THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Pen-24-432

AARON ROBSHAW,

Appellant

v.

STATE OF MAINE,

Appellee

ON APPEAL from the Penobscot County
Unified Criminal Docket

APPELLANT'S BRIEF

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PROCEDURAL HISTORY

A criminal complaint was filed against Aaron Robshaw on February 21, 2021. Appendix ("App.") 3. An indictment was issued on December 27, 2023 alleging two counts of Gross Sexual Assault under 17-A M.R.S. § 253(1)(C) (Counts 1 & 2), two counts of Unlawful Sexual Assault under 17-A M.R.S. § 255-A(1)(E-1) (Counts 3 & 4), and one count of Unlawful Sexual Assault under 17-A M.R.S. § 255-A(1)(E-1) (Count 5). App. 37-38.

A two-day jury trial was held on August 20-21, 2024. App. 10-11. Mr. Robshaw made a motion for judgment of acquittal after the close of the State's evidence on Day 1. Trial Transcript ("Tr.") 258-60. The Trial Court (Malonee, J.) granted the motion as to Count 2, but denied it as to the remaining counts. Tr. 260-61. Mr. Robshaw renewed that motion after the close of Mr. Robshaw's evidence, and it was denied. Tr. 343, 354.

The jury returned a guilty verdict on the remaining counts on August 21, 2024. App. 39-41.

At sentencing held on September 20, 2024, Mr. Robshaw was sentenced to twenty years on Count 1, with a concurrent fifteen years on Counts 3 and 4, and a concurrent ten years on Count 5. App. 31-34.

Mr. Robshaw filed a Notice of Appeal and an Application to Allow an Appeal of Sentence on September 20, 2024. App. 13-14. This Court granted leave to appeal the sentence on December 20, 2024.

STATEMENT OF FACTS

Aaron Robshaw knew the alleged victim, M.D., since she was approximately four years old. Tr. 284. M.D.'s mother, Samantha H[redacted], was friends with Mr. Robshaw's girlfriend, Kerry L[redacted]. Tr. 283-84. Around 2017, Ms. H[redacted] and her family moved into the trailer near the one Mr. Robshaw's father owned. Tr. 285. Ms. L[redacted] lived at the trailer with Mr. Robshaw and his father. Tr. 216.

Ms. H[redacted] and Ms. L[redacted] were close friends and would see each other often – multiple times in a week. Tr. 290. When Ms. H[redacted] would come over to the Robshaw's trailer when she visited Ms. L[redacted] she would bring M.D. Tr. 290. When Ms. H[redacted] was working or unable to watch M.D., she would drop her off at the Robshaw trailer to be watched by Ms. L[redacted]. Tr. 290, 293. The trailer was small, and Mr. Robshaw's father spent much of his time in a chair in the front living room. Tr. 294. To not disturb him, it was common for people to congregate in the back bedroom to watch movies

and play video games. Id. When all three were in the trailer, Mr. Robshaw, Ms. L[redacted], and M.D. would typically be in the bedroom together. Id.

M.D. was sixteen when she testified at trial. Tr. 33. She testified she remembered going to the Robshaw trailer nearly every day when she was nine to eleven years old. Tr. 39. She often went with her mother or another person, though she occasionally went alone. Tr. 40. When she was at the trailer, she recalled mostly watching television or looking at her phone in the bedroom. Tr. 43. She testified there were times when Ms. L[redacted] would leave the room to cook dinner or smoke a cigarette outside, and she would sometimes be alone with Mr. Robshaw in the bedroom. Tr. 44. During those times, Mr. Robshaw would sometimes tickle her on her thighs, rear, and stomach. Id. During one of those times she was alone with him, M.D. said Mr. Robshaw put his hands underneath her clothes and touched her vagina. Tr. 48. She said that on multiple occasions, he put his finger in her vagina, but she did not remember how often. Tr. 50-52. She also recounted a time when she was eleven when he touched her vagina with his mouth. Id. M.D. said that when he was doing that, he said he would "hurt the people [she] loved." Tr. 53. Additionally, she testified Mr. Robshaw came out of the bathroom naked once and "tried to get [her] to look at him." Tr. 54-55.

