STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

DOCKET NO. PEN-24-432

STATE OF MAINE

APPELLEE

v.

AARON ROBSHAW

APPELLANT

ON APPEAL FROM THE PENOBSCOT COUNTY UNIFIED CRIMINAL DOCKET, BANGOR, ME

BRIEF OF APPELLEE

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STATEMENT OF THE FACTS

Around 2018 and 2019, when the victim M.D. was between approximately nine and eleven years old, she lived with her mother in the neighborhood known as old Capehart in Bangor, Maine. (T. 34-35.) Her mother worked odd hours as a CNA, and M.D. would frequently spend time at defendant Aaron Robshaw's trailer on Finson Road. (T. 35-37.) She went to that trailer nearly every day, sometimes with her mother and other times to be babysat while her mother worked. (T. 39-40.) There, M.D. would spend time with Robshaw and his girlfriend in the back bedroom where they lived. (T. 37-38, 41-42.) M.D. referred to Robshaw as Uncle Aaron, and they would occasionally horse around with him tickling her and throwing her on the bed. (T. 38, 43-44.) Over time, however, the contact became more insidious. (T. 52.) On multiple occasions before M.D. turned twelve years old, when Robshaw and she were in the bedroom alone, Robshaw placed his hand in M.D.'s pants and on her vagina. (T. 46-48, 50.) This occurred often, and he would occasionally "move his fingers around, or he would put his fingers in [M.D.'s] vagina." (T. 50-51.) On at least one occasion when she was eleven years old, Robshaw placed his mouth on M.D.'s vagina. (T. 52-53.)

On September 14, 2019, M.D. told her mother for the first time that Robshaw had sexually abused her. (T. 56, 164, 169-70.) By this time the abuse

had been ongoing for years. (T. 48, 52, 73.) However, she only disclosed some of what Robshaw had done to her because she "was scared about what he would do, and [she] was scared about just the whole situation. It was embarrassing too." (T. 57.) She also felt like she bore responsibility for what had happened. (T. 58.) During her first disclosure, M.D. told her mother that Robshaw had touched her just once, and she maintained that assertion for several years. (T. 57-58, 75.) She did not reveal the full extent of the abuse until 2023. *Id.*; (T. 76-77, 79, 205.)

Robshaw was charged by complaint with a single count of unlawful sexual contact on February 17, 2021. (A. 3.) He failed to appear on March 17, 2021, was arrested, and had his initial appearance on May 12, 2021. (A. 3-4.) He was indicted on a single count of unlawful sexual contact on July 28, 2021. (A. 5.) The State sought and obtained a superseding indictment on March 22, 2023 and again on December 27, 2023. (A. 8.) Robshaw was arraigned and pled not guilty to all charges in the State's latest indictment prior to the outset of trial on August 20, 2024. (A. 10.)

The matter proceeded to jury trial on August 20, 2024. (A. 10.) There, the State sought to admit expert testimony from Molly Louison-Semrow on the topic of delayed disclosure. (T. 86.) After extensive voir dire, the trial court (*Mallonee, J.*) admitted the testimony, concluding that Ms. Louison-Semrow's

testimony could assist the jury on a topic that it characterized as "counterintuitive." (T. 128-29.) Ms. Louison-Semrow proceeded to define delayed disclosure for the jury and to testify as to the consensus in the scientific community that there is often a delay in the reporting of sexual abuse, and that full disclosure often occurs over time. (T. 144-47, 150.)

Robshaw was found guilty following trial on August 21, 2024. (A. 11.) A sentencing hearing was held on September 20, 2024. (A. 12.) Following argument, the trial court sentenced Robshaw to twenty years' incarceration followed by twenty years of supervised release. (A. 12.) This appeal timely followed. (A.14.)

STATEMENT OF THE ISSUES PRESENTED

I. Whether the trial court erred in its sentencing analysis, when the Legislature has set the basic sentence for gross sexual assault of a child under twelve at no less than twenty years?

