

Appendix A – Order Dismissing Appeal #31136 (October 3, 2025)

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

OCT -3 2025

Shay Johnson-Lay
Clerk

* * * *

GARLAND RAY GREGORY, JR.,) ORDER DISMISSING APPEAL
Petitioner and Appellant,)
vs.) #31136
STATE OF SOUTH DAKOTA,)
Respondent and Appellee.)

On July 29, 2025, Appellee State of South Dakota served and filed a motion to dismiss in the above-entitled matter pursuant to this Court's warning order dated October 9, 2024. Appellant, Garland Ray Gregory Jr., did not serve and file a response. After considering the Appellee's motion, the Court denied it and entered an order to show cause on September 11, 2025 as to why the appeal should not be dismissed on the ground that it is frivolous and incognizable. Appellant served and filed a response. The Court considered the response, and it is

ORDERED that the appeal is dismissed.

DATED at Pierre, South Dakota this 3rd day of October,
2025.

BY THE COURT:

[Signature] *RJ*

Steven R. Jensen, Chief Justice

ATTEST:

[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.

IN THE SUPREME COURT

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

OF THE

OCT - 3 2025

STATE OF SOUTH DAKOTA

* * * *

Shelby Johnson, Clerk
Clerk

IN THE MATTER OF THE SUBMISSIONS OF)
GARLAND RAY GREGORY, JR.)
)

SANCTION ORDER

It being the inherent responsibility of this Court to maintain the integrity of the judicial system and its efficient operation for the orderly administration of justice and the expeditious disposition of cases, and it also being the inherent responsibility of this Court to prevent abuse of legal process;

AND this Court having previously directed Garland Ray Gregory, Jr., to cease his submission of repetitive, unwarranted, frivolous, and/or vexatious documents to this Court and those courts under this Court's supervisory jurisdiction or face the imposition of more severe sanctions up to and including the restriction of his ability to file documents with the Clerk of this Court and those other clerks under this Court's supervisory jurisdiction.

AND this Court having entered an order on September 11, 2025, to show cause as to why Garland Ray Gregory, Jr. should not be sanctioned for continuous submissions that appeared to be meritless and frivolous, and this Court having received Garland Ray Gregory, Jr.'s response to its order to show cause on September 24, 2025, and this Court having examined Garland Ray Gregory, Jr.'s response to

the order to show cause, and finds that Garland Ray Gregory, Jr.'s documents were unwarranted by existing law, frivolous, lacking in evidentiary support, and/or were presented for an improper purpose; this Court, therefore, finds Garland Ray Gregory, Jr. to be in violation of the Court's previous warning to cease submitting meritless and frivolous documents, and it is

ORDERED that, effective immediately, the Clerk of this Court and all clerks within the supervisory jurisdiction of this Court are directed to decline to accept ANY pro se filing by, or on behalf of Garland Ray Gregory, Jr. and to return un-filed any papers that he may attempt to file, either directly or indirectly (as by mail to individual judges), with the following exceptions:

- (1) papers in any appeal or original proceeding before this Court in which Gregory is named or may be named as a party. However, under this exception, the Chief Justice must first authorize the filing as procedurally appropriate and grounded in fact and/or in law, and
- (2) papers relating to Gregory's defense of any civil action in which he has been named or may be named as a party defendant. However, under this exception, the judge presiding over the case must first authorize the filing as procedurally appropriate and grounded in fact and/or in law, and
- (3) papers in any criminal case in which Gregory may be a defendant and for any application for habeas corpus that he

may wish to file if the judge presiding over the case first authorizes the filing as procedurally appropriate and grounded in fact and/or in law. It is the intention of this exception that this Court's sanction not impede the filing of any documents necessary to protect Gregory from unnecessary or illegal imprisonment or other confinement, and

(4) papers in any case that would impede imminent danger of serious physical injury to Gregory so long as the danger is imminent at the time of filing and the judge presiding over the case first authorizes the filing as procedurally appropriate and grounded in fact and/or in law.