Mr. Robshaw denied he ever was inappropriate with M.D. Tr. 299. He denied touching her vagina with either his hand or his mouth. Id. In fact, he said he never was alone with M.D., Tr. 303-04, that someone was always there in the trailer with him whenever M.D. was around, be it his father, Ms. L[redacted], Ms. H[redacted], or others. Tr. 294, 305-06. Additionally, he described M.D. as clinging to Ms. L[redacted], never leaving her side when they were together, making it impossible for him to be alone with M.D. Tr. 305. Further, he refuted the idea that he could be alone with M.D. when Ms. L[redacted] would go outside to smoke because they never went out for just that purpose, that everyone simply smoked in the house and in every room. Tr. 295. Finally, he told the jury about two separate occasions – once by a pool and once on a video posted on Facebook – where he observed M.D.'s older brother behaving in a sexual way towards M.D. Tr. 285-88.

Ms. L[redacted] echoed Mr. Robshaw's testimony. She said there was never a time when he would have been alone with M.D. Tr. 230, 246. She also denied that she would ever go outside just to smoke, as everyone just smoked in the house. Tr. 230. Further, she described M.D. as her "little shadow," never leaving her side. Tr. 230-31, 246. If Ms. L[redacted] ever left the room, M.D. would come with her. Tr. 246. M.D., she said, came to their

trailer often on her own because she would fight with her mother. Tr. 233. She recalled at least two times when M.D. said she wanted Ms. L[redacted] to buy a house big enough for her and her grandmother to live with Ms. L[redacted] and Mr. Robshaw without her mother. Tr. 233, 297-98. She also confirmed that she saw the same video on Facebook as Mr. Robshaw and described it as disturbing. Tr. 327-28.

After conducting voir dire, and over Mr. Robshaw's objection, *see* App. 15-30, the Trial Court permitted the State to call Molly Louison-Semrow, associate director of Pinetree Institute, and a forensic interviewer for the Cumberland County Children's Advocacy Center. Tr. 133. It offered her as an expert "in the field of child forensic interviewing and sexual abuse disclosure." Tr. 143. She testified to the jury about the research behind the study of delayed disclosure, Tr. 146-47, including what she termed as "barriers to disclosure." Tr. 148-49. According to Ms. Louison-Semrow, the consensus in the research is "most disclosure is delayed by some period of time, and the consensus is that when and if children do disclose, that is often over time." Tr. 149-50. She acknowledged she had not seen anything related to M.D.'s case nor had she spoken with any of the witnesses, including M.D. Tr. 151.

The jury ultimately found Mr. Robshaw guilty on the remaining four counts. App. 40-41. At sentencing held on September 20, 2024, Mr. Robshaw was sentenced to twenty years on Count 1, with a concurrent fifteen years on Counts 3 and 4, and a concurrent ten years on Count 5. App. 31-34.

This appeal timely ensued.

ISSUES ON APPEAL

I. Did the Trial Court commit reversible error when it failed to incorporate the nature of the elements of the crime in its sentencing analysis?

II. Did the Trial Court abuse its discretion when it allowed the State to put on an expert to discuss the phenomenon of delayed disclosure?

III. Did the Trial Court sufficiently justify its decision to impose a twenty-year period of supervised release?

SUMMARY OF THE ARGUMENT

First, the Trial Court erred by rigidly basing its sentencing analysis on the 20-year mandatory minimum under 17-A M.R.S. § 253(2), effectively treating it as a sentencing floor. While the statute restricts judicial discretion for the basic sentence, constitutional principles of proportionality and due process still apply. The court did not adequately consider the nature of the offense within the broader sentencing framework, leading to an unduly harsh sentence. This approach contradicts established sentencing principles and necessitates resentencing.

Second, the Trial Court abused its discretion by permitting an expert to testify about general theories of delayed disclosure in child sexual abuse cases. While expert testimony on topics not understood by the average person is permissible, this type of broad, case-unspecific testimony lacked relevance and prejudiced the defendant, as the expert's testimony effectively bolstered that of the alleged victim.

Finally, the Trial Court did not properly justify its decision to impose twenty years of supervised release.

ARGUMENT

I. The Trial Court committed reversible error when it failed to incorporate the nature of the elements of the crime in its sentencing analysis.