II. Whether the trial court erred in admitting expert testimony on the phenomenon of delayed disclosure, when the testimony was reliable and helpful to the finder of fact in explaining an issue outside of the understanding of the average person?

III. Whether the trial court erred in imposing a twenty-year period of supervised release, when it found rehabilitation unlikely and based the term on the need to protect the community?

ARGUMENT

I. The trial court did not err in its sentencing analysis, when the Legislature has set the basic sentence for gross sexual assault of a child under twelve at no less than twenty years.

The Eighth Amendment to the United States Constitution forbids "cruel and unusual punishments . . . ." U.S. Const. amend. VIII. This Court has noted that "the Eighth Amendment contains a narrow proportionality principle, that does not require strict proportionality between crime and sentence but rather forbids only extreme sentences that are grossly disproportionate to the crime." *State v. Ward*, 2011 ME 74, ¶ 19, 21 A.3d 1033 (citing *Graham v. Florida*, 560 U.S. 48, 59-60 (2011)). It is a "rare case" that can support an inference of gross disproportionality.[1] *Id.*

Gross sexual assault of a child under twelve is sentenced according to 17-A M.R.S. § 1252(4-E) (2018).[2] Pursuant to statute, the sentencing court must impose imprisonment for a definite term of years followed by the immediate imposition of a term of supervised release. *Id.* In determining the appropriate sentence for this crime, the basic term of imprisonment is "at least twenty

[1] Robshaw anchors his analysis in the Eighth Amendment of the United States Constitution and Article 1, section 9 of the Maine Constitution. However, the State constitutional argument was not meaningfully developed below, and this Court should decline to address the claim on appeal. *See State v. Hernandez-Rodriguez*, 2025 ME 9, n. 5 -- A.3d --.

[2] 17-A M.R.S. § 1252(4-E) was repealed and replaced in 2019. *See* P.L. 2019, ch. 113, § B-14 (emergency, effective May 16, 2019) (codified at 17-A M.R.S. § 253-A (2024)). No changes relevant to this appeal were made.

years." *Id.* The permissible period of supervised release is life. 17-A M.R.S. § 1231(2)(C) (2018).[3] This Court reviews the first step of a felony sentencing analysis *de novo* for misapplication of the law. *State v. Holland*, 2012 ME 2, ¶ 38, 34 A.3d 1130. It reviews the sentencing court's maximum sentence for abuse of discretion. *State v. Ketcham*, 2024 ME 80, ¶ 35, 327 A.3d 1103 (citation omitted).

Robshaw argues that the trial court erred by "anchoring its analysis rigidly at the statutory starting point . . ." resulting in an inflated sentence that failed to consider the relative seriousness of his conduct. (Blue Br. 14.) He argues that constitutional principles surrounding proportionality require the trial court to consider the way the crime was committed at some other "step" in the sentencing process irrespective of the twenty-year basic sentence requirement.[4] *Id.* at 18-21. Absent that, Robshaw argues that he was denied meaningful proportionality review.

[3] 17-A M.R.S. § 1252 was also repealed and replaced in 2019. *See* P.L. 2019, ch. 113, § A-1 (emergency, effective May 16, 2019) (codified at 17-A M.R.S. § 1604 (2024)).

[4] In his brief, Robshaw references due process. To this extent it was developed, such argument is unpersuasive. This Court has held that sentencing courts "are accorded wide discretion in the sources and types of information that may be relied upon at sentencing" limited only by the requirement that such information must be "factually reliable and relevant." *State v. Parker*, 2017 ME 28, ¶ 23, 156 A.3d 118 (citing *State v. Bennett*, 2015 ME 46, ¶ 22, 114 A.3d 994).

This is not a novel issue. In *State v. Parker*, this Court considered whether "the supervised release statutory scheme abrogates the typical *Hewey* analysis" in part by imposing a twenty-year basic sentence, thereby denying an offender "meaningful proportionality review." *State v. Parker*, 2017 ME 28, ¶ 31, 156 A.3d 118. In affirming Parker's sentence, this Court held that the trial court did not misapply the law because the twenty-year basic term of imprisonment is "statutorily mandated." *Id.* ¶ 34 (citation omitted).

