

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

STATE OF SOUTH DAKOTA,)	ORDER REMANDING FOR THE
Plaintiff and Appellee,)	ISSUANCE OF AN AMENDED
)	JUDGMENT
vs.)	
)	#29532
MATTHEW CHRISTOPHER KURTENBACH,)	
Defendant and Appellant.)	

The Court has considered all the briefs filed in the above-entitled matter, together with the appeal record, and has concluded, pursuant to SDCL 15-26A-87.1(A)(4) and (C)(4), that good cause exists for a summary disposition. By pleading nolo contendere to the charge underlying the Judgment being appealed, Appellant has waived this Court's review of all non-jurisdictional issues and the first two issues raised in this appeal relating to Appellant's motion for sanctions against the prosecutor and to the setting of no bail and cash-only bail do not pertain to defects in this Court's jurisdiction. See *LaCroix v. Fluke*, 2022 S.D. 29, ¶ 25, 975 N.W.2d 150, 160. Further, even if Appellant had not waived review of the first issue, the relief Appellant seeks (sanctions for an alleged violation of the Rules of Professional Conduct in the conduct of grand jury proceedings) cannot be afforded in a direct appeal from a criminal conviction. As to Appellant's third issue, this Court lacks

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jurisdiction to consider Appellant's challenge to the determination of his initial parole date. See SDCL 24-15A-33 (inmates aggrieved by an established parole date may apply for a review of the date with the South Dakota Board of Pardons and Paroles); *Petersen v. South Dakota Board of Pardons and Paroles*, 2018 S.D. 39, ¶¶ 7-12, 912 N.W.2d 841, 842-44 (a court's appellate jurisdiction to review an inmate's parole date "depends on compliance with conditions precedent set by the legislature"); *Stumes v. Delano*, 508 N.W.2d 366, 373 (S.D. 1993) (declining to consider an inmate's constitutional challenge to law applied by the Board of Pardons and Paroles because of the failure to timely appeal under SDCL chapter 1-26).

However, as identified by Appellant in his fourth issue, the circuit court did not, after finding the existence of aggravating factors that warranted departure from presumptive probation, include the aggravating factors in the dispositional order as required by SDCL 22-6-11. This "type of clerical error does not require a new trial or resentencing[,] " but it does necessitate a remand. *State v. Flowers*, 2016 S.D. 63, ¶ 10, 885 N.W.2d 783, 786.

Now, therefore, it is

ORDERED that the matter be remanded for the circuit court to amend the dispositional order to include the aggravating factors


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factors considered on the record at sentencing. In all other respects, the judgment of conviction is affirmed.

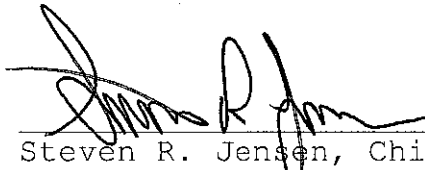
DATED at Pierre, South Dakota, this 6th day of September, 2022.

BY THE COURT:

ATTEST:



Clerk of the Supreme Court
(SEAL)



Steven R. Jensen, Chief Justice

(Justices Janine M. Kern and Scott P. Myren disqualified.)

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Mark E. Salter, Patricia J. DeVaney and Circuit Court Judges Camela Theeler and Tami Bern.

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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Clerk