The constraints of 17-A M.R.S. § 253(2) loomed large when the Trial Court conducted its sentencing calculations in this case. While the Legislature's directive in this section abrogates judicial discretion in setting the basic sentence, it does not eliminate the constitutional obligations that govern the broader sentencing process. The Trial Court's approach – anchoring its analysis rigidly at the statutory starting point – resulted in an unduly harsh sentence, effectively transforming the prescribed starting point into a *de facto* floor. Such a method was an abuse of the Trial Court's discretion.

A. Preservation and Standard of Review

Mr. Robshaw, during sentencing, objected to how the Trial Court applied 17-A M.R.S. § 253(2) in determining a proper sentence. S.Tr. 33-35.

This Court reviews "a sentencing court's determination of the basic sentence at step one for misapplication of the law or of sentencing principles, or an abuse of the court's sentencing power." *State v. Ketcham*, 2024 ME 80, ¶ 35, 327 A.3d 1103, 1113 (*citing State v. Williams*, 2020 ME

128, ¶ 56, 241 A.3d 835). It reviews "the determination of the maximum sentence at step two for an abuse of discretion and the final sentence reached by the court for a disregard of sentencing factors or an abuse of the court's sentencing power." *Id.* The Court reviews, at "each of the steps of the sentencing process," has "articulate[d] which sentencing goals are served by the sentence." *Ketcham* at ¶ 35 (*quoting State v. Watson*, 2024 ME 24, ¶ 22, 319 A.3d 430).

"[T]he trial court is generally afforded significant leeway in determining which factors are considered and the weight a factor is assigned." *Ketcham* at ¶ 35 (citations omitted). Although "a sentencing court is not required to consider or discuss every argument or factor the defendant raises, it must still articulate which sentencing goals are served by the sentence and must not disregard significant and relevant sentencing factors." *Id.* (*citing Watson*)

Having granted the discretionary appeal and merged it with Mr. Robshaw's direct appeal, the Court is empowered to review questions of sentence legality here. *See State v. Murray-Burns*, 2023 ME 21, ¶¶ 12-17, 290 A.3d 542; 15 M.R.S. § 2152 (2023). In reviewing a criminal sentence, this Court must consider:

1. Propriety of sentence. The propriety of the sentence, having regard to the nature of the offense, the character of the offender, the protection of the public interest, the effect of the offense on the victim and any other relevant sentencing factors recognized under law; and

2. Manner in which sentence was imposed. The manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.

15 M.R.S. § 2155.

B. The *Hewey* analysis and 17-A M.R.S. § 253-A(2)

At sentencing, the Trial Court and trial counsel discussed the requirements set by the Legislature for judges sentencing defendants under 17-A M.R.S. § 253(2), which states:

> If the State pleads and proves that a crime under section 253 was committed against an individual who had not yet attained 12 years of age, the court shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A, the court shall select a definite term of at least 20 years.

17-A M.R.S. § 253-A(2). They all concurred that the statute mandated starting the analysis of Mr. Robshaw's sentence at 20 years. September 20, 2024, Sentencing Transcript ("S.Tr.") 33, 37-38. The subsequent step, however, became the focal point of contention and is the source of the Trial Court's mistake.

Generally, a sentencing court in felony cases must navigate a familiar procedure known as a *Hewey* analysis. *See State v. Hewey*, 622 A.2d 1151 (Me. 1993) and 17-A MRS § 1602. The Legislature has abrogated judicial discretion to set basic sentences in cases under 17-A M.R.S. § 253-A(2) by mandating the basic sentence, the first step of the *Hewey* analysis, be fixed at twenty years. Even though the discretion on where to start the sentencing process has been abrogated, the Constitutional protections inherent in criminal sentencing still apply to the rest of the sentencing analysis. *See generally State v. Ringuette*, 2022 ME 61, ¶¶ 9-13, 288 A.3d 393.

The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. Article 1, section 9 of the Maine Constitution explicitly provides that "all penalties and punishments shall be proportioned to the offense." Me. Const. art. I, § 9; *see State v. Bennett*, 2015 ME 46, ¶ 15, 114 A.3d 994, 1000. Furthermore, "all penalties and punishments shall be proportioned to the offense." Me. Const. art. I, § 9, cl. 2.

