

## **APPENDIX – A**

**South Dakota Supreme Court Affirmance of Dismissal**

**South Dakota Fourth Judicial Circuit Court's Dismissal**

SUPREME COURT  
IN THE SUPREME COURT STATE OF SOUTH DAKOTA  
FILED

OF THE

NOV 13 2023

STATE OF SOUTH DAKOTA

*Shirley A. Johnson, Clerk*

\* \* \* \*

GARLAND RAY GREGORY, JR., ) ORDER DIRECTING ISSUANCE OF  
Petitioner and Appellant, ) JUDGMENT OF AFFIRMANCE  
vs. )  
STATE OF SOUTH DAKOTA, )  
Respondent and Appellee. )  
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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 ground that the issues on appeal are clearly controlled by settled South Dakota law or federal law binding upon the states (SDCL 15-26A-87.1(A)(1)), now, therefore, it is

ORDERED that a judgment affirming the dismissal of the circuit court be entered forthwith.

DATED at Pierre, South Dakota, this 13th day of November, 2023.

BY THE COURT:

*Steven R. Jensen*  
Steven R. Jensen, Chief Justice

ATTEST:

*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.

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF LAWRENCE )  
IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

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GARLAND RAY GREGORY, JR,  
Petitioner,  
v.

40CIV23-88

STATE OF SOUTH DAKOTA,  
Respondent.

MEMORANDUM OF OPINION ON THE  
PETITION FOR WRIT OF ERROR  
CORAM NOBIS

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On April 21, 2023, the above-captioned Petitioner filed a Petition for Writ of Error Coram Nobis, *pro se*. The Court, having reviewed the applicable law, the extensive history of this case, and the arguments of the Petitioner, being fully advised on the matter, and with good cause issues its Memorandum of Decision.

OPINION

The Petitioner outlines four separate claims of error under the Writ of Error Coram Nobis Petition. This Court will address each of those claims separately.

In South Dakota, the jurisdiction of the court to grant relief under a writ of error coram nobis is limited in scope. The relief allowed under the writ of coram nobis pertains only to errors of fact or fundamental jurisdictional errors. *Gregory v. Class*, 1998 S.D. 106, ¶ 18, 584 N.W.2d 873, 878. The said errors must not have been known to the petitioner at the time of the proceedings or were not revealed to him due to fraud or coercion. *Id.* (citing *Petition of Brockmueller*, 374 N.W.2d 135, 137 (S.D. 1985)). A proceeding that is challenged by this writ is presumed to be correct and the burden is on the petitioner to show otherwise. “Those seeking coram nobis relief must carefully study the procedural history of the case, ‘because past events exert a decisive control over which issues may or may not be raised ... [and trial records] have to be examined in order to ascertain whether a claim is barred by res judicata or collateral estoppel.’” *Id.* (quoting *Morgan Prickett, The Writ of Error Coram Nobis in*

*California*, 30 Santa Clara L. Rev. 1 (1990), at 24). Relief under the writ of coram nobis will only be “granted when circumstances compel such action to achieve justice.” *State v. Davis*, 515 N.W.2d 205, 207 (S.D. 1994).

Petitioner’s first claim states “[t]he state of South Dakota’s Fourth Judicial Circuit, County of Lawrence, filed an insufficient Information, and never acquired subject matter jurisdiction in the criminal complaint *State v. Gregory*, CR. 79-250, resulting in a void judgment.” *Petition for writ of error coram nobis*. As indicated by the review of the procedural history of this case, this isn’t the first time the Petitioner has brought a claim regarding a defective information. In *Gregory v. Class*, 1998 S.D. 106, this same Petitioner filed a writ of error coram nobis with the circuit court claiming eight different causes of action for relief. One of those claims alleged that the information by which the Petitioner was charged was insufficient because it did not define the elements of conspiracy. The Circuit Court dismissed the petition and the Petitioner appealed. On appeal, the South Dakota Supreme Court held that his claim for a defective information fails because it was not brought up in the prior proceedings. *Gregory v. Class*, 1998 S.D. 106, ¶ 21.

The Petitioner now comes before this Court seeking relief under the same theory he previously attempted which the Supreme Court denied. Not only is he barred from bringing this claim up again by res judicata or collateral estoppel because he failed to bring it up in his prior proceedings, his claim also does not merit relief. The South Dakota Supreme Court held that an error in an indictment or information is inadequate to merit relief under coram nobis. *Gregory v. Class*, 1998 S.D. 106, ¶ 21. Therefore, the first claim in his petition is **DISMISSED**.