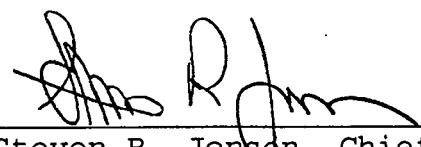
Garland Ray Gregory, Jr. is authorized to submit to this Court, NO EARLIER THAN TWO YEARS FROM THE DATE OF THIS ORDER, a motion to modify or rescind these sanctions.

DATED at Pierre, South Dakota, this 3rd day of October, 2025.

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.

Appendix B – Memorandum Of Opinion On The Petition For Writ Of Error

Coram Nobis 40CIV25-207 (June 23, 2025)

2 pgs.

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF LAWRENCE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

GARLAND RAY GREGORY, JR,
Petitioner

v.

STATE OF SOUTH DAKOTA,
Respondent.

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

40CIV25-207

On June 17, 2025, 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 in its Memorandum of Decision.

OPINION

The Petitioner outlines one claim of error under the Writ of Error Coram Nobis Petition. This Court will address that single claim.

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 SD 106, 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 coercions. *Id.* 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.* 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 (SD 1994).

Petitioner’s claim states: “denial of counsel of choice, in petitioner’s January 27, 1981 filed Post-Conviction/Habeas action.”

Petitioner has filed numerous petitions for post conviction relief. The Court is thoroughly familiar with all of the filings. He did not directly appeal his underlying conviction.

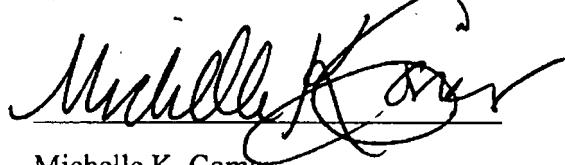
Coram nobis is not "merely another avenue of appeal." *In re Brockmueller*, 374 N.W2d 135,139 (SD 1985). With one significant exception, coram nobis deals only with errors of fact as opposed to an ordinary error in law. The exception is that the writ can reach certain constitutionally significant errors like jurisdictional defects. *Gregory v. Class* 1998 SD 106, 584 N.W. 2d 873, 878. Here, Petitioner has alleged no error of fact, nor has he alleged a jurisdictional defect.

CONCLUSION

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

Dated this 23rd day of June, 2025.

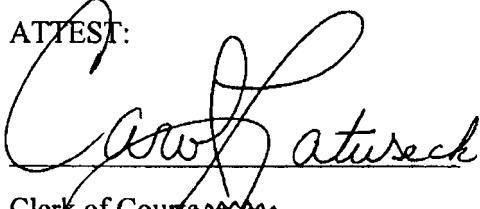
BY THE COURT:



Michelle K. Comer

Circuit Court Judge

ATTEST:



Carol Latusek

Clerk of Court

Deputy



**Appendix C – Petitioner/Appellants Response to South Dakota Supreme Court’s
Order Requiring Appellant To Show Cause Why Appeal Should Not
Be Dismissed Nor Sanctions Entered Against Him**

3 pgs.

**IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA**

| | | |
|--------------------------|---|--------------------------|
| GARLAND RAY GREGORY, JR. |) | PETITIONER/APPELLANT'S |
| Petitioner/Appellant, |) | RESPONSE TO SOUTH DAKOTA |
| |) | SUPREME COURT'S ORDER |
| vs. |) | REQUIRING APPELLANT TO |
| |) | SHOW CAUSE WHY APPEAL |
| STATE OF SOUTH DAKOTA |) | SHOULD NOT BE DISMISSED |
| Respondent/Appellee. |) | NOR SANCTIONS ENTERED |
| |) | AGAINST HIM |

#31136

Pursuant to Court's Order dated and filed 11th day of September 2025, received by petitioner/appellant 16th day of September 2025.