Here, as in *Parker*, the sentencing court correctly applied the mandatory twenty-year basic sentence at step one of its analysis. Its actions do not amount to misapplication of the law. Robshaw attempts to avoid the unfavorable standard of review afforded trial courts at step one of a sentencing analysis by arguing that proportionality review must necessarily occur at some other part of the analysis, suggesting that such considerations can be folded into step two of sentencing. (Blue Br. 21.) He is then free to argue that the trial court abused its discretion in its sentencing. The issues with this argument are threefold. First, the Eighth Amendment requirement of proportionality prevents only those sentences that are so disproportionate as to shock the conscience. That is not the case here, where Robshaw was found to have performed oral gross sexual assault on an eleven-year-old after years of digital contact and digital penetration. Second, due process requires only that courts rely on factually

reliable information in sentencing. There is no assertion that the court relied on unreliable information, but rather that the court failed to rate the crime on a "scale" of seriousness. Contrary to Robshaw's position, the court did implicitly rate the crime on the scale of seriousness by opining that the Legislature's intent in imposing the twenty-year basic sentence was to encompass all of the lesser ways the crime could be committed, rejecting the State's argument that the court should start at twenty years as reflecting the least serious way the crime could be committed and go up from there. (Sent. T. 42-43.) Third, while this Court has acknowledged that step three of the traditional *Hewey* analysis must be modified in the supervised release context, it has made no such statement with regard to steps one and two. In fact, it has passed upon the constitutionality of a sentencing court's analysis in this type of case and affirmed that court's final sentence. *Parker*, 2017 ME 28, ¶¶ 34-35, 156 A.3d 118.

While Robshaw frames his argument as constitutional in nature, it is fundamentally a policy argument. He disagrees with the twenty-year basic sentence because he argues it sets the floor and inflates sentences against individuals convicted of sexually assault minors under twelve. It is true that sexual predators likely do receive higher sentences because of 17-A M.R.S. § 253-A(2) (2024) and its predecessor 17-A M.R.S. § 1252(4-E) (2018). That this

occurs does not work a constitutional violation particularly where, as here, the sentence is not so disparate from the conduct as to give rise to an inference of gross disproportionality.

The sentencing court did not misapply the law in imposing a twenty-year basic sentence at step one of its analysis.

II. The trial court did not err in admitting expert testimony on the phenomenon of delayed disclosure, when the testimony was reliable and helpful to the finder of fact in explaining an issue outside of the understanding of the average person.

"A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if such testimony will help the trier of fact to understand the evidence or to determine a fact in issue." M.R. Evid. 702. To be admissible, an expert's opinion must be relevant to an issue in the case. *State v. Napier*, 1998 ME 8, ¶ 5, 704 A.2d 869. "Whether proffered evidence requires expert explanation is a question left to the discretion of the trial court." *State v. Paquin*, 2020 ME 53, ¶ 17, 230 A.3d 17, *abrogated on other grounds by State v. Armstrong*, 2020 ME 56, ¶¶ 23-29, 320 A.3d 405 (quoting *State v. Wyman*, 2015 ME 1, ¶ 26, 107 A.3d 641). A court's decision to allow expert testimony is reviewed for an abuse of discretion. *Id.* ¶ 18.

As with Robshaw's first assignment of error, this Court has spoken on the admissibility of testimony regarding delayed disclosure. In *Paquin*, the State proffered testimony from an expert regarding the prevalence of delayed disclosure in child sexual abuse cases, particularly in cases involving male victims. *Id.* ¶ 16. As in this case, Paquin objected that the testimony served no purpose other than to impermissibly bolster the victim's testimony. *Id.* The trial court admitted the testimony over objection, noting that that the State did not seek "to elicit the expert's opinion concerning why the alleged victims in this particular case delayed reporting . . . ." *Id.* The expert then testified that "delayed disclosure is actually the norm . . . It's almost expected given the statistics . . . ." *Id.* In affirming the ruling of the trial court, this Court noted that "the court limited the risk of unfair prejudice to Paquin by restricting the expert's testimony to the subject of delayed disclosure in general—as opposed to an opinion as to why the victim in this case may have made a late disclosure . . . ." *Id.* ¶ 18.

