No.

ORIGINAL

23-7265

IN THE

Supreme Court of the United States

NICHOLAS S. HINES – PETITIONER

vs.

STATE OF SOUTH DAKOTA – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

Nicholas S. Hines # 20596
1412 Wood St.
Springfield, SD 57062

QUESTIONS PRESENTED

1.) WHETHER THE SIXTH AND FOURTEENTH AMENDMENTS PERMIT GREATER INCLUDED OFFENSES AND CONDUCT THAT HAS BEEN ACQUITTED BY A JURY, OR DISMISSED PURSUANT TO A PLEA AGREEMENT AND FACTUAL BASIS UNDER SDCL § 23A-7-4 (Fed.R.Crim.P. 11(f)), TO BE ARGUED BY A PROSECUTOR AND CONSIDERED BY A COURT AT SENTENCING?

2.) WHETHER SOUTH DAKOTA'S HOMICIDE SCHEME VIOLATES THE SIXTH AND FOURTEENTH AMENDMENTS AS IT CONTAINS IDENTICAL MAXIMUM PENALTIES OF LIFE WITHOUT PAROLE AND VAGUE STATUTES?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

State v. Hines, Criminal Case No. 66C11000216A0, Yankton County, First Judicial Circuit of South Dakota. Judgment *entered* June 7, 2012, *vacated* June 18. 2021, Judgment *entered* March 14, 2023.

State v. Hines, Appeal No. 26420, Supreme Court of South Dakota, *affirmed* March 25, 2013.

Hines v. Young, Civil Case No. 66CIV13-000262, Yankton County, First Judicial Circuit of South Dakota. Judgment *entered* June 18, 2021.

Hines v. Young, Appeal No. 30182, Supreme Court of South Dakota, *affirmed* March 13, 2023.

State v. Hines, 2023 WL 7628850, Appeal No. 30302, Supreme Court of South Dakota, *affirmed* November 11, 2023.

TABLE OF CONTENTS

TABLE OF AUTHORIES CITED

INDEX TO APPENDICIES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

This is a state court case. The opinion of the highest state court to review the merits, the South Dakota Supreme Court, appears at Appendix A. of the petition and is reported at *State v. Hines,* 2023 WL 7628850. The opinion of the First Circuit Court of the State of South Dakota appears at Appendix B. of the petition and is unpublished.

JURISDICTION

The date on which the South Dakota Supreme Court decided my case was November 11, 2023. A copy of that decision appears at Appendix A. A timely petition for rehearing was thereafter denied on January 29, 2024, and a copy of the order denying rehearing appears at Appendix C. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI of the United States Constitution,

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously

ascertained by law, and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have assistance of counsel for his defense."

Amendment XIV of the United States Constitution,

Section 1 . . . "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction equal protection of laws."

Federal Rule of Criminal Procedure 11(f).

"Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea." (*Libretti v. U.S.,* 516 U.S. 29, 38 (1995))

South Dakota Codified Law 23A-7-14 (Rule 11(f)).

"The court shall defer the acceptance of any plea . . . until it is satisfied that there is a factual basis for the offense charged or to which the defendant pleads."

South Dakota Codified Law 23A-7-4.

"Before accepting a plea of guilty or nolo contendere a court must address the defendant personally in open court . . . and determine that he understands:

(5) That if he pleads guilty . . . the court may ask him questions about the offense to which he has pleaded, and if he answers those questions under

oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury."

South Dakota Codified Law 22-6-1.

"Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class A felony: death or life imprisonment in a state correctional facility. A lesser sentence may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;

(2) Class B felony: life imprisonment in a state correctional facility. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;

(3) Class C felony: life imprisonment in a state correctional facility. In addition, a fine of fifty thousand dollars may be imposed[.]"

South Dakota Codified Law 22-16-4.

"Homicide is murder in the first degree:

(1) If perpetrated without authority of law and with a premeditated design to effect the death of the person killed or any other human being, including an unborn child[.]"

South Dakota Codified Law 22-16-7.

"Homicide is murder in the second degree if perpetrated by an act imminently dangerous to others and evincing a depraved mind, without

regard for human life, although without any premeditated design to effect the death of any particular person, including an unborn child.

South Dakota Codified Law 22-16-15.

"Homicide is manslaughter in the first degree if perpetrated:

(3) Without any design to effect death, including unborn child, but by means of a dangerous weapon[.]"

STATEMENT OF THE CASE

Intro

This petition originates from a case that was remanded for resentencing and challenges the second criminal judgment.

The facts regarding the criminal incident itself can be found in the presentence investigation 'Settled Record' (herein "SR') 1236-38 and in the parties' appellate briefs of *Appeal No. 30302* within the Appellant's Brief p.2-3, Appellee's Brief p.4-13 and Reply Brief p.1-3.

On April 11, 2011 and argument ensued between Petitioner and his longtime girlfriend Brianna Knoll at their home. As Knoll was leaving in her car the Petitioner ran into the street in front of the her car wherein the gun discharged. The Petitioner shot himself in the head seconds later. Knoll's car continued traveling down the street. Officers arrived immediately. Knoll had died instantly.

i. Original Criminal Proceedings: State v. Hines Case No. 66C11000216A0 and South Dakota Supreme Court Appeal No. 26420 (April 19, 2011 - March 25, 2013)

1. On April 19, 2011, an indictment was filed in Yankton County, South Dakota, *Criminal File No. 66C11000216A0,* charging the Petitioner with first degree murder in violation of *SDCL § 22-16-4,* a Class A felony. SR 1-2.

2. On December 7, 2011, a forensic psychiatric evaluation was performed which made the following finding,

> The Applicant ". . .At the time of the alleged criminal activity, he was suffering from a substantial psychiatric disorder of thought, mood, or behavior which affected him at the time of the alleged offense and impaired his judgment. i.e., severe alcoholic intoxication, marijuana intoxication and Bipolar II disorder."