Petitioner/Appellant's claim not previously before a court, and the jurisdiction of *coram nobis* (All Writs Act U.S.C. § 1651(a)) proper:

Petitioner/Appellant's sole *coram nobis* claim 'the erroneous deprivation of his counsel of choice' is in the second class of constitutional error called structural defects, an error of the most fundamental character. A limited class of constitutional errors that defy analysis by harmless error standards, "so intrinsically harmful as to require automatic reversal without regard to their effect on the outcome." Neder v. United States, 527 U.S. 1, 7 (1999).

This extra ordinary remedy, *coram nobis*, is necessary under the circumstances "compelling such to achieve justice." United States v. Morgan, 346 U.S. 502, 511 (1954).

Coram nobis includes errors of the most fundamental character, *Morgan*, *supra* at 512, encompassing legal errors of constitutional significance. Petition of *Brockmueller*, 374 N.W.2d

135, 138 (S.D. 1985). The ‘erroneous deprivation of counsel of choice’, with consequences that are necessarily unquantifiable and indeterminate, “unquestionably qualifies as a structural error” United States v. Gonzalez-Lopez, 548 U.S. 140, 150 (2006), which are characterized as “a very limited class of errors that trigger automatic reversal.” United States v. Davila, 569 U.S. 597, 611 (2013).

This second class of constitutional error called structural defects defies analysis by harmless error standards, effecting the framework within the process, and not simply an error in the process itself, see Gonzalez-Lopez, *supra* at 148; Green v. United States, 262 F.3d 717, 717-718 (8th Cir. 2001), an error of the most fundamental character the South Dakota Court recognizes as such:

“When an error is structural it necessarily renders a trial fundamentally unfair. See Neder v. United States, 527 U.S. 1, 8, 119 S.Ct. 1827, 1833, 144 L.Ed.2d 35 (1999). As one court states, “A structural error resists harmless error review completely because it taints the entire proceeding.” State v. Levy, 156 Wash.2d 709, 132 P.3d 1076, 1083 (2006).” Guthmiller v. Weber, 804 N.W.2d 400, 406 (S.D. 2011)

The United States Supreme Court limiting the application of res judicata and collateral estoppel principles, when not given the full and fair opportunity to litigate the issues, see *Allen v. McCurry*, 449 U.S. 90, 95 (1980), which the Court’s Warning Order dated 9 October 2024 elicits as a cause and effect; citing the ‘number of submissions’, petitioner/appellant’s filings, which resulted from the Sixth Amendment deprivation of counsel of choice violation’s “tainted proceeding” *Guthmiller*, *supra*, of the earlier decision asserted as definitive (Gregory v. State, 325 N.W.2d 297 9S.D. 1982)/Gregory v. State, 353 N.W.2d 777 (S.D. 1984)), that was not given the full and fair opportunity to litigate the issues as a result of the Sixth Amendment violation

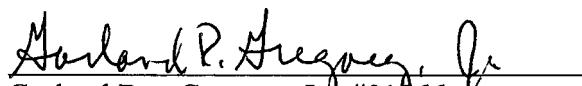
'deprivation of counsel of choice', "with consequences that are necessarily unquantifiable and indeterminate." Gonzalez-Lopez, *supra* at 150.

The application for the writ properly viewed as a belated extension of the original proceeding ¹ during which the error [the structural defect triggering automatic reversal, Gonzalez-Lopez, *supra* at 159; Davila, *supra*. In this instance a new habeas review] allegedly transpired. See *United States v. Denedo*, 556 U.S. 904, 912-913 (2009).

As demonstrated by the content of this response to the Court's Order to Show Cause, petitioner/appellant has not filed a frivolous action that would violate the Court's 9 October 2024 Warning Order, as the content of the Petition For Writ Of Error Coram Nobis, and the Appeal From The Circuit Court, Fourth Judicial Circuit Lawrence County, South Dakota, Appellant's Brief demonstrates. Petitioner/Appellant should be allowed to proceed. Be it so Ordered.

Respectfully Submitted,

This 18th day of September 2025.


Garland Ray Gregory, Jr #01866
Mike Durfee State Prison
1412 N. Wood Street
Springfield, SD 57062-2238

¹ Petitioner/Appellant's January 27, 1981 Post-Conviction/Habeas filing.