Petitioner’s second claim states “[i]n *Gregory v. State*, 353 N.W.2d 777 (S.D. 1984), the Court failed to conclude the law, on its specific affirmative finding of petitioner meeting the burden of proof on one of the petitioner’s habeas claims, leaving habeas un-terminated, resulting in a void judgment.” *Petition for writ of error coram nobis*. The trial court has a duty to make findings upon every issue raised by pleadings, and its failure to do so is error; refusal or failure to find, however, may not be grounds for reversal if no prejudice to a substantial right is caused. *Stugelmayer*

*v. Ulmer*, 1977, 260 N.W.2d 236. Specifically, a habeas corpus court's findings of fact and conclusions of law may not be overturned unless they are clearly erroneous. *Davi v. Class*, 2000 S.D. 30, ¶ 15, 609 N.W.2d 107, 112. In *Gregory v. State*, 353 N.W.2d 777 (S.D. 1984), the same Petitioner as in the present case filed a petition for post-conviction relief with the trial court. The trial court entered an order denying relief, without issuing a separate finding of facts and conclusions of law. The Petitioner appealed the ruling and on the first appeal, the South Dakota Supreme Court remanded the case back to the trial court to enter its findings of facts and conclusions based upon the record, that had been made at the post-conviction hearing.

Following the entrance of the findings of facts and conclusions of law, the trial court again issued an order denying the petitioner's claim for post-conviction relief, and the petitioner once again appealed. On the second appeal, South Dakota having the opportunity to review the entire record, and the findings of facts and conclusions of law entered by the trial court affirmed the trial court's order denying post-conviction relief. The only way a court can overturn habeas corpus findings of facts and conclusions of law is if they are clearly erroneous. The fact that the South Dakota Supreme Court affirmed the order is indicative that it did not find such findings of facts and conclusions of law to be clearly erroneous; therefore, his second claim in his petition is **DISMISSED**.

For the sake of argument, even if the trial court did fail to "conclude the law" as the petitioner alleges in *Gregory v. State*, refusal or failure to find or conclude the law that is not grounds for reversal if no prejudice to the substantial right is caused. *Stugelmayer v. Ulmer*, 1977, 260 N.W.2d 236. The burden is on the Petitioner to show that he was prejudiced by such error which he has failed to do.

Petitioner's third claim states "[t]he holding the South Dakota Supreme Court made in Gregory v. State, 353 N.W.2d 777 (S.D. 1984), has been overturned by subsequent South Dakota Supreme Court holdings, retroactively applicable to petitioner." *Petition for writ of error coram nobis*. The Petitioner indicated that *Gregory v. State*, 353 N.W.2d 777 (S.D. 1984) has been overturned by subsequent South Dakota Supreme Court cases but yet he fails to cite to any such cases. This

Court has done its due diligence in researching the history of *Gregory v. State*, and has failed to find any cases that overturn that case. Not only does the petitioner fail to cite to any cases which overturned *Gregory v. State*, he also fails to state what exactly was overturned and why relief is appropriate. The burden is on Petitioner to show that there is merit to his claim and he has failed to do that; therefore, his third claim in his petition is **DISMISSED**.

Petitioner's four and final claim states "[p]etitioner's life sentence inadvertently made a violation of the plea bargain, by a 2005 South Dakota Legislative Action capping the penalty (imprisonment) at fifty years. Retroactively applicable to petitioner, with some time off for good behavior, petitioner discharged the sentence no later than 21 October 2006, and petitioner's continued imprisonment violates the United States Constitution's Eighth Amendment." *Petition for writ of error coram nobis*. In *Gregory v. Class*, 1998 S.D. 106, ¶ 26 the South Dakota Supreme Court held that petitions for coram nobis do not cover issues of cruel and unusual punishment as defined by the Eighth Amendment of the United States Constitution; therefore, his fourth claim in his petition is improper under this petition and is hereby **DISMISSED**.

#### CONCLUSION

Based upon the above written opinion the Petitioner's Writ of Error Coram Nobis Petition is hereby **DISMISSED IN ITS ENTIRETY**.

Dated this 25th day of April, 2023.

