilty to one count of Abuse or Cruelty to A Minor, Less Than Seven Years of Age (Domestic). SR 381. The remaining charges and the habitual offender information were dismissed. See SR 380-89. The court sentenced Glidden to fifteen years in prison and suspended six of those years. SR 233-35.

STATEMENT OF FACTS

On November 30, 2020, Jessica Cloud was traveling northbound on Interstate 29, when she noticed a blue pickup¹ swerving on the road. PH 4. The pickup swerved to the right side of the road where it ramped off a trailer and flipped over. *Id.* The pickup rolled several times, eventually landing on its tires. PH 8. The driver of the pickup was Glidden and his four-year-old son, C.G. (DOB 05/11/2016), was a passenger. PH 9.

When law enforcement arrived at the scene, Glidden was mumbling, and his speech was thick and slurred. PH 10. Law enforcement noticed Glidden smelled like methamphetamine. *Id.* Glidden denied any drug use. *Id.* But law enforcement found methamphetamine in the backseat of the pickup. PH 12. Glidden also had methamphetamine in his pocket. PH 24.

¹ The pickup was also traveling northbound. PH 11.

Glidden was transported to the hospital, where law enforcement performed field sobriety tests. PH 22. Glidden failed the Horizontal Gaze Nystagmus test. *Id.* His eyes were also bloodshot, and his pupils were dilated. PH 27. Law enforcement determined he was an impaired driver and obtained a search warrant for Glidden's blood and urine. PH 22-23. Test results showed he had 68,044 ng/ml of methamphetamine in his system. SR 169 (Sealed Document).

During the crash, C.G. was thrown from the vehicle.² PH 9. The skin from his hand to his elbow was gone, exposing his muscle tissue and bone. *Id.* He also suffered a head injury, where part of his skull was exposed. *Id.* C.G. was rushed to the hospital in Fargo, North Dakota, but he was then flown to Minneapolis, Minnesota, because of the severity of his injuries. ST 3. C.G. needed a skin graft on his right arm and right leg. *Id.* He also experienced a partial amputation of his right index finger. *Id.*

Since the crash, C.G. has undergone "eight laser treatments, six finger release with pins placed then removed, and one scalp surgery." *Id.* He will need more finger release surgeries as he continues to grow. ST 3-4. He will also need more skin graft surgeries, as the skin graft will not grow with him. ST 4. When he is nine, C.G. will need tendon repair surgery and continued therapy to ensure the surgery is successful. *Id.*

² C.G. was in a booster seat, however, under state law, he should have been in a full-restraint car seat. PH 12.

ARGUMENT

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION
WHEN IT IMPOSED A FIFTEEN-YEAR PRISON SENTENCE
AND SUSPENDED SIX YEARS.

A. *Standard of Review.*

“A circuit court’s sentencing decision is generally reviewed for an abuse of discretion.” *State v. Holler*, 2020 S.D. 28, ¶ 10, 944 N.W.2d 339, 342 (citing *State v. Chipps*, 2016 S.D. 8, ¶ 31, 874 N.W.2d 475, 486). “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. Delehoj*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 109. Consequently, “a sentence within the statutory maximum [generally] will not be disturbed on appeal.” *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (quoting *State v. Bruce*, 2011 S.D. 14, ¶ 28, 796 N.W.2d 397, 406). Also, “[a]bsent specific authority, 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).

B. *The Circuit Court Did Not Abuse Its Discretion When It Sentenced Glidden to Fifteen Years in Prison and Suspended Six Years.*

When sentencing a defendant “circuit courts must look at both the person before them and the nature and impact of the offense.”

State v. Mitchell, 2021 S.D. 46, ¶ 29, 963 N.W.2d 326, 333. The court is also required to “accurately assess the ‘true nature of the offense.’”

Mitchell, 2021 S.D. 46, ¶ 30, 963 N.W.2d at 333 (quoting *State v. Klinetobe*, 2021 S.D. 24, ¶ 36, 958 N.W.2d 734, 742).