> To determine whether a sentence is disproportionate, we conduct a two-part test. First, we compare the gravity of the offense [with] the severity of the sentence. Second, if this

> comparison results in an inference of gross disproportionality [we] then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction.

State v. Stanislaw, 2013 ME 43, ¶29 (citations and quotations omitted). "[U]nder the Maine Constitution, a punishment can violate article 1, section 9 if it is disproportionate to the offense for which it is being imposed, even if it is not cruel or unusual in the sense that it is inherently barbaric." *State v. Lopez*, 2018 ME 59, ¶ 14, 184 A.3d 880, 885 (internal quotation omitted). Due process requires "that criminal adjudications are not conducted in an arbitrary manner and that terms of imprisonment are not imposed 'on an ad hoc and subjective basis.'" *Beckles v. United States*, 580, U.S. 256, 266, 137 S. Ct. 886, 892 (2017) (*internal quotation omitted*).

Sentences must be placed on a continuum based on the severity of the acts committed. Even before *Hewey*, courts were computing sentences in terms of a continuum and placing them in quadrants within the sentencing range relative to each other, in which judges "rank all of the possible means of committing the offenses on a scale reflecting degrees of seriousness." *See, e.g.*, *State v. Hallowell*, 577 A.2d 778, 781 (Me. 1990). After *Hewey* and its subsequent codification, 17-A M.R.S. § 1602, courts have continued the quadrant analysis. *See, e.g.*, *State v. Bennett*, 2015 ME 46, ¶15; *State v.*

Lopez, 2018 ME 59, ¶19. This Court has granted sentencing judges wide latitude in exercising their quadrant-setting discretion as long as that determination is reasonable. *State v. Whitten*, 667 A.2d 849, 852 (Me. 1995).

The Trial Court's language suggested its analysis operated within this framework and used terms of "least worst" and "lower stratum" to describe the acts of how this type of crime could be committed.

> I agree with [the prosecutor] that this is not the least worst way to commit this offense.
>
> But it's also true that it is far from the worst way one can do it. There -- you can have genital penetration, you can have violence, you can have force, you can have more vivid threats of force than the ones we heard about at trial here. You can -- you can have offenders who victimize their own children. There are just a lot of ways for it to be worse.
>
> I'm satisfied that in setting such a high minimum, the legislature intended not just to designate the least worst way to commit the offense, but to capture kind of the lower stratum of -- of ways in which it can -- the offense can be -- can be committed.

S.Tr. at 42-43. From the Trial Court's perspective, the shadow of the twenty-year starting point is cast upon all of the "lower stratum" cases without any distinction.

Therein lies the problem. When sentencing courts begin their analysis at twenty years for gross sexual assault cases, all of the "lower stratum" of cases gets truncated and consolidated into this twenty-year benchmark. Individual characteristics of cases in the lower stratum, normally part of a sentencing court's analysis during Step 1 of the *Hewey* analysis, get disregarded. By contrast, courts engaging in a sentencing analysis in more severe cases use those cases' individualized characteristics to set the first step higher than twenty years. The result, in practice, is that the twenty-year starting point becomes a twenty-year sentencing floor unless extraordinary mitigating factors are present, such as overwhelming remorse and accepting responsibility. These factors will never be present in cases that proceed to trial, which means not only are sentences for plea deals shifted upward, but a trial penalty emerges despite courts claiming they do not punish individuals for choosing to go to trial. S.Tr. 40. If the nature of the crime is not considered as a separate factor, most of these cases, including all trial cases, will be subjected to a twenty-year floor on sentencing. Consequently,

sentences become unnaturally high as a result.[1] This contradicts the thoughtful analysis required by the Code and *Hewey*.

Accordingly, this Court's intervention is necessary to clarify the proper application of 17-A M.R.S. § 253-A(2) and to reaffirm that sentencing must reflect both legislative mandates and the fundamental principles of proportionality and due process. This Court needs to make clear that the nature and quality of offense are to be incorporated in sentencing, even in the face of the restrictions of § 253-A(2). If it cannot happen in the first step of the *Hewey* analysis because it has been barred by legislative fiat, then it should be required to happen in the second step. The Trial Court's failure to fully account for it in anything other than a cursory way was an abuse of discretion, and the sentence should be vacated and returned to the Trial Court for resentencing.