3. On March 8, 2012 the respondent filed an Information charging Petitioner with first degree manslaughter in violation of *SDCL § 22-16-15(3)* and *SDCL § 22-16-1,* a Class C felony. SR 90-91. The same day, Petitioner appeared before the circuit court and entered the following guilty plea and factual basis,

> Court: And you were in Yankton County on April 9, 2011?
>
> Defendant: Yes, Your Honor.
>
> Court: And did you have a dangerous weapon?
>
> Defendant: Yes, Your Honor.
>
> Court: And what was that?
>
> Defendant: It was a gun.
>
> Court: And as a result of you using that gun, what happened?
>
> Defendant: May I speak freely, Your Honor?

Court: Pardon?

Defendant: May I speak freely?

Court: Yes, you may.

Defendant: There was an *accidental discharge* of a weapon, but then I · · a moment after that, I took a few steps and attempted on my own life. I was not aware of that it was a mortal wound until I woke up in the hospital a few days later. As a result · · and I was informed that my girlfriend, Brianna, was no longer with us. And that's what I understand to be as far as what happened.

Court: And you understand it was *that discharge* of that weapon that killed Brianna?

Defendant: Yes, Your Honor.

Court: That *even though that that was accidental*, it was your action that resulted in her death?

Defendant: Why I decided to go forward today was that I understand that I need to be responsible for what has happened regardless of my intent. It was very irresponsible to, you know, go forward to have weapon out, and the *fact it went of incidentally* (sic) no matter what the odds are or whatever that took her life, I need to accept responsibility for it, and I also want to say that I feel the charge is appropriate due to the fact that I just have to put my trust in the court with deciding what is necessary for me here on out.

Court: The court will find that there is a factual basis for the plea and the admission will be filed. You may be seated." SR 848-849 at PT 12:1-13:19.

4. On June 7, 2012 the Petitioner appeared before the circuit court for sentencing. While requesting a life sentence the respondent stated,

"The second reason were making the request, Your Honor, is the killing of Brianna in cold blood. And I know the Court is well aware of the facts."

SR 857-1001 at ST 95:19-21.

The circuit court sentenced the Petitioner to 200 years with 100 years suspended and entered its judgment the same day. SR 812-14, SR 857-1001 at ST 126:6-127:19.

5. On July 5, 2012 Petitioner filed a notice of appeal. SR 821. On March 25, 2013 the South Dakota Supreme Court summarily affirmed *Appeal No. 26420.* SR 1046.

ii. State Habeas Corpus Proceedings, Hines v. Young, 66CIV13-000262 [1] and South Dakota Supreme Court Appeal No. 30182 (July 10, 2013 – March 13, 2023)

6. On July 10, 2013 Petitioner filed a pro se Petition for Writ of Habeas Corpus. On March 20, 2020, Petitioner, thru counsel, filed an Amended Writ of Habeas Corpus. On July 23, 2020 the respondent filed a Return to Amended Writ of Habeas Corpus. On May 4, 2021 Petitioner filed a Second Amended Petition for Writ of Habeas Corpus. On May 21, the Petitioner's habeas counsel and the respondent agreed to stipulated to habeas relief and negotiated a (second) plea agreement[2] On June 1,

[1] On September 29, 2022, in remanded criminal proceedings, of *Case No. 66C11000216A0,* the circuit court took "judicial notice" of the "entire habeas file" during a motions hearing. SR 1731-1757 at MT 12:6-13:8, 14:15-15:6.

[2] In habeas file *Hines v. Young, 66CIV13-000262* - 'screenshots' of the *second* 'plea agreement' between habeas counsel and the respondent are within the June 28, 2021 Affidavit of Ashley Miles Holtz in Support of Motion to Withdraw - Exhibit F. attached thereto.

2021 the Petitioner appeared before the state habeas court. The habeas court accepted the Petitioner's Second Amended Petition for Writ of Habeas Corpus and the respondent made no objection. The habeas court and the parties entered into a stipulation agreeing to vacate the Petitioner's sentence. On June 18, 2021 the habeas court entered an Order Granting Habeas Relief and Vacating Sentence.

7. On June 28, 2021, Petitioner's habeas counsel filed the Affidavit of Ashley M. Holtz in Support of Motion to Withdraw, with exhibits attached e.g. screenshots of emails and texts of plea negotiations with the respondent and post-hearing discourse with the habeas court regarding the same.

8. On May 11, 2022 Petitioner filed a Motion for Relief from Order requesting the habeas court vacate its stipulation order and hear his Second Amended Petition on the merits[3] due to habeas counsel and the respondent negotiating a 60 year sentence cap vs. the 40-45 year cap the Petitioner had agreed to. On June 28, 2022 Petitioner appeared before the habeas court to hear his motion. Petitioner argued that he did not know that a sentence cap higher than he authorized would be negotiated by his habeas counsel and respondent - *after* - the June 1, 2021 stipulation hearing.

9. On July 22, 2022 the habeas court entered it's Order of Dismissal. On August 19, 2022 Petitioner filed a Motion for Certificate of Probable cause. On September 2, 2022 the respondent filed an objection. On November 18, 2022 the habeas court

[3] In *Wharton v. Vaughn,* 371 F.Supp.3d 195 (3rd Cir. 2019) the district court concluded that habeas relief, "constitutional errors" cannot be stipulated. *Wharton* cited numerous authorities to support its reasoning, including *Sibron v. NewYork,* 392 U.S. 392 U.S. 40, 58 (1968) and *Young v. U.S.,* 315 U.S. 257, 258-259 (1942) "our judgments are precedents, and the proper administration of justice of the criminal law cannot be left merely to the stipulation of the parties."

denied the motion for probable cause. On November 29, 2022 Petitioner filed a Motion for Certificate of Probable Cause with the South Dakota Supreme Court *Appeal No. 30182.* The respondent filed no response. On March 13, 2023 the South Dakota Supreme Court entered an Order Denying Motion for Probable Cause in *Appeal No. 30182.*

iii. Remanded Criminal Proceedings: State v. Hines Case No. 66C11000216A0 (June 18, 2021 – March 14, 2023)[4]

10. On June 18, 2021 the state habeas court entered an Order Granting Habeas relief and Vacating Sentence. SR 1066-68.

11. On September 29, 2022 the circuit court held a motions hearing regarding a new PSI and Court Services Officer. SR 1731-57. The respondent stated ". . . the habeas ruling is not a ruling. All it is, is agreeing to a stipulation . . .". SR 1731-51 at MT 6:5-6. The circuit court took "judicial notice" of the habeas file (*Case No. 66CIV13-262)* as it had "looked at the whole file because [it] was directed to do so." SR 1731-57 at MT 12:6-13:8. The parties agreed that the circuit court's oral order taking "judicial notice" of the habeas file was sufficient for the "record" and no written order was necessary. SR 1731-57 at MT 14:15-15:6.