BY THE COURT:



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Michael W. Day  
Presiding Circuit Court Judge

Attest:  
Latuseck, Carol  
Clerk



## APPENDIX – B

### Information

### Jury Instructions

STATE OF SOUTH DAKOTA )  
COUNTY OF LAWRENCE )  
STATE OF SOUTH DAKOTA, )  
Plaintiff, )  
vs. )  
GARLAND RAY GREGORY, JR. )  
and )  
JOHN CARL ARCHAMBAULT, )  
Defendants. )

IN CIV. JUIT COURT  
EIGHTH JUDICIAL CIRCUIT

INFORMATION FOR: Count I-  
Conspiring to Murder  
Count II - Murder by  
Premeditated Design  
VIOLATION OF SDCL 22-3-8 and  
22-16-4

Craig D. Grotenhause, as prosecuting attorney, in the name of and by authority of the State of South Dakota, makes and files this Information against Garland Ray Gregory, Jr. and John Carl Archambault, and charges as to:

That on or about the 1st day of November, 1979, in the County of Lawrence, State of South Dakota, Garland Ray Gregory, Jr. and John Carl Archambault did commit the public offenses of Count I - Conspiring to Murder, Count II - Murder by Premeditated Design, SDCL 22-3-8 and 22-16-4 in that Garland Ray Gregory, Jr. and John Carl Archambault: Count I - Comspiring to Murder

That on or about November 1, 1979, Garland Ray Gregory, Jr. and John Carl Archambault did willfully, unlawfully, and feloniously conspir with each other to commit the offense of premeditated murder, an offense against the State of South Dakota, and that said Garland Ray Gregory, Jr. and John Carl Archambault did the following overt acts to-wit: Did receive a 12 gauge shot gun belonging to Ronald Brumbaugh and load the same with five shells; did receive a Volkswagen automobile

from said Ronald Brumbaugh and transport Michael Young to a county road in Lawrence County, South Dakota, and did murder said Michael Young at that point by shooting said Michael Young with a shot gun and did at that time remove identification from the body of said Michael Young and destroy the same, and did thereafter fabricate evidence and statements to conceal said murder. Contrary to SDCL 22-3-8.

Count II - Murder by Premeditated Design

Did willfully, unlawfully and feloniously effect the death of human being without authority of law and with a premeditated design to effect the death of the person killed, to-wit:

Did willfully, unlawfully and feloniously murder Michael D. Young by means of a firearm with out authority of law and with a premeditated design to effect the death of said person. Contrary to SDCL 22-16-4.

## CONSPIRACY - ESSENTIAL ELEMENTS

The elements of the offense of conspiracy as charged in the (information, indictment), each of which the state must prove beyond a reasonable doubt, are:

1. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant entered into an agreement with \_\_\_\_\_ (or more than one person) to commit the offense of \_\_\_\_\_.
2. That the defendant did so with the intent that the object or purpose of the agreement be performed.
3. That the defendant or another member of the conspiracy committed at least one of the overt acts charged in the (indictment) (information).
4. That such overt act was done in furtherance of some object or purpose of the conspiracy.
5. That one of the overt acts must have occurred in \_\_\_\_\_ County. (insert county where charge is brought)

## Reference:

SDCL 22-3-8  
Iowa Uniform Criminal Instruction 602  
15A CJS, Conspiracy, § 45

## Comment:

Intent - Specific should be used with this instruction.

There must be a specific intent by the conspirators to do an unlawful act or to do a lawful act by unlawful means. This is true even though the conspiracy has for its object the commission of an offense which can be committed without any specific intent. A conspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself.

It is important to note as regards to element #3 that even though the state alleges many overt acts in the indictment or information, it need prove only one of the alleged overt acts to secure a conviction.

## **APPENDIX – C**

### **Change of Plea Hearing Transcript**

### **Statutes and Legislative Action Language**

13642

3 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
4 COUNTY OF LAWRENCE ) SS EIGHTH JUDICIAL CIRCUIT  
5 \*  
6 STATE OF SOUTH DAKOTA, \*  
7 Plaintiff, \* TRANSCRIPT OF  
8 vs. \* CHANGE OF PLEA  
9 GARLAND RAY GREGORY, JR., \* Volume 1 of 1  
0 Defendant. \* (Pages 1 to 11: March 13, 1980)

12 BEFORE: THE HONORABLE ROBERT A. MILLER,  
13 Circuit Judge, presiding at  
14 Deadwood, South Dakota, on  
March 13, 1980.

17 APPEARANCES: For the Plaintiff:  
18 Craig Grotenhause, Esq.  
19 State's Attorney  
Lawrence County  
Deadwood, South Dakota

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

APR 30 1982

the Defendant:  
Keith R. Smit, Esq.