[1] Sentences on sex offenses continue to rise nationally. At least one study has shown a 64% increase in the number of individuals between 2010 and 2020 who were in prison for 10 years or more for a rape or sexual assault conviction prior to release. *See* Budd. K.M. (2024) "Responding to Crimes of a Sexual Nature: What We Really Want Is No More Victims." The Sentencing Project. https://www.sentencingproject.org/policy-brief/responding-to-crimes-of-a-sexual-nature-what-we-really-want-is-no-more-victims (last visited Dec. 10, 2024)

II. The Trial Court should not have allowed a witness to testify about general theories of delayed disclosure.

The Trial Court allowed the State to call an expert witness who testified not about the case at hand, but about the phenomenon known as "delayed disclosure." The expert witness, Molly Louison-Semrow, should not have been allowed to testify about this area, and allowing it was an abuse of discretion.

A. Preservation and standard of review

Mr. Robshaw objected to allowing Ms. Louison-Semrow as an expert, not by questioning her ability to instruct the jury in forensic interviews of children but to offer testimony about general theories of delayed disclosure in sexual abuse cases. Tr. 119-20, 126-28.

This Court reviews a trial court's "foundational finding that expert testimony is sufficiently reliable for clear error, and review for an abuse of discretion a court's decision to admit an expert's opinion after finding it reliable." *State v. Westgate*, 2020 ME 74, ¶ 24, 234 A.3d 230, 237 (*citing State v. Maine*, 2017 ME 25, ¶ 16, 155 A.3d 871 (citation omitted)). "A court abuses its discretion in ruling on evidentiary issues if the ruling arises from a failure to apply principles of law applicable to a situation resulting in prejudice." *Westgate* ¶ 23 (internal citations omitted).

B. The use of experts in cases of allegations of sexual abuse of children must be specific to the case itself.

This is not new ground for this Court, as it has approved expert testimony in these types of cases before. See, e.g., *Westgate*, 2020 ME at ¶¶ 24-30 (expert on forensic interview techniques); *State v. Paquin*, 2020 ME 53, ¶¶ 16-18, 230 A.3d 17 (delayed reporting particularly in male victims) (abrogated on other grounds by *State v. Armstrong*, 2020 ME 97, ¶¶ 7-12, 237 A.3d 185). "An expert opinion must be relevant to an issue in the case." *State v. Napier*, 1998 ME 8, ¶ 5, 704 A.2d 869; *see also* Field & Murray, *Maine Evidence* § 702.1 at 374-75 (7th ed. 2007).

In a case decided just a month before the trial in this case, this Court addressed near-identical testimony by an expert witness in *State v. Smith*, 2024 ME 56, 320 A.3d 405. In *Smith*, the Court described the testimony of a licensed clinical social worker, Kathy Harvey-Brown, who also had a master's degree in social work. The Court noted:

> Harvey-Brown testified that she is familiar with the research on children's delayed disclosure of sexual abuse and that her expert opinion is based on that research. Harvey-Brown defined "delayed disclosure" as a disclosure that does not occur immediately after a sexual abuse episode. She explained that the research shows it is "quite normative" for child victims of sexual abuse to not disclose the abuse immediately and that there could be many reasons for the delay, including the victim's age,

> whether there is a believing caregiver, whether the abuser is a family member, any feelings of shame, an insufficient understanding of the significance of the conduct involved, and other psychosocial factors.

Smith ¶ 9. When the defendant in *Smith* challenged Harvey-Brown's testimony, he said she was not qualified to render an opinion because she lacked the sufficient educational background to qualify as an expert under Rule 702. *Smith* at ¶ 23. This Court said Rule 702 is not so prescribed, and education is one of the factors a court can consider. *Id.* at ¶ 24 (*citing United States v. Monteiro*, 407 F. Supp. 2d 351, 373 (D. Mass. 2006) ("[E]ducation is not the *sine qua non* of qualification of an expert witness.")) Harvey-Brown, this Court determined:

> explained to the jury that it is not uncommon for a child who has been sexually abused to delay reporting the abuse and that a number of psychosocial factors may contribute to the delay. Her expert opinion did not stray outside her area of expertise nor did it require additional specialized knowledge.