12. On October 18, 2022 Petitioner filed a Motion for an Accidental Discharge Expert to support the factual basis of his plea. SR 1131-1223. On November 4, 2022 the circuit court held a motions hearing for a mental health evaluation and

[4] The Petitioner's *remanded* criminal proceedings in *Case No. 66C11000216A0 (June 18, 2021 – March 14, 2023)* were running *parallel* with the 'post stipulation' litigation in his habeas *Case No. 66CIV13-262 (July 10, 2013 – March 13, 2023)*

accidental discharge expert. SR 1695-1730. The following exchanges occurred at the hearing regarding the motion for the expert;

i. Court: "[T]he most important information is as contained in Paragraph 3 of your motion, Mr. Whalen, wherein you have taken the position that "it is the defendant's position that the discharge of the firearm that resulted in the death of Brianna may have been in part accidental."" SR 1705 at MT 10:11-16.

ii. MR. Whalen: "Obviously the – in addition to what I've noted in my motion and to the Court there, I think it's pertinent to note that this is one of the issues that was addressed in the habeas corpus matter. It was dealt with by – to a certain degree by Judge Eckrich. It was also something back in 2012. I believe it was then in the sentencing that was not objected to by the State as far as the assertion that there was an accidental element to the death of Brianna." SR 1706-07 at 11:21-12:24.

iii. Court: "Mr. Klimisch, it was alluded to that you did not – your office did not take a position at the time of the plea that it was within the realm of possibility that there was an accidental element to this. That's what Mr. Whalen said in his argument would – I realize I'm asking you to go back 10 years, but do you recall that? Is that –

MR. Klimisch: Judge, I --

Court: -- an accurate reflection of where you were at?

MR. Klimisch: I don't recall. I don't. I apologize. I don't recall." SR 1708 at 13:11-20

iv. Court: [Y]our client pled guilty to the offense of an amended – a lesser charge than originally charged but nonetheless a very serious offense of causing a death with a deadly weapon, if I recall the state of the charge. It was not a reckless thing; it was a class felony – Class C felony, and if I look at – I'm just going to pull up the charging document.

The specific charge was a violation of SDCL 22-16-15(3), 22-16-1, in that the defendant did kill a human being, Brianna Knoll, perpetrated without any design to affect her death and by means of a dangerous weapon. A factual basis was offered and accepted by the Court that supported that plea." SR 1709 at 14:18-25

v. Court: "It's not an element of the offense. The offense is that you – that your client killed someone, that he didn't intend to do – that he didn't have the design to bring about their death, and he used a dangerous weapon to do so, *none of which is being contested.*" SR 1710-11 at 15:12-16:3

The respondent made additional requests, which the circuit court acknowledged "would undermine the ruling of the habeas judge" and "be doing an end run around the habeas court's order your office stipulated to." *See* SR 1712-15 17:1-19:8.

12. On January 16, 2023 Petitioner's counsel filed a Sentencing Memorandum. SR 1547-1581; Appendix E. p 21-56.

"During the plea hearing, the Defendant admitted certain relevant facts regarding his case to establish th factual basis for the plea. The factual basis facts, however, were insufficient to support a conviction of first or second

> degree murder. At the time of the Defendant's guilty plea, Judge Glen Eng accepted a factual basis for the plea of guilty to first degree manslaughter charge and relied upon sufficient evidence to support that charge, rather than a charge of either first or second degree murder. Further, the Defendant was adamant when he entered his plea to the first degree manslaughter charge that the shooting of Brianna was accidental."

Id. at pg 2, SR 1548; Appendix E. p. 23. The Memorandum asked the circuit court to consider the "Second Amended Petition for Habeas Corpus [and] numerous grounds for relief" and that "[t]hese claims, while not all litigated, are considerations which are relevant to the Court fashioning a fair sentence in this case." Id. at pg 5-6, SR 1551-52; Appendix E. p. 26-27. The Memorandum cited "proportionality of sentences" and cited the various ranges of manslaughter sentences. Id. at pg 6-7, SR 1552-53; Appendix E. p. 27-28.

Notably, Petitioner's counsel attached a pro se argument made by the Petitioner to the Memorandum which raised the issue:

> "South Dakota's Homicide Scheme Violates Due Process and Sixth Amendment Rights with two parts 1.A. Factual Basis of Manslaughter can be Prosecuted Identically to Murder. 1.B. SDCL 22-6-1 is Vague and does not Sufficiently Specify the Range of Sentences for a Class C Felony (the punishment for manslaughter)" Id., SR 1556-81; Appendix E. p. 31-56.

13. On February 28, 2023 the circuit court held a sentencing hearing. SR 1786-2034.

At the hearing the Petitioner's counsel, respondent, Petitioner and circuit court stated the following:

i. MR. Whalen: "I have indicated to the Court with my sentencing memorandum the various sentences that have been imposed by courts throughout South Dakota over the last few decades, for sure. And the Court can see that those sentences vary in a great degree. Some to zero on a Homicide, First-degree Manslaughter; some to 99 years, Life. It's – everything in the middle is wide open." SR 1872-73 at ST 87:20-88:1. MR Whalen: "I have indicated in my brief that the average sentence is 40-54 years." SR 1892 at ST 107:1-3.

ii. The respondent argued the crime was "murder", the Petitioner was a "murderer" and described the Petitioner's actions as "murdering Brianna." SR 1894-96 at ST 109:21-24, 110:6-9, 111:12-14. The respondent repeatedly requested the circuit court impose a 200 year sentence. SR 1906-07 at ST 121:7-23, 122:19-22.