Charles A. Wolsky, Esq.  
Morman, Smit, Shepard,  
Attorneys at Law  
Sturgis, South Dakota

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26 year 60

1980

1 BY THE COURT: The record should reflect that I was  
2 notified by Counsel yesterday, or the day before yesterday,  
3 that Mr. Gregory desired to appear before the Court to  
4 change a plea.

5 Is that an accurate statement, Counsel?

6 BY MR. GROTHOUSE: Yes, Your Honor, it is.

7 BY MR. SMIT: That's correct, Your Honor.

8 BY THE COURT: Okay. Now, I further understand that the  
9 change of plea applies to Count I of the Information;  
10 is that correct? It's a conspiracy charge?

11 BY MR. WOLSKY: That's correct, Your Honor.

12 BY MR. SMIT: That's correct, Your Honor.

13 BY THE COURT: I understand further there is a plea  
14 bargain in this case, and before we talk about changing  
15 the plea, I want the plea bargain put of record. Who is  
16 going to do it?

17 BY MR. GROTHOUSE: Counsel, would you do it, please.

18 BY MR. WOLSKY: Your Honor, the plea arrangement is that  
19 we contacted the State's Attorney and in our discussions  
20 with him, he indicated that the only plea that he would  
21 accept was a plea to murder with a life sentence. We  
22 told the State's Attorney that this was unacceptable to  
23 Garland Gregory and that the only thing that he would  
24 consider pleading guilty to was the charge of conspiracy.  
25 And the State's Attorney agreed later that he would

1 accept a plea to the crime of conspiracy but that it would  
2 only be if Garland Gregory was to receive a life sentence.  
3 And it was with that understanding that Mr. Gregory  
4 decided that he would plead to the conspiracy charge  
5 and we have so informed Mr. Gregory that the Court has  
6 indicated to us that he will be sentenced to a life  
7 sentence, and that this is also going to be what the  
8 State's Attorney will recommend.

9 BY THE COURT: Is that the extent of the plea bargain as  
10 you know it?

11 BY MR. WOLSKY: In addition to that, Your Honor, Mr.  
12 Gregory has agreed to talk to the State's Attorney and  
13 tell him all of the facts and circumstances regarding  
14 this crime, and in specific, give him any information  
15 which he may have with regard to Ron Brumbaugh's  
16 involvement in this matter and, if necessary, testify  
17 as to those facts and circumstances at some future trial  
18 in the action of the State of South Dakota versus Ronald  
19 Brumbaugh.

20 BY THE COURT: Is that the extent, then, of the plea  
21 bargain?

22 BY MR. WOLSKY: That is, Your Honor.

23 BY THE COURT: Mr. Grottenhouse, is that your understanding  
24 of the plea bargain?

25 BY MR. GROTHENHOUSE: Yes, Your Honor, that is my under-

1 standing; that the State would recommend a sentence of  
2 life for Mr. Gregory on this case, and I think that is a  
3 full reflection of everything we have talked about.

4 BY THE COURT: Mr. Gregory, you have heard the statement  
5 by your attorney and by the State's Attorney. Is that  
6 your understanding of the plea bargain?

7 BY THE DEFENDANT: Yes, sir.

8 BY THE COURT: And, Mr. Gregory, have you entered into  
9 that plea bargain with your attorney and the State's  
10 Attorney freely and voluntarily?

11 BY THE DEFENDANT: Yes, I have.

12 BY THE COURT: Okay. Have any threats or promises --  
13 well, before I ask you, you understand, and before I have  
14 advised you of all of your Constitutional and statutory  
15 rights, including your right to an attorney, your right  
16 to plead not guilty or persist in that plea, the right  
17 to confront and cross-examine witnesses against you,  
18 your right to a trial by jury, and your right not to be  
19 compelled to be a witness against yourself. You under-  
20 stand those rights?

21 BY THE DEFENDANT: I understand those rights.

22 BY THE COURT: And you understand those rights still  
23 exist today?

24 BY THE DEFENDANT: Yes, I do.

25 BY THE COURT: Do you understand, and I want you to under-

1 stand that a plea of guilty is a waiver of each and every  
2 one of those rights that I have outlined before, and  
3 which I outlined to you again today. Do you understand  
4 that?

5 BY THE DEFENDANT: I understand that.

6 BY THE COURT: Okay. Do you understand further that  
7 if you plead guilty there will be no further trial of  
8 any kind and the Court would proceed through the normal  
9 processes to impose sentence. Do you understand that?