Smith at ¶ 28.

In this case, the objection on Ms. Louison-Semrow's testimony was not based on her training. In fact, defense counsel repeatedly suggested she was likely quite capable at her job of interviewing children in cases of suspected abuse. Tr. 112-13, 119. Counsel instead objected to the fact that the State's

expert was relying on studies that made no effort to distinguish if any of the late disclosures were determined to be truthful, she wasn't offering any case-specific information, and she was simply bolstering the credibility of the alleged victim in an indirect, but authoritative way. Tr. 126-27. He also argued she was not going to aid the jury in its task of determining if the alleged victim was credible, which was the key question for the jury as the State's only evidence came from the alleged victim herself. Tr. 127-28.

Ms. Louison-Semrow acknowledged she was not testifying about anything specifically related to M.D., but simply research to which she was familiar. The testimony of Ms. Louison-Semrow was offered by the State, not for the technical nature of child interviews, *see Westgate*, or the clinical indicators observed in an alleged victim, *see State v. Black*, 537 A.2d 1154, 1157 (Me. 1988), but to bolster the credibility of M.D.'s testimony because it fit with research-validated patterns. She testified that "[t]he research tells us that a delay in disclosure from a child is so common that we should expect it." Tr. 145. This Court has previously observed that "expert testimony offered to explain inconsistent testimony or conduct can have the effect of bolstering that person's credibility." *State v. Black*, 537 A.2d 1154, 1157 (Me. 1988). And, because of the skills and experiences typical to their

profession, the opinions of "experienced criminal investigator[s]" about a witness's credibility are "far more prejudicial" than those of other witnesses. *State v. Scott*, 2019 ME 105, ¶ 59 (Jabar, J., dissenting). An expert impermissibly strays over the line into implicit commentary on an alleged victim's credibility by testifying about "the accuracy, reliability or truthfulness of witnesses of the same type under consideration." *State v. Ellis*, 512 S.W.3d 816, 839 (Mo. App. W.D. 2016) (quotation marks omitted).[2]

This testimony did not meet the required Rule 401 and 702 requirements and should not have been allowed.

[2] *See generally Kurtz v. Commonwealth*, 172 S.W.3d 409, 414 (Ky. 2005) (expert delayed-disclosure testimony improper because "a party cannot introduce evidence of the habit of a class of individuals either to prove that another member of the class acted the same way … or to prove that the person was a member of that class because he/she acted the same way under similar circumstances."); *In re Renewal of the Teaching Certificate of Thompson*, 893 P.2d 301, 307 (Mont. 1995) ("[A]n expert's general statements that delays and recantations are common in victims of sexual abuse may prejudice the accused because the trier of fact may defer to the expertise of the expert in the field of child sexual abuse and infer that the expert believes the witness to be credible."); *State v. Cressey*, 628 A.2d 696, 699-700 (N.H. 1993) ("[W]e reject the State's assertions that the scope of [the expert witness's] testimony was somehow limited by her statements in conclusion that the children exhibited symptoms consistent with those of sexually abused children. We see no appreciable difference between this type of statement and a statement that, in her opinion, the children were sexually abused."); *State v. Batangan*, 799 P.2d 48, 52 (Hawaii 1990) ("The expert's use of words such as 'truthful' and 'believable' are not talismanic. But where the effect of the expert's opinion is the same as directly opining on the truthfulness of the complaining witness, such testimony invades the province of the jury.") (quotation marks and citation omitted).

C. Expert witness testimony is not necessary if a topic is widely known

This Court has recently cast an unexpected cloud over this type of evidence. What if the concept of "delayed disclosure" has moved beyond the provenance of expert testimony? If, *arguendo*, an expert testifying on the phenomenon of delayed disclosure is considered appropriate under Rule 702, the question becomes whether it is proper to have an expert expound on what is in the jury's common understanding.