Here, Robshaw challenged neither the expert witness's expertise nor the reliability of her testimony. *See State v. Smith*, 2024 ME 56, ¶ 25, 320 A.3d 405 (holding that the trial judge did not err in finding the State's witness qualified to testify as an expert on the phenomenon of delayed disclosure). Instead, he argued that, while the State's expert was capable, the testimony was irrelevant

because she had not reviewed the facts of this case and could offer no case-specific information or opinion. (T. 126-27.) Robshaw argued that the only reason for her testimony was to bolster the credibility of the victim in an impermissible manner. *Id.* Further, Robshaw argued that her testimony would not aid the jury in "understand[ing] the evidence or [in] determin[ing] a fact in issue." *See* M.R. Evid. 702.

Robshaw's argument misapprehends the relevance of the expert testimony. In this case, there was evidence that the victim had made multiple disclosures to law enforcement at two different times multiple years apart and that the first disclosure was delayed. (T. 76-79.) As the trial court noted, the idea that a child could make multiple disclosures and reveal more conduct over time is "counterintuitive." (T. 128-29.) While the court phrased its analysis in terms of what "parents" might understand, the same is true of any juror. Given that the victim in this case made a first disclosure in 2019 followed by a more detailed disclosure in 2023, the expert testimony was helpful to the jury in understanding that this sequence of events is not unusual. The jury was free to accept or reject this testimony, and Robshaw was free to plumb the depths of that understanding on cross-examination.

Robshaw's argument that the testimony was inadmissible because the expert knew nothing about the specific facts of this case is similarly

unpersuasive. First, Ms. Louison-Semrow expressly stated that she had no expertise or ability to opine as to the veracity of any individual's disclosure of sexual abuse. (T. 118.) She was not tendered to offer a case specific opinion, but rather to testify as to the state of the research and current understanding in the field of delayed disclosure and, relatedly, continuing disclosure. Review of the discovery in this case would not have altered Louison-Semrow's testimony about the existence and prevalence of delayed disclosure. Robshaw argues that Louison-Semrow should not have been allowed to testify because she had not reviewed information that would not have helped her form any opinion specific to this case. The argument again misapprehends the value of and reason for her testimony—to explain a potential misconception regarding reporting of sexual abuse.

Second, Robshaw's argument is ironic in that had Ms. Louison-Semrow reviewed case-specific material, her testimony would likely *have* been excluded as impermissibly bolstering the victim's testimony. *See Paquin*, 2020 ME 53, 230 A.3d 17; *see also State v. Black*, 537 A.2d 1154 (Me. 1988). In *State v. Black*, this Court held that while an expert's testimony explaining certain inconsistencies in a victim's retelling of events was admissible to rebut the express or implied argument that said events could not have occurred, the trial court improperly admitted testimony regarding "signs" that the expert had

witnessed which—to that witness—were consistent with a victim of child sexual abuse. *Black*, 537 A.2d at 1156-57. Even if Louison-Semrow had not explicitly opined (which, of course, she could not) that the victim in this case acted in a manner consistent with a sexually abused child, her testimony, coupled with an acknowledgment that she had reviewed the discovery and interviews in this case, could well have tipped the balance in favor of exclusion because the jury would be left to conclude that she would not have testified unless she concluded in her review of the materials that the victim was truthful. This would amount to improper vouching. The fact that she testified as a so-called "blind expert" was, contrary to Robshaw's argument, critical to the admissibility of her testimony.