10 BY THE DEFENDANT: Yes, I do.

11 BY THE COURT: You are further advised that the Court may  
12 ask you questions about the offense to which you have  
13 plead guilty and if I were to put you under oath and  
14 you would answer these questions on the record in the  
15 presence of your attorney, the answers could later be  
16 used against you on an offense of perjury. Do you  
17 understand that?

18 BY THE DEFENDANT: Yes, I understand that.

19 BY THE COURT: With that information that you have given  
20 to the Court and the Court has received, what plea do  
21 you desire to enter to Count I of the Information charg-  
22 ing you with the offense of conspiracy to commit murder?

23 BY THE DEFENDANT: Guilty.

24 BY THE COURT: Now, have any threats been made to you  
25 to get you to plead guilty?

1 BY THE DEFENDANT: No, they haven't.

2 BY THE COURT: Has anyone exerted any force or coercion  
3 upon you to get you to plead guilty?

4 BY THE DEFENDANT: No.

5 BY THE COURT: Okay. Other than the plea bargain that's  
6 just been put of record, have any agreements or promises  
7 been entered in with you or to you that in any manner  
8 influenced your plea?

9 BY THE DEFENDANT: No.

10 BY THE COURT: Mr. Gregory, are you entering this plea  
11 of your own free will?

12 BY THE DEFENDANT: Yes, I am.

13 BY THE COURT: Very well. Okay, go ahead and be seated.

14 For the record, I find that the plea is  
15 voluntarily made.

16 Now, under our law the Court may not accept  
17 a plea of guilty until it is satisfied that there is a  
18 factual basis for the plea. I have been involved in this  
19 case from its inception; at least, through the Archambault  
20 proceedings. I have read the Preliminary Hearing  
21 transcripts. I have read the entire file of the  
22 Archambault case, which includes, as Counsel are aware  
23 of, and we should make of record, statements that he has  
24 given to polygraph people and then again the reports of  
25 the polygraph people to the State's Attorney and to the

1 Court. And I believe that I am totally fully conversant  
2 with all of the facts as they exist. I believe further  
3 through almost every proceeding, Mr. Gregory has been  
4 present on every occasion the Court has been. I don't  
5 know if he has had an opportunity to review the file.  
6 I assume Counsel have.

7 BY MR. SMIT: Yes, Your Honor.

8 BY MR. WOLSKY: Mr. Gregory has read all the transcripts  
9 and statements of the witnesses, Your Honor.

10 BY THE COURT: Okay. Is Mr. Gregory prepared at this  
11 time to state in his own words to the Court the factual  
12 basis for his plea to the offense of conspiracy to commit  
13 murder?

14 BY MR. WOLSKY: If the Court feels that it is necessary  
15 for him to do so, other than what the Court has already  
16 had an opportunity to read, he is. But --

17 BY THE COURT: Well, I really honestly believe that there  
18 is a sufficient factual basis in the file to establish  
19 that Mr. Gregory did commit the offense to which he plead  
20 guilty. But let me ask you this, Mr. Gregory:

21 Your plea of guilty as I have advised you  
22 before is an admission that you did commit the offense  
23 to which you plead guilty. Do you understand that?

24 BY THE DEFENDANT: Yes, I do.

25 BY THE COURT: And did you, as alleged in the Information

1 and as contained in all of the records and files,  
2 conspire with John Archambault and -- well, principally  
3 John Archambault, I am not going to go into the matter  
4 of Brumbaugh at this time, but did you conspire with  
5 John Archambault to commit the murder upon Mr. Young?

6 BY THE DEFENDANT: Yes, I did.

7 BY THE COURT: Is there anything relating to the conspiracy  
8 charge that's been presented to the Court in the form of  
9 Preliminary Hearing testimony, testimony or statements of  
10 Counsel, or anything relating to the conspiracy charge  
11 that you dispute?

12 (Off the record discussion between Counsel.)

13 BY THE DEFENDANT: I dispute the fact that I did not  
14 shoot Michael Young, and I did not make an open agreement  
15 to shoot Michael Young to John Archambault. But I did  
16 carry on a conversation with him about that. But I  
17 didn't agree to it. But I was involved in the conversation  
18 where it was mentioned.

19 BY THE COURT: Anything else you want to state to the  
20 Court as it pertains to that charge?

21 BY THE DEFENDANT: No, nothing else.

22 BY THE COURT: Okay, very well.

23 Okay, for the record, the Court finds that  
24 there is a factual basis for the plea, and I previously  
25 having determined that the plea was voluntarily made,

1 it is accepted and Mr. Gregory is adjudged guilty of  
2 the offense of conspiracy to commit murder.