iii. The Petitioner quoted his 2012 manslaughter plea with the factual basis of an "accidental" shooting. SR 1935-37 at ST 150:20-152:8. The Petitioner asked the circuit court to "take notice of Ms. Holtz last affidavit in the [habeas] case that was filed"[5] and read 'screenshots' within the affidavit regarding the "new plea agreement" negotiated with the State." SR 1956-66 at ST 171:14-181:6. Petitioner stated "In

[5] See. *Hines v. Young, 66CIV13-000262,* June 28, 2021 Affidavit of Ashley Miles Holtz in Support of Motion to Withdraw – Exhibit F. attached thereto, which are screenshots of the Petitioner's *second* plea agreement.

criminal proceedings before this Court, Mr. Klimisch argued against *all the terms* of the plea deal." and "stipulation itself." SR 1965-66 at ST 180:1-181:6.

iv. The circuit court began its sentencing statement by saying "I don't believe I am showing any bias when I do this . . . I *never* interject my own life into my cases. I shouldn't say "never" because *I'm about to do it."* SR 1981-82 at ST 196:10-197:7.

Court: "You have spent a great deal of – before me, in your submissions to the Court, in your past arguments, in your habeas, in your discussions with counsel, and in your concerns expressed today but throughout your case – as to how your actions were perceived by others, by focusing on the unintended consequence of your actions. But a Class C felony doesn't require that there be intended consequences. A sentencing court can consider from the perspective of how this happened exactly how you pointed out and impose a life sentence if it's determined what they think is appropriate. So I *have not* concerned myself very much about whether this was an *accident or unintended*[.]" SR 1983 at ST 198:9-22.

Court: "The statute you pled to doesn't talk about accidents or intentional. This is not a Class 1 murder case, this is a Class C felony manslaughter and it says that if you, without justification, cause a

death with a firearm, you are guilty of a Class C felony manslaughter. So *by your facts you face a life sentence."* SR 1984 at ST 199:17-22.

Court: I didn't consider alternative theories as to how this happened. That's not to say I don't find your version of how this occurred to be challenging to believe. It is. Who takes a gun to a confrontation with the *intent* to win an argument, as opposed to the *intent* to use it?

But as I already said, it's not a murder case. Had the State wished to have me consider it a murder case then my hands would have been tied because the life sentence that I would have had to impose would not have given me any discretion. And they could have done that *by trying the case.* For good reasons, I'm sure, they made the determination that *this was the appropriate way to approach it.* So, please Mr. Klimisch, don't take that as a criticism. It is no how it is intended. I just want you to know that I am not considering these alternative theories that might have justified murder charges because *that's not whats before me.*

But I am tempering that with the statement I've made twice and I will make again it is only because of the rehabilitative aspect – that I have been guided by my predecessors – that I am not giving you a life sentence." SR 1989-90 at ST 204:5-205:6.

Court: "I also want to state, as was hinted at by your attorney, that Class C felonies are *fact-driven,* and they are not impacted by other

> Class C felony sentencings, except for me to consider, in a general sense what has occurred. But as has been pointed out the have been *everything from no jail to life sentences – or effective life sentences – imposed in our state for these types of cases."* SR 1990 at ST 205:7-22.
>
> Court: But I also wanted to mention that you had asked for a firearms expert. I don't know if I had already said this and I apologize if I had, but I wanted to clarify that I didn't grant that, not because I didn't want you to present that evidence but because, as I said, I was *accepting your version of these facts for the purposes of sentencing.* And your version supports a conviction for manslaughter with the *parameters the legislature has given me.* So if I didn't clarify why I denied you expert, it wasn't because I didn't think it wasn't important. It was because it wasn't an expense appropriate to incur, given the very little impact it would have on me, *knowing how I intended to treat the factual basis of this case."* SR 1991-92 at ST 206:16-207:4.

The circuit court sentenced the Petitioner to 100 years with 25 years suspended. SR 1992. The circuit court ordered the Petitioner pay numerous costs, including that the Petitioner pay a 2013 $600,000.00 wrongful death *civil* judgment[6] as part of his *criminal* "restitution". SR 1993-94, 1998 at ST 209-210, 213. On March 14, 2023 the circuit court entered it's written Judgment of Conviction and Sentence. SR 1663-66; Appendix B p.6.

[6] See Judgment in Yankton County, South Dakota *Case No. 66CIV13-135.*

iv. South Dakota Supreme Court: State v. Hines, Appeal No. 30302

(March 24, 2023 – January 29, 2024)

14. On March 24, 2023, Petitioner filed a Notice of Appeal. SR 1672. On July 10, 2023 Petitioner's appellate counsel filed the Appellant's Brief and raised no issues in 'Part A' of the brief – Petitioner raised 6 issues in 'Part B' of the brief.

(1) Whether the trial court abused its discretion when weighing sentencing factors?, id. pg. 5-12

(2) Whether the State violated the terms of the 2012 plea agreement and 2021 stipulation?, id. pg. 13-18

(3) Whether South Dakota's homicide scheme violates due process, equal protection and Sixth Amendment rights?, id. pg. 18-20

(4) Whether the habeas court's failure to perform its judicial function prior to issuing its habeas relief order deprived the trial court jurisdiction over CR 11-216?, id. pg. 21-22

(5) Whether the State's evidence that was claimed to be lost or destroyed (in CIV 13-262) and then subsequently produced and used in (in CR 11-216) and materially false assertions at sentencing violated due process?, id. pg. 22-26

(6) Whether the sentencing court was biased?, id. pg. 26-27.

15. On August 14, 2023, the respondent filed the Appellee's Brief which; (1) Asserted various procedural bars to the Petitioner's claims and asked the Court 'strike' the Petitioner's Appendix as it contained habeas documents, id. pg. 15-21 (2)

That the Petitioner received an appropriate sentence, id. pg. 21-29 (3) That the Petitioner's sentence does not violate the Eighth Amendment, id. pg. 29-32. The Brief addressed issues of judicial bias and sentencing factors but did not address the merits of the other 4 claims raised in the Appellant's Brief.