“In fashioning an appropriate sentence, courts look to the character and history of the defendant. This requires an examination of a defendant’s ‘general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record’” *Rice*, 2016 S.D. 18, ¶ 27, 877 N.W.2d at 84 (quoting *Bruce*, 2011 S.D. 14, ¶ 29, 796 N.W.2d at 406). The circuit courts also have a broad range of evidence they may consider to learn about a defendant. *State v. McKinney*, 2005 S.D. 74, ¶ 17, 699 N.W.2d 460, 466 (citing *State v. Arabie*, 2003 S.D. 57, ¶ 21, 663 N.W.2d 250, 257). This broad range includes uncharged conduct and crimes for which a defendant was acquitted. *Id.* at 465-66.

Prior to imposing its sentences, the circuit court examined Glidden’s background, criminal history, age, and prospects for rehabilitation. The circuit court reviewed Glidden’s presentence investigation report (PSI), which is 117 pages long. SR 114-231 (Sealed

Document). The PSI included information about Glidden's family, life, and criminal record. *Id.* The court also reviewed the law enforcement reports, letters of support, and a victim impact letter. *Id.*

The circuit court considered that Glidden was on bond for this case when he accrued three more felony convictions. ST 12. The court agreed that he did not think Glidden intended to cause injuries to his child that day, but also noted that this was "far worse than the child abuse cases [its] seen where somebody is driving drunk with a child in a car." *Id.* Adding that "it's a miracle . . . that [C.G.] is still alive." ST 14. The court noted this was not a typical car crash, it was a result of Glidden's drug use, which almost killed his child. *Id.*

The court weighed several factors, including punishment, rehabilitation, and deterrence. *Id.* It found the facts of the case were egregious and it felt that Glidden had not learned from any of the previous chances he had been given. ST 15. Glidden was 34 years old at the time of sentencing with seven felonies. Three of which he committed while on bond for the pending case. *Id.*

Glidden argues the court abused its discretion by placing "more emphasis on the criminal past than any other element [it] needs to consider" GB 8. Glidden also criticizes the court for not considering the possibility of rehabilitation or his family life. *Id.* But these critiques are not an accurate reflection of the record. The court did consider rehabilitation and Glidden's family life.

While “retribution, deterrence, incapacitation, and rehabilitation are each legitimate penological goals[,]” “none of these goals have preeminence over the others.” *Toavs*, 2017 S.D. 93, ¶ 10, 906 N.W. 2d at 357 (internal citations omitted). And because the circuit court needs to render a sentence on a case-by-case basis, there may be cases in which the court need not consider rehabilitation prospects at all. *Id.* (internal citations omitted).

Even so, the circuit court did consider Glidden’s rehabilitation prospects. It read the PSI, which addressed how Glidden got a chemical dependency evaluation that resulted no treatment recommendations. ST 11. The court found this result difficult to believe. *Id.* The court also discussed how it was concerned that Glidden racked up three new felony convictions while out on bond. ST 11-12.

In his argument, Glidden fails to recognize that a nine-year prison sentence does provide him an opportunity for rehabilitation. *Toavs*, 2017 S.D. 93, ¶ 13, 906 N.W.2d at 358 (citing *State v. Lemley*, 1996 S.D. 91, ¶ 15, 552 N.W.2d 409, 413) (finding a term of years allowed for the prospect of rehabilitation). He will be 45 years old (if he serves the full nine-year sentence initially imposed), giving him plenty of time to turn his life around and be a productive member of society outside the prison walls.

The circuit court also considered Glidden’s family life when imposing its sentence. At sentencing and in the PSI, the court was

informed that Glidden was engaged. SR 116 (Sealed Document); ST 9. His fiancé even wrote a letter in support of him. ST 122 (Sealed Document). The court also recognized that a prison sentence would take Glidden away from his son, and the last person the court wanted to affect was C.G. ST 14. So, the circuit court did consider Glidden's family life.

Ultimately, the circuit court considered many factors including Glidden's "moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record, as well as the rehabilitative prospects[.]" ST 10. It therefore did not abuse its discretion in sentencing Glidden to fifteen years in prison, with six years suspended.

CONCLUSION

The State respectfully requests that Glidden's conviction and sentence be affirmed.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

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 1,753 words.

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

Dated this 4th day of December 2024.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of December 2024, a true and correct copy of Appellee’s Brief in the matter of *State of South Dakota v. Clinton Roy Glidden* was served electronically through Odyssey File and Serve upon Robert J. Doody at robert@doodylawoffice.com.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General