3 Now, do you have any motions as it pertains  
4 to Count II?

5 BY MR. GROTHOUSE: Yes, Your Honor. The State would  
6 move to dismiss Count II charging Mr. Gregory with the  
7 crime of murder by premeditated design. We will prepare  
8 a written motion.

9 BY THE COURT: I assume you don't object to that?

10 BY MR. WOLSKY: No.

11 BY MR. SMIT: No.

12 BY MR. WOLSKY: And that is a dismissal with prejudice,  
13 correct?

14 BY MR. GROTHOUSE: Yes, I believe it would be.

15 BY MR. WOLSKY: All right.

16 BY THE COURT: Very well, it is dismissed.

17 Okay, have you discussed with Mr. Gregory  
18 the matter of a pre-sentence investigation?

19 BY MR. SMIT: Yes, Your Honor.

20 BY MR. WOLSKY: Yes.

21 BY THE COURT: And what are his wishes in that regard?

22 BY MR. SMIT: We would request a pre-sentence investigation  
23 by the Court.

24 BY THE COURT: Very well. It will be ordered that a  
25 pre-sentence investigation be conducted by the Court

1 Services Department of this Circuit, and I will be  
2 visiting with Mr. Vodopich towards that end and he will  
3 be contacting Counsel. I assume that you have people  
4 that you would like to have him interview. I understand  
5 that Mr. Gregory's parents are here. I would like to  
6 have Mr. Vodopich or whatever agent he assigns to have  
7 an opportunity to interview them while they are here  
8 rather than interviewing them by telephone or otherwise.

9 BY MR. SMIT: I am sure that can be arranged, Your  
10 Honor.

11 BY THE COURT: Okay. I am not going to set sentencing  
12 at this time because I don't know when I will receive  
13 the pre-sentence investigation report. But I will as soon  
14 as I get it, I will notify Counsel and we can sentence  
15 both Archambault and Mr. Gregory at the same time, I  
16 would assume.

17 Does the State have anything further?

18 BY MR. GROTHOUSE: I don't believe so. Your Honor

19 BY THE COURT: Does the Defendant have anything further?

20 BY MR. WOLSKY: Nothing further, Your Honor.

21 BY THE COURT: Okay. You are remanded to the custody of  
22 the Sheriff, Mr. Gregory.

23 (Proceedings concluded.)

24 | Page

1 STATE OF SOUTH DAKOTA )  
2 COUNTY OF HUGHES )  
3  
4

SS

CERTIFICATE

5 I, RICHARD A. CHRISTOFFER, Notary Public and Registered  
6 Professional Reporter in and for the Sixth Judicial Circuit  
7 of the State of South Dakota, do hereby certify that the  
8 Transcript of Change of Plea in the aforecaptioned matter,  
9 contained on the foregoing pages 1 through 11, inclusive,  
10 was reduced to stenographic writing by me and thereafter  
11 transcribed; that said proceedings were held in Deadwood,  
12 South Dakota, on the 13th day of March, 1980, and that the  
13 foregoing is a full, true and complete transcript of my  
14 shorthand notes of the proceedings had at the date and  
15 place above set forth.

16 Dated this 26<sup>th</sup> day of March, 1980.

17  
18  
19  
20  
21 RICHARD A. CHRISTOFFER, NOTARY PUBLIC AND  
22 REGISTERED PROFESSIONAL REPORTER  
23  
24  
25

FILED

APR 25 1980  
G.L. Edstrom  
CLERK OF CIRCUIT COURT  
LAWRENCE COUNTY, S. D.  
By Fatheroyd Hall Deputy

**SDCL § 22-3-8 Conspiracy against state or local government – Penalty.**

If two or more persons conspire, either to commit any offense against the State of South Dakota, or to defraud the State of South Dakota, or any county, township, school district, or municipal corporation in any manner or for any purpose, and one or more of the parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty and may be punished up to the maximum penalty prescribed for the crime underlying the conspiracy. However it is not a crime to conspire to commit Class 2 misdemeanor or a petty offense.

**Change Of Felony Prescription**

**2005 S.D. SB43**

**Enacted, March 15, 2005**

An act to revise the South Dakota Criminal Code

Text

Section 148. That section 22-6-1 be amended to read as follows:

22-6-1 Except as otherwise provided by law, felonies are divided in to the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed: