

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

LEE TODD MALCOLM,)	ORDER DIRECTING ISSUANCE OF
Petitioner and Appellant,)	JUDGMENT OF REVERSAL
)	
vs.)	#30521
)	
BRENT FLUKE, Warden,)	
SOUTH DAKOTA STATE PENITENTIARY,)	
Respondent and Appellee.)	

The Court considered the briefs filed in the above-entitled matter, together with the appeal record. The Court concluded pursuant to SDCL 15-26A-87.1(C) that the order from which appeal is taken should be reversed on the ground that the habeas court erroneously dismissed the Petitioner's ineffective assistance of counsel claims that were premised on the allegations that his trial counsel failed to move to suppress evidence obtained from the smartphone and failed to ascertain the viability of the advance consent theory or pursue other theories of defense. These claims, as pled in the petition, sufficiently stated a claim to survive dismissal under SDCL 15-6-12(b)(5). *Steiner v. Weber*, 2011 S.D. 40, 815 N.W.2d 549.

Therefore, it is

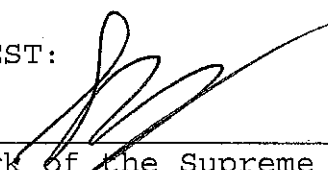
ORDERED that the circuit court's dismissal of the petition for writ of habeas corpus is reversed, and the case is remanded to the circuit court for further proceedings on the petition.

#30521, Order

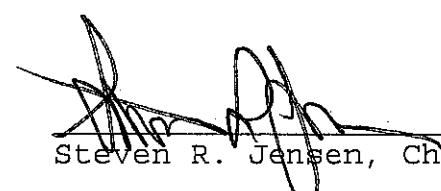
DATED at Pierre, South Dakota, this 4th day of September,
2024.

BY THE COURT:

ATTEST:



Clerk of the Supreme Court
(SEAL)



Steven R. Jensen, Chief Justice

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

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

SEP 04 2024


Clerk