16. On September 6, 2023, Petitioner filed his Reply Brief which argued (1) 'The settled record contains the entire habeas file and Defendant's Appendix documents due to the circuit court's "oral order" taking "judicial notice" of the entire habeas file", id., pg. 3-7 (2) Judicial bias has 'Extrajudicial' source, id. pg. 8-9 (3) 'Petitioner claims abuse of discretion as Eighth Amendment claims have no merit under SD's homicide scheme and SDCL 22-6-1(3) have no merit, id. pg. 9-14. Petitioner requested an evidentiary hearing, id. pg. 14.

17. On November 13, 2023, the South Dakota Supreme Court summarily affirmed *Appeal No. 30302.* Appendix A. pg. 1-2.

18. On November 27, 2023, Petitioner filed a pro se Petition for a Rehearing. Appendix D. pg. 10-20. (1) The Petition cited facts from the record regarding the circuit court taking "judicial notice" of the habeas file and *(second)* plea agreement within it, id. pg. 1-2; Appendix D. pg. 12-13. (2) The Petition's cause for rehearing – "Whether the State Violated the Terms of the 2012 Plea and 2021 Plea Agreement and Stipulation". The Petition cited facts and law from the record and the parties appellate briefs, id. pg. 3-8; Appendix D. pg 14-19. Notably, the Petition -again reiterated- that the respondent and the circuit court materially breached the 2012 plea agreement's factual basis of an "accidental" shooting at sentencing by the

respondent arguing the Petitioner was a "murderer", the crime was "murder" an the circuit court questioning "intent". Id. "[A]rguing "murder rather than manslaughter . . . "violated the Defendant's Fifth, Sixth and Fourteenth Amendment rights to due process and a jury trial to the basic elements of the charge." id. pg. 8, Appendix D. pg. 19.

19. On December 1, 2023 the respondent filed the Appellee's Reply to Petition for Rehearing. The merits if the Petitioner's arguments were not addressed in the Reply.

20. On January 29, 2024, the South Dakota Supreme Court denied the Petitioner's Petition for a Rehearing. Appendix C. pg. 8-9.

21. The legal and factual substance of the questions the Petitioner raised to this Court has been repeatedly asserted by him during circuit court and appellate proceedings. The questions raised were completely unaddressed or ignored by the respondent and state courts.

SUMMARY OF ARGUMENT

1. The first argument raises the unanswered 'state' question in McClinton v. U.S., 600 U.S. --- (2023) regarding Sixth Amendment rights and the use of acquitted and dismissed conduct at sentencing. It addresses why a court's acceptance of a plea's factual basis under Fed.R.Crim.P. 11(f) should affect what can be argued by a prosecutor and considered by a court at sentencing. And why, as a matter of existing law, that dismissed conduct pursuant to a plea cannot be argued and considered at sentencing, but acquitted conduct can without intervention by this

Court. This argument goes strait to the heart of state and federal defendants' choice of whether to go to trial or plead guilty.

This argument supports that acquitted charges and conduct established at trial can *currently* be argued by a prosecutor and considered by sentencing court – absent a new rule created by this Court. However, a prosecutor cannot argue conduct related to a greater included offense at sentencing and a sentencing court *must* consider the *established conduct* within a *factual basis* under Fed.R.Crim.P. 11(f) (and state derivatives) related to the *offense itself* when a plea to a reduced charge is accepted.

2. The second argument addresses that – regardless of what this Court's position is regarding Sixth and Fourteenth Amendment rights related to acquitted or dismissed conduct sentencing – it is objectively meaningless for the Petitioner. In South Dakota's homicide scheme, first and second degree murder carry a mandatory life sentence and first degree manslaughter can carry a life sentence or any unidentifiable number of years. No fact found at trial, during plea proceedings or at sentencing – has any objective relevance to sentence length. Additionally, the sentencing statute SDCL 22-6-1(3) and the statute for second degree murder SDCL 22-16-7 are unconstitutionally vague.

The factual and legal substance of these arguments exist within the circuit and appellate court records at: (1) prior to sentencing by the Petitioner within the January 28, 2023 Sentencing Memorandum SR 1556-81; Appendix E. pg.

31-56 (2) at sentencing (see 'Statement of Case' above) (3) Petitioner's Appellant's Brief, pg. 6, 8, 10-11, 13-20, 26-27 (4) Appellant's Reply Brief, pg. 9-12 (5) Appellant's Request for Rehearing, pg. 1-7; Appendix D., pg. 12-19.

ARGUMENT

ARGUMENT 1. WHETHER THE SIXTH AND FOURTEENTH AMENDMENTS PERMIT ACQUITTED CONDUCT OR DISMISSED CONDUCT DISMISSED CONDUCT PURSUANT TO A PLEA – TO BE ARGUED AND CONSIDERED AT SENTENCING?

A. THE COURT'S RECENT UNANSWERED SIXTH AMENDMENT QUESTION IN MCCLINTON V. U.S. AND REASONING INVOLVING ACQUITTED AND DISMISSED CONDUCT SENTENCING LIES IN SUBSEQUENT LEGISLATION, POLICY AND PROCEDURAL RULES.

In *McClinton v. U.S.,* 143 S.Ct. 2400 (mem) (2023) this Court was presented with the question of whether the use of acquitted conduct in federal sentencing violated Sixth Amendment rights. 5 Justices of this Court respected the denial of certiorari because the Sentencing Commission was going to resolve questions regarding acquitted-conduct sentencing. Justice Sotomayor stated that "[e]ven defendants with strong cases may understandably choose not to exercise their right to a jury trial when they learn that even if they are acquitted, the State can get another shot at sentencing." id. at 2402. Justice Alito stated "Even if [acquitted] conduct should not be considered in federal sentencing proceedings, that decision *will*

not affect state courts, and therefore the constitutional issue will remain." id. at 2403. Justice Alito further addressed the history of the Sixth Amendment and the "*stare decisis* standing in the way. In *U.S. v. Watts,* we said that there is no "prohibition against considering certain types of evidence at sentencing" including "uncharged or acquitted conduct." 519 U.S., at 152-155, 117 S.Ct. 633." id. at 2404. Justice Alito also reasoned "there is no relevant difference for these purposes between acquitted conduct and uncharged conduct, the historical evidence supporting consideration of uncharged conduct is highly relevant to the consideration of acquitted conduct." id. at n.1.