Paquin is instructive. In that case, the State sought to call an expert to testify that victims of sexual abuse often wait years before disclosing the trauma and to explain why that was the case. *Paquin*, 2020 ME 53, ¶ 16, 230 A.3d 17. Paquin testified that this type of testimony "unfairly bolstered the victim's credibility." *Id.* The trial court admitted the testimony after a lengthy voir dire, stating that it was satisfied that the State did not seek to elicit any testimony from the expert as to why the "victims in this particular case delayed reporting . . . ." *Id.*

In affirming that ruling, this Court held that the trial court did not abuse its discretion in determining that the expert was qualified and "could testify concerning a matter that would assist the jury in understanding the evidence." *Id*. ¶ 18. Particularly, this court noted with approval the trial court's ruling limiting the testimony to the general topic of delayed disclosure and disallowing any comment as to why a late disclosure had been made in that case. *Id.*

The court in this case reached the same conclusion as the *Paquin* court in allowing general testimony on the topic of delayed disclosure. Ms. Louison-Semrow's testimony was appropriately tailored to that body of research and, importantly, did not contain any opinion as to the veracity of the victim in this case. Contrary to Robshaw's argument, this was appropriate. Ms. Louison-Semrow testified as to a body of research that the average juror may not understand and which, as the trial justice noted, is counterintuitive. The jury was then appropriately left to accept or reject her testimony and determine for themselves whether and how it applied to this case.

Robshaw also argues that delayed disclosure is now so well understood and well known that expert testimony is not necessary to explain it to a jury. *See Dupuis v. Roman Catholic Bishop of Portland*, 2025 ME 6, ¶ 68, --- A.3d ---. This argument is unpreserved, and "[w]hether proffered evidence requires

expert explanation is a question left to the discretion of the trial court." *Wyman*, 2015 ME 1, ¶ 26, 107 A.3d 641. Further, Robshaw's argument reads too much into this Court's decision in *Dupuis*. First, he cites to the dissent, which does not carry the force of law. More important, however, is the context in which the dissent addressed the issue of delayed disclosure. In that case, the question presented to this Court was whether a statute purporting to revive certain claims previously barred by the relevant statute of limitations allowed twelve plaintiffs to bring claims against the Roman Catholic Bishop of Portland which were previously time barred. *Dupuis*, 2025 ME 6, ¶ 1, --- A.3d ---. The majority held that the Bishop had a vested right to be free of the plaintiffs' claims and held the statute at issue unconstitutional "as applied to expired claims." *Id.* ¶ 56.

Writing for the dissent, Justice Douglas reasoned in part that a statute of limitations is an "arbitrary constraint . . . 'represent[ing] a public policy about the privilege to litigate'" that does not amount to a vested constitutional right. *Id.* ¶ 60. He discussed delayed disclosure in the context of the legislative prerogative to allow these types of claims to be revived, *Id.* ¶ 61, suggesting as one compelling reason that the once little known and little understood topic of delayed disclosure is now a widely recognized phenomenon supported by a robust body of research. *Id.* ¶¶ 68, 73. This does not mean, as Robshaw

contends, that the average person now understands and is cognizant of the idea of delayed disclosure. It simply means that there is now a scientific consensus on the topic of delayed disclosure that did not exist at the time when a six-year statute of limitations barred suit as to the claims in issue. Far from rendering the testimony unnecessary or unfairly prejudicial, this consensus renders the testimony reliable, a threshold step in the analysis of whether to allow expert testimony on a topic. *See State v. Westgate*, 2020 ME 74, ¶ 24, 234 A.3d 230 (discussing the applicable standard of review of a trial court's determination that expert testimony is sufficiently reliable).[5]

The trial court did not err in allowing the State to elicit expert testimony on the topic of delayed disclosure, and the verdict should be affirmed.

III. The trial court did not err in imposing a twenty-year period of supervised release, when it found rehabilitation unlikely and based the term on the need to protect the community.

