

IN THE SUPREME COURT

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

OF THE

JAN 16 2024

STATE OF SOUTH DAKOTA

Shif A. Jensen Legal
Clerk

* * * *

STATE OF SOUTH DAKOTA,)
Plaintiff and Appellee,)
vs.)
RACHAEL AMBER MCCARTY,)
Defendant and Appellant.)

ORDER DIRECTING ISSUANCE OF
JUDGMENT OF AFFIRMANCE

#30263

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 appeal is without merit on the following grounds: 1. that the issues on appeal are clearly controlled by settled South Dakota law or federal law binding upon the states, and 2. that the issues on appeal are ones of judicial discretion and there clearly was not an abuse of discretion (SDCL 15-26A-87.1(A) (1) and (3)), now, therefore, it is

ORDERED that a judgment affirming the Judgment of the lower 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*, 202 S.D. 67, ¶ 30, 952 N.W.2d, 1213, 120.)]

DATED at Pierre, South Dakota, this 16th day of January, 2024.

BY THE COURT:

ATTEST:

Steven R. Jensen
Steven R. Jensen, Chief Justice

[Signature]
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.