Fully considering the Court's reasoning above, without contradiction, comes the foundation of the Petitioner's argument – that the decision to use acquitted or dismissed conduct in state and federal court sentencing turns on subsequent law, legislation and procedural rules (such as Fed.R.Crim.P. 11(f)) – after the enactment of the Sixth Amendment.

Notably, this Court denied certiorari to 'appropriately' wait for the Sentencing Commission's policy decision before granting certiorari in a case involving acquitted conduct sentencing.

B. RULES OF CRIMINAL PROCEDURE 11(f) AND ESTOPPEL PREVENT CONDUCT AND DISMISSED CHARGES PURSUANT TO A PLEA AGREEMENT FROM BEING ARGUED AND CONSIDERED AT SENTENCING

The limited scope of this argument is only related to a sentencing court's consideration of conduct regarding the offense itself and in no way intrudes on the principle that "the punishment should fit the offender and not merely the crime." *Williams v. New York*, 337 U.S. 241, 247 (1949).

i. State and Federal Rules of Criminal Procedure 11(f) and SDCL 23A-7-14 (Rule 11(f))

At trial a court and a prosecutor are not involved in a jury's factual reasoning and finding of an acquittal. However, unlike acquitted conduct, proceedings involving dismissed charges pursuant to a plea agreement required a court, prosecutor and a defendant to have a 'meeting of the minds' and make findings on the record establishing a factual basis for the conduct supporting the disposition of the charges.

South Dakota's 'factual basis requirement is codified at SDCL 23A-7-2 (Rule 11(a)) and SDCL 23A-7-14 (Rule 11(f))' and "very closely patterned after Federal Rule of Criminal Procedure 11(f). Thus, to guide our interpretation" "we look to the federal courts' interpretation of Rule 11(f)." *State v. Nachtigall,* 2007 SD 109, at ¶ 6, 8 , n.4, 5. This Court can review South Dakota's interpretation of Rule 11(f). *See. Foster v. Chatman,* 578 U.S. 488, 499, n.4 (2016).

> "We have held that a district court judge satisfies the requirements of Rule 11(f) when he "determine[s] 'that the conduct which the defendant admits constitutes the offense

> charged in the indictment or information or an offense included therein to which the defendant has pleaded guilty.'"

Liberetti v. U.S., 516 U.S 29, 38 (1995) (*quoting McCarthy v. U.S.,* 394 U.S. 459, 467 (1969)); *see also Braxton v. U.S.,* 500 U.S. 344, 349-51 (1991). "Advisory Committee's Notes on Fed.R.Crim.Proc.11, 18 U.S.C. App., p. 730 (Rule 11(f) protects defendants who do not "realiz[e] that [their] conduct does not actually fall within the charge.")" *Liberetti,* 516 U.S., at 42.

> "[A] sentencing court may not *disregard* the factual basis statement or overlook the established conduct supporting the essential elements of the offense[.]" . . . "This recognition is an inevitable consequence of the requirement that "[t]he [circuit] court must find a factual basis for each element of the offense" before accepting a defendant's guilty plea. *State v. Roedder*, 2019 SD 9, ¶ 14 (*quoting State v. Nachtigall,* 2007 SD 109, ¶ 5); *see also* SDCL 23A-7-14 (Rule 11(f))."

State v. Mitchell, 2021 SD 46, at ¶ 32-33.

ii. Pleas – Estoppel

In addition to Rule 11(f), estoppel applies to a defendant factual basis and the findings made during plea proceedings. Differences in the 'standard of proof' in phases of a criminal case are not a basis for a court, prosecutor or defendant to make contradictory findings and arguments at sentencing – in the *same case.*

"When a court decides on a rule of law, that decision should continue to govern the same issues in subsequent stages of the *same case*." *Pepper v. U.S.,* 562 U.S. 476, 506 (2011) (*citing Arizona v. California,* 460 U.S. 605, 618 (1983)). The rule, know as judicial estoppel, "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Zedner v. U.S.,* 547 U.S. 489, 504 (2006), *New Hampshire v. Maine,* 532 U.S. 742, 749 (2001), *Pegram v. Herdrich,* 530 U.S. 211, 227, n.8 (2000).

> "[T]he representations of the defendant, his lawyer, and the prosecutor at [a plea] hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solem declarations in open court carry a strong presumption of verity."

Blackledge v. Allison, 431 U.S. 63, 73-74 (1977).

Under SDCL 23A-7-4 a defendant can be 'prosecuted for perjury' for contradicting the factual basis of their plea. Additionally, (althought not an issue in the civil case) the Petitioner could not have contradicted the findings made during his plea proceedings in the wrongful death civil action *66CIV13-135. see U.S v. Hamed,* 976 F.3d 825, 828-30 (8th Cir. 2020) (applying judicial estoppel during denaturalization hearing to findings involving defendant's guilty plea "that "there was a factual basis for the plea at the time.", Fed.R.Crim.P. 11(b)(3)[.])"

C. CONCLUSION

Here, under multiple Rules of the Criminal Procedure; (1) the respondent could have objected to the factual basis of the plea and withdrawn the agreement and (2) the circuit court could have rejected the plea agreement and its factual basis after reviewing the presentence investigation report. *See U.S. v. Hyde,* 520 U.S. 670, 673-75, 678 (1997).

The respondent repeated 'murder' arguments at sentencing. SR 1894-96 at ST 109:21-24, 110:6-9, 111:12-12-14. These arguments breached the Petitioner's 2012 plea and its factual basis (and the 2021 plea agreement)[7]. SR 848-49 at PT 12:1-13:19. *Santobello v. New York,* 404 U.S. 257 (1971). The Petitioner read his 2012 factual basis of an "accidental shooting" and objected to the respondent's breaches at sentencing. SR 1935-37, 1956-66, at ST 150:20-152:8, 171:14-181:6. *Puckett v. U.S.,* 566 U.S. 129 (2009).

The circuit court disregarded the factual basis of the Petitioner's plea during sentencing. SR 1983, 1984, 1989-90, 1990, 1991-92, at ST 198:9-22, 199:17-22, 204:5-205:6, 205:7-22, 206:16-207:4.

The South Dakota Supreme Court's summary affirmance of these actions by the respondent and the circuit court equate to a "repeal of a criminal procedural rule by implication [which] is disfavored." *Vonn v. U.S., 535 U.S. 55, 65-74 (2002).*

[7] One of the terms of the 2021 plea agreement terms that the respondent agreed to was: "4. The Prosecution agrees they will not make arguments that will insinuate or claim that Nick is a cold blooded murderer or that he committed this killing in cold blood." – See "screenshot/email" in *Hines v. Young, 66CIV13-000262,* June 28, 2021 Affidavit of Ashley Miles Holtz in Support of Motion to Withdraw – Exhibit F. attached thereto.

ARGUMENT 2. WHETHER SOUTH DAKOTA'S HOMICIDE SCHEME VIOLATES THE SIXTH AND FOURTEENTH AMENDMENTS DUE TO IDENTICAL MAXIMUM PENALTIES AND VAGUE STATUTES?

A. SOUTH DAKOTA'S HOMICIDE SCHEME VIOLATES THE SIXTH AND FOURTEENTH AMENDMENTS.

i. Intro

"The point is simply that the diminishment of the jury's significance by removing control over facts determining a statutory range would resonate with claims of earlier controversies, to raise a genuine Sixth Amendment issue not yet settled." *Jones v. U.S.,* 526 U.S. 227, 248 (1999). "The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell,* 418 U.S. 539, 558 (1974).

"A guilty plea does not bar a defendant from challenging the constitutionality of the statute of conviction on appeal." *Class v. U.S.,* 538 U.S. 174, 178-182 (2018).

ii. Elements and Penalties

SDCL 22-16-4 First Degree Murder is a *specific intent* crime, Class A felony; penalty, mandatory "Death or Life" (death with separate due process protections);

SDCL 22-16-7 Second Degree Murder is a *general intent* crime, Class B felony; penalty, mandatory "Life";

SDCL 22-16-15 First Degree Manslaughter is a *general intent* crime, Class C felony; penalty, "Life".

SDCL 22-6-1 contains the punishments for all the above Class A, B and C Class felonies.

iii. Other Unconstitutional Schemes

In *Apprendi v. New Jersey,* 530 U.S. 466 (2000), this Court held unconstitutional New Jersey's statutory procedure permitting prosecutors to charge defendants (and obtain convictions) on second-degree offenses, but seek punishments based on first-degree offenses. That statutory scheme allowed "a jury to convict a defendant of a second-degree offense . . . beyond a reasonable doubt," but then permitted "a judge to impose punishment identical to that New Jersey provided for a first-degree offense based upon the judge's finding by a preponderance of the evidence." *id.* at 491. New Jersey's scheme, this Court found, gave the government little incentive to shoulder the larger burden of proving a first-degree offense beyond a reasonable doubt, when proving a lesser offense was easier and less risky, with the government still able to seek the same first-degree murder penalty at sentencing. *See id.* at 484 ("[T]he defendant should not – at the moment the State is put to proof of those circumstances – be deprived of protections that have, until that point, unquestionably attached.").

In *Mullaney v. Wilbur,* 421 U.S. 684, 698-99 (1975) "Maine divide[d] the single generic offense of felonious homicide into three distinct punishment

categories – murder, voluntary manslaughter, and involuntary manslaughter . . .Maine could impose a life sentence for any felonious homicide . . . *unless* the defendant was able to prove [by preponderance] that his act was neither intentional nor criminally reckless." The Court found it "intolerable" to "sentence one guilty only of manslaughter as a murder." *id.* at 698-99.

iv. No Fact Gives a Defendant a Due Process Right to a Sentence Less than Life Without Parole

Facts that simply affect a sentence "can be proved . . . by a preponderance of the evidence." *U.S. v. O'Brien,* 560 U.S. 218, 224 (2010), but due process requires that facts needed to establish an element of a criminal offense must be proven beyond a reasonable doubt, *In re Winship,* 397 U.S. 358, 364 (1970).

This Court "has never doubted the judge's discretion within a statutory range." *U.S. v. Booker,* 543 U.S. 220, 233 (2005). Facts that raise the minimum or maximum penalty affect Sixth Amendment and due process rights. *U.S. v. Haymond,* 139 S.Ct. 2369, 2376-79 (2019). It does not matter whether the "fact" is labeled as an "element" or "sentencing factor" *Booker*, 543 U.S. at 231-32.

The respondent's Appellee's Brief pg. 29-32 attempted to turn the Petitioner's arguments on appeal related to this issue into an Eighth Amendment claim - for a good reason. In *State v. Manning,* 2023 SD 7 ¶47 the South Dakota Supreme Court applied the Eighth and Fourteenth Amendments to a Class C

felony under SDCL 22-6-1, and 'any sentence less that life ends the constitutional review.'

The circuit court refernced a "Class C felony" and "life sentence" 12 times each at sentencing. SR 1983-1998. Under SDCl 22-16-15 and SDCL 22-6-1(3) no conceivable fact exists that the Petitoner could have proved at trial, during plea proceedings, or at sentencing that guaranteed a sentence within a range of parole to hundreds of years, or life without parole. Due process cannot exist in the complete absence of it.

The circuit court stated it accepted the Petitioner's "version of these *facts* for the purposes of sentencing." SR 1991-92 at ST 206:16-207:4. The factual basis of the Petitioner's manslaughter plea was that an "accidental" discharge had occurred which resulted in the death of his girlfriend. This Court found it "intolerable" to "sentence one guilty only of manslaughter as a murder." *Mullaney,* 421 U.S. at 698-99.

B. SDCL 22-16-7 AND SDCL 22-6-1 ARE UNCONSTITUTIONALLY VAGUE

i. Legal Standard for Vagueness

This Court has recognized that "vague sentencing provisions may pose constitutional questions if they do not with *sufficient clarity* state the consequences of violating a given statute." *Bankers Life & Casualty Co. v. Crenshaw,* 486 U.S. 71, 88 (1988) (*quoting U.S. v. Batchelder,* 422 U.S. 114, 123 (1979)). "The Court has invalidated two kinds of laws as "void for vagueness", laws that (1) define criminal offenses and (2) laws that fix

permissible sentences for criminal offenses." *Beckles v. U.S.,* 580 U.S. 256, 262 (2019).

A guilty plea *does not* bar a defendant from challenging the constitutionality of the statute of conviction on direct appeal. *Class v. U.S.,* 538 U.S. 174, 178-182 (2018).

ii. No Distinction Between First Degree Manslaughter SDCL 22-16-15 and Second Degree Murder SDCL 22-16-7

"First-degree murder is a specific-intent offense. The crimes of second-degree murder and first-degree manslaughter are *general-intent* crimes." *Kleinsasser v. Weber,* 2016 S.D. 16 at ¶ 24.

In *State v. Hart,* 584 N.W.2d 863 (1998) it was held that the "*crucial distinction*" between *"general intent"* crimes SDCL 22-16-15 - 1st degree manslaughter and 2nd degree murder is SDCL 22-16-7's stand alone - "depraved mind" - element. SDCL 22-16-7 does not objectively define "depraved mind". No definition exists for "depraved mind" under SDCL Title 22. Despite numerous challenges to SDCL 22-16-7's vagueness the South Dakota Supreme "court [has not] further defined the vague terms." *Bell v. Cone,* 543 U.S. 447, 453 (2005).

South Dakota also uses "depraved mind" within it death penalty statutes. SDCL 23A-27A-1's 6 factors objectively define "depraved mind" conduct. This Court has repeatedly recognized that the phrase "depraved" can be utilized in an unconstitutionally vague manner. "Aggravating circumstances

in 24 states which include "*depravity of mind*" are vague overbroad and meaningless" 64 N.C.L. Rev. 941,943-944 (1986)." *Lewis v. Jeffers,* 497 U.S. 764, n. 9 (1990). "Arizona's "especially heinous, cruel or *depraved*' factor was at issue in Walton v. Arizona, supra. As we explained, "there is *no serious argument* that this factor is not *facially vague*." 497 U.S., at 654." *Richmond v. Lewis,* 506 U.S. 40, 47 (1992); See also *Gregg v. Georgia,* 428 U.S. 153, 201 (1976); *Godfrey v. Georgia*, 466 U.S. 420, 432-33 (1980).

Any first degree-manslaughter defendant bears a risk of being convicted of SDCL 22-16-7 under second-degree murder this vague statute. A first-degree manslaughter sentence can vary from probation, to any number of years or life without parole. However, a conviction for second degree-murder under SDCL 22-16-7 carries a mandatory life without parole sentence. "Life without parole sentences share some characteristics with death sentences." *Campell v. Ohio,* 138 S.Ct. 1059 (2019). This is why SDCL 22-16-7 unconstitutional vagueness is highly relevant to any manslaughter defendant's consideration whether to plea or go to trial.

iii. SDCL 22-6-1(3) Class C Felony – Does Not Have a Defined Sentencing Range

The Petitioner brought up the vagueness of SDCL 22-6-1(3) in great factual and legal detail prior to sentencing within a pro se argument that his trial counsel attached to the January 16, 2023 sentencing memorandum. SR 1556-81; Appendix E. pg 31-56. The Petitioner cited other manslaughter cases and

how the media has also recognized the extreme disparity of manslaughter sentences under SDCL 22-6-1(3). SR 1580-81; Appendix E. pg. 55-56. (See. November 15, 2021 Keloland Investigates "Manslaughter: Unequal Time" www.keloland.com/news/investigates/manslaughter-unequal-time/amp/)

At sentencing the Petitioner's trial counsel stated "sentences vary in a great degree. Some zero on a homicide, first-degree manslaughter; some 99 years, life. It's – everything in the middle is wide open." SR 1872-73 at ST 87:20-88:1 "I have indicated in my brief that the average sentence is 40-54 years." SR 1892 at ST 107:1-3. The circuit court stated "as has been pointed out there has been everything from no jail to life sentences – or effective life sentences – in our state for these types of cases." SR 1990 at ST 205:11-14.

This Court has criticized these kinds of indeterminate sentencing practices. See. *Blakely v. Washington,* 542 U.S. 296, 332-33 (2004); *Harmlem v. Michigan,* 501 U.S. 957, 1007 (1991).

As stated above there is no relevant fact under SDCL 22-6-1(3) that can be proven at trial, provided during a plea hearing or at sentencing that has any objective relevance to a sentence. Under SDCL 22-6-1(3)'s vague terms do not state that any term of years can be given. Sentencing courts give sentences that can vary by hundreds of years – e.g. the Petitioner's first sentence of 200 years in 2012 and second sentence of 100 years in 2023. This also raises other constitutional questions – what number of years exceeds a life without parole? SDCL 22-6-1(3) is being utilized without any guidance and in an

arbitrary manner. SDCL 22-6-1(3) sentencing range is undefined and unconstitutionally vague.

C. Conclusion

South Dakota's homicide scheme is *functionally* indifferent that the ones in *Apprendi v. New Jersey,* U.S. 466 (200) and *Mullaney v. Wilbur,* 421 U.S. 684 (1975) as a sentencing court can consider, by a preponderance of evidence that any manslaughter defendant committed murder - or not – and sentence them identically. See. *State v. Mitchell,* 2021 S.S. 46, ¶47, n. 9; SR 1983, 1984, 1989-90 at ST 87:20-88:1, 198:9-22, 199:17-22, 204:5-205:6; see also Appendix E. pg. 31-56 (SR 1556-81).

In South Dakota all homicides can carry a life without parole sentence. "Life without parole sentences share some characteristics with death sentences." *Campell v. Ohio,* 138 S.Ct. 1059 (2019). And a first degree manslaughter conviction under SDCL 22-16-15 can be sentenced identically or to any number of years under SDCL 22-6-1(3) regardless of the facts. There is no real adversarial process at trial or at sentencing for a homicide defendant. Therefore, South Dakota's homicide scheme is arbitrary violates the Sixth and Fourteenth Amendments.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted, this 2nd day of April, 2024.

Nick Hines – Petitioner

Subscribed and sworn to me this
2 day of April, 2024

DEBRA M. BILERS
NOTARY PUBLIC
SOUTH DAKOTA

My Commission Expires Nov. 21, 2025