> The phenomenon of "delayed disclosure" by childhood sexual abuse survivors is now well understood and clinically confirmed. Over the last several decades, an extensive body of research has demonstrated that individuals who endured sexual abuse as children experience that trauma in ways distinct from victims of other crimes. Many studies have documented the psychological barriers to revealing the abuse and have shown that, typically, a survivor needs decades to process and understand the abuse.

Dupuis v. Roman Catholic Bishop of Portland, 2025 ME 6, ¶ 68, __ A.3d ___ (internal quotations omitted). Once a topic has become widely known, why must an expert explain it to a jury?

"The two categories of expert and lay opinion testimony are thus mutually exclusive: an opinion based on 'scientific, technical, or other specialized knowledge,' M.R. Evid. 702, cannot be an opinion of a witness 'not testifying as an expert,' M.R. Evid. 701." *Mitchell v. Kieliszek*, 2006 ME

70, ¶ 14, 900 A.2d 719, 723. Just as a lay witness cannot testify on information in the purview of an expert, an expert is not needed to testify on topics that fall within the experience and knowledge of the general public. "In order to provide assistance to the jury, the expert testimony 1) must be concerned with a matter "beyond common knowledge so that the untrained layman will not be able to determine it intelligently" without that expert help; and 2) the expert's testimony must be helpful to the jury's understanding." *State v. Rich*, 549 A.2d 742, 743 (Me. 1988) (internal citation omitted). It is not necessary assistance if it is already known.

Society is far more knowledgeable about the effects of trauma than it was when *Black* was decided. *See Kermit V. Lipez, The Child Witness in Sexual Abuse Cases in Maine: Presentation, Impeachment, and Controversy,* 42 Me.L.Rev. 283, 345 (1990) ("Any person who suffers from some type of traumatic experience … may have difficultly relating that experience in a chronological, coherent and organized manner."). What insight did Ms. Louison-Semrow's testimony provide to jurors "beyond the kind of judgment an ordinarily intelligent juror can exert?" *Black, 537 A.2d at 1156 (quoting Field & Murray, Maine Evidence § 702.1 (1987))*.

The fact that the same type of testimony could fall within the scope of commonly held information and the area of expert witnesses highlights the prejudicial nature of an expert reinforcing already understood ground. Whatever benefit it was, it was minimal and far outweighed by the risk of prejudice. *See* M.R. Evid. 403; *State v. Maine,* 2017 ME 25, ¶ 24, 155 A.3d 871, 877, *as corrected* (July 27, 2017) ("Even relevant evidence, however, is inadmissible if "its probative value is substantially outweighed by a danger of ... unfair prejudice, ... [or] misleading the jury."); *Paquin* ¶ 18, fn.7. This evidence should not have been presented to the jury.

III. The Trial Court failed to conduct the required analysis to support its decision to impose a twenty-year period of supervised release.

The Trial Court erred by imposing a twenty-year supervised release period. This decision was arbitrary and lacked sufficient support and justification. The Trial Court did not follow this Court's guidance from *State v. Cook*, 2011 ME 94, 26 A.3d 834, which instructs that when determining the duration of supervised release, it must consider appropriate statutory sentencing factors focused on supervision and rehabilitation. According to *Cook* at ¶ 29, a sentencing court must outline its reasoning regarding the factors explicitly included in 17-A M.R.S.A. § 1501 and § 1602. It also must

cite any relevant case-specific factors influencing the terms of supervised release and how these factors contributed to the decided length and conditions imposed. *Cook* at ¶ 30. The Trial Court, however, did not adequately justify the twenty-year period of supervised release. Failure to do so requires the Court to vacate the imposition of the supervised release and return it to the Trial Court.

A. Preservation and standard of review

The Trial Court's decision to impose 20 years of supervised release was not specifically objected to during the sentencing hearing. Nonetheless, "[w]hen leave to appeal from a sentence that includes supervised release is granted, [this Court] will separately review the term of supervised release for misapplication of principle to ensure that supervised release is not imposed as punishment for the defendant's substantive criminal conduct, and for an abuse of discretion concerning the analytical factors selected by the court as appropriate; the length of the resulting term of supervised release; and the conditions imposed on that term." *Cook* at ¶ 31 (citing *Hewey* at 1155 (recognizing the trial court's "superior posture for evaluating ... those factors particular to a particular offender")); *State v. Dalli*, 2010 ME

113, ¶¶ 6, 9, 12 (sentencing analysis reviewed for misapplication of principle and abuse of discretion).