When sentencing for the crime of gross sexual assault on a child less than twelve, "the court shall impose . . . a period of supervised release after imprisonment." 17-A M.R.S. § 1881(1) (2024). Maine's supervised release

[5] Consider expert testimony in the field of DNA evidence. One could replace everything the dissent in *Dupuis* said regarding delayed disclosure with DNA evidence and reach the same conclusion. DNA evidence is now well understood in a way it was not in the late 20th century. DNA evidence is now clinically confirmed and supported by a robust body of literature and scientific consensus. Should this greater understanding in the field function to exclude DNA expert testimony at trial? Of course not. Just because a topic is widely recognized and clinically confirmed does not mean that the average layperson understands it such that expert testimony would not provide any assistance to a jury.

statute "requires a court, when imposing a term of supervised release and determining its length, to consider statutory sentencing factors appropriate to its primary purpose of supervision and rehabilitation. Guided by those considerations, the court may then impose any conditions of supervised release authorized by 17-A M.R.S. § 1232 that it deems reasonable and appropriate."[6] *State v. Cook*, 2011 ME 94, ¶ 29, 26 A.3d 834. In arriving at the resultant period of supervised release, the sentencing court must "separately articulate its analysis" as to the *Hewey*, statutory, 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.* ¶ 30.

> When leave to appeal from a sentence that includes supervised release is granted, we 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.
>
> *Id.* ¶ 31.

The sentencing justice in this case did not impose twenty years of supervised release as punishment. *See id.* ¶ 30. Therefore, the relevant inquiry is whether the court abused its discretion concerning the factors upon which it

[6] 17-A M.R.S. § 1232 was repealed and replaced in 2019. *See* Public Law P.L. 2019, ch. 113, s. A-1 (emergency, effective May 16, 2019) (codified at 17-A M.R.S. § 1882 (2024)).

relied, in imposing a twenty-year period of supervised release, or in imposing the conditions prayed for by the State.

Here, Robshaw accurately cites the court's analysis on the issue of supervised release. (Blue Br. 31.) The court reasoned that it was imposing all the conditions the State asked for because it did not know how else to keep the community safe. (Sent. T. 45.) In supporting this rationale, the court noted that Robshaw had previously been convicted of a sex crime against a child and failed to comply with his registration obligations. *Id.* By imposing a twenty-year period of supervised release, the court reasoned that Robshaw would be unlikely to reoffend by the time the period was over. *Id.* at 45-46.

The court's ruling regarding supervised release was not exhaustive, but it was sufficient for this Court to conclude that the sentencing court did not abuse its discretion. Notably, neither *Cook* nor any of this Court's holdings on sentencing require an exhaustive review justifying imposition of a sentence. *See State v. Bentley*, 2021 ME 39, ¶ 11, 254 A.3d 1171 (holding that a sentencing court is granted "significant leeway" in the factors it may consider and the weight to be given to each sentencing factor). The sentencing court highlighted the factor that it found to be paramount, protection of the public, and it appropriately leaned on that factor in imposing a lengthy period of supervised

release with the conditions requested by the State. This was not an abuse of discretion, and the sentence of the trial court should be affirmed.

CONCLUSION

The trial court did not err either in determining the basic sentence, determining the maximum sentence or in imposing a twenty-year period of supervised release. The court properly applied the twenty-year basic sentence at step one and considered aggravating and mitigating factors at step two of its analysis. Further, the court properly considered the goal of public safety and the scant chance for rehabilitation in imposing a twenty-year term of supervised release with all the conditions sought by the State. Finally, the court did not err in admitting the testimony of Molly Louison-Semrow, whose expert testimony in the field of delayed disclosure assisted the jury in understanding a "counterintuitive" subject. The verdict and sentence should be affirmed.

Respectfully Submitted,

Dated: 3/12/25

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CERTIFICATE OF SERVICE

As required by M.R. App. P. 7(c)(1), I have this twelve day of March, 2025 sent a native .pdf version of this brief to the Clerk of the Law court and attorney James Mason at the email address from which I received his brief. Upon acceptance by the Clerk of the Law Court, I will deliver ten hard copies to the Law Court and two copies to opposing counsel attorney James M. Mason, Esq., at 16 Union St., Brunswick, ME 04401.

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