B. Supervised release must only be imposed based of the factors present in each individual case

The Trial Court failed to properly justify its reasons for imposing the twenty-year period of supervised release, stating only:

> To that, I must add a period of supervised release. I don't know how to -- and I -- and I shall, and the term of supervised release will include all of the terms proposed by the State. And the reason for this, Mr. Robshaw, is I don't know how else to keep people safe from you.
>
> If you had -- if you had suffered the consequences of your first sex offense and if you had reformed, as people do, as people do, then we would not be here, but you couldn't do that, and you couldn't comply with the registration obligations, and now you've committed this offense, and you've hurt this girl, and you've hurt her family, and you've hurt everybody who cares about you. And I don't know how else to prevent that from happening other than to put you under supervision for a very long time.
>
> Given your age, there's going to come a point where, you know, frankly you'll – you'll be -- if I -- if I've done my calculation correctly, you'll be – you'll be younger when your supervision ends than I am now, but you will be old enough so it's unlikely you will reoffend. So there will be a period of 20 years of supervised release following the end of Mr. Robshaw's sentence.

S.Tr. 45-46. A single factor – safety for the community – was espoused by the Trial Court when imposing the twenty-year period. The Trial Court

apparently believed it necessary for the protection of the public to impose a twenty-year period of supervision on a defendant who will be in his late sixties when he is released. This conclusion, however, did not come after a complete analysis of *all* the required factors.

Supervised release is not another punishment for the acts that led to the conviction; it has many purposes.

> In enacting a system of supervised release modeled on the federal system, the Legislature intended to enhance the safety of the community primarily by supervising and rehabilitating, potentially for a long period of time, sex offenders who have already been punished for their crimes by incarceration, and secondarily by re-incarcerating the offender if he proves unable to follow the conditions promoting rehabilitation prescribed by the court. This conclusion as to the nature and purpose of supervised release guides our consideration of the sentencing analysis required to impose it.

Cook at ¶ 26. Violations of the terms of supervised release come with their own incarcerable consequences. In Mr. Robshaw's case, it could come with the imposition of a prison sentence equal to his original sentence.

This Court has imposed a requirement on sentencing courts making the decision to impose supervised release to adhere "to the well-established precedent of *State v. Hewey* and describe … a sentencing process by which the significant purposes and relevant factors may be articulated by the trial

court in an individual case." *Cook* at ¶ 30 (*quoting Hewey* 622 A.2d at 1154) (internal quotation marks omitted).

> Although a sentencing court imposing supervised release is not required to repeat the three-step section 1252–C analysis, in order to comply with the Legislature's intent and allow for meaningful appellate review, the court must separately articulate its analysis as to the section 1151, section 1252–C(2), and case-specific factors it finds relevant to supervised release, and how those factors led it to arrive at the length and conditions of supervised release imposed.

Id. (citing repealed and replaced sentencing statutes).

The Trial Court should have specifically articulated all the individual factors it considered when imposing the term of supervised release. It also should have expressed the factors it relied upon when determining the period length it imposed. Because none of this happened, and the Sentencing Court failed to articulate its analysis and the factors that led to imposing twenty years of supervised release, the sentence should be vacated and remanded back to the Trial Court.

CONCLUSION

This Court should either vacate the conviction of Mr. Robshaw and/or the sentence imposed by the Trial Court and remand the case back to the Trial Court for proceedings consistent with this Court's mandate.

Dated: February 11, 2025 /s/ James Mason

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CERTIFICATE OF SERVICE

As required by the M.R.App.P. 7(c)(1), I sent a native PDF version of this brief to the Clerk of this Court and opposing counsel at the email addresses provided with entry of appearance. I will, when directed by the Clerk of Court under M.R.App.P. 7(c)(3), deliver ten paper copies of this brief to this Court's Clerk's office via U.S. Mail, and send two copies to opposing counsel at the addresses provided by that same entry of appearance.

CERTIFICATE OF COMPLIANCE

I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

Dated: February 11, 2025

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_____
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