

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

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**LAW DOCKET NO. SPR-24-439**

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**STATE OF MAINE v. KEITH MERCHANT**

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**On Appeal from a criminal conviction entered by the Unified Criminal Court sitting in  
Somerset County**

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**BRIEF OF APPELLANT**

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## **STATEMENT OF FACTS**

On December 15, 2023, Defendant Keith Merchant was indicted on an 8 Count Indictment, alleging in Count I) Gross Sexual Assault occurring between October 1, 2021 and March 3, 2022, Class A; in Count II) Unlawful Sexual Contact, Class B; in Count III) Gross Sexual Assault occurring between March 4, 2022 and March 3, 2023, Class A; in Count IV) Unlawful Sexual Contact, Class B; in Count V) Sexual Abuse of a Minor, Class C; in Count VI) Sexual Abuse of a Minor, Class C; in Count VII) Unlawful Sexual Contact, Class D; and in Count VIII) Violation of Condition of Release, Class E. App. 27-29.

On August 13, 2024, Mr. Merchant pled guilty to all counts in the Indictment. App. 7. On August 16, 2024, the State filed its sentencing memorandum. In its memorandum, the State recommended a 40-year sentence, comprising of 20 years on Count I; 10 years consecutive on Count III; 5 years consecutive on Count II; and 5 years consecutive on Count IV. App. 39. The State requested 5 years on Counts V and VI to be served concurrent to Count I; 364 days on Count VII concurrent to Count I; and 180 days on Count VIII concurrent to Count I. App. 39-40. On August 26, 2024, Mr. Merchant, through counsel, filed his sentencing memorandum. App. 7. In his memorandum, Mr. Merchant requested a total sentence on all counts of 15 years, with all but 10 years suspended and 8 years of probation. App. 30.

On August 27, 2024, the Court (*Benson, J.*) held a sentencing hearing. App. 7. During the Hearing, the Court conducted a *Hewey* analysis with respect to Count I. *See*

App. 19-24. In setting the basic sentence, the Court noted the age of the victim, the fact that Mr. Merchant was in a position of trust, *“the fact that there were multiple – several multiples of incident over a period of a number of years”*, and that Mr. Merchant bribed the victim to engage in sexual intimacy as aggravating factors. App. 20-21 (emphasis added). The Court set the basic term of imprisonment on Count I at 18 years. App. 21.

The Court then set the maximum term of imprisonment at 20 years. App. 23. The Court proceeded to step three of the *Hewey* analysis before considering whether to sentence Mr. Merchant to consecutive sentences. *See* App. 23-24. The Court declined to suspend any portion of the maximum sentence citing the availability of supervised release. App. 24. The Court next sentenced Mr. Merchant on Count II to 5 years concurrent to Count I. App. 24. The Court proceeded to address Count III, stating:

The Court notes in addressing Count III that it is an offense based on different conduct arising from a separate criminal episode involving multiple incidents over the course of a year. Count I involves multiple incidents over the course of one year, and Count III involves multiple incidents over the course of another year. So the Court's general sentencing conclusions reached in arriving at the sentence in Count I would also apply to Count III, which, as I noted a moment ago, is a separate series of incidents. For that reason, the Court imposes on Count III a consecutive 10-year sentence, and for the reasons articulated earlier, the Court suspends none of that sentence.

The Court notes that it would be legal, the Court could impose a completely suspended sentence with probation, but the Court declines to do so, and the Court declines to do so for two reasons. The first, as I noted earlier, is that supervised release is available, and the Court intends to impose a 10-year period of supervised release, along with the 20-year sentence on Count I, and the Court –

Actually on Count III, Madam Clerk.

And the Court considers the maximum period of probation that the Court could impose if the Court were to impose a fully suspended sentence. So the sentence on Count III will be 10 years to the Department of Corrections consecutive to the sentence in Count I, followed by a 10-year period of supervised release.

App. 24-25. The Court sentenced Mr. Merchant to 5 years on Count IV concurrent to Count I; 2 years on Count V concurrent to Count I; 2 years on Count VI concurrent to Count I; six months on Count VII concurrent to Count I; and 90 days on Count VIII concurrent to Count I. App. 026. Mr. Merchant filed this appeal.

## **ISSUES PRESENTED FOR REVIEW**

1. Whether the Court erred when conducting its *Hewey* analysis by combining conduct from both Count I and Count III when setting the basic sentence on Count I thereby violating Mr. Merchant's double jeopardy right under the Maine and federal Constitutions, and by failing to consider consecutive sentences before determining a final sentence on Count I.
2. Whether Mr. Merchant's sentence of 30 years was excessive and disproportionate to the offense under the Maine Constitution.

## **SUMMARY OF THE ARGUMENT**

The Trial Court, respectfully, erred when it conducted its *Hewey* analysis by effectively sentencing Mr. Merchant to consecutive sentences for the same conduct. Mr. Merchant was charged, in relevant part, with two counts of gross sexual assault, in Counts I and in Count III. With respect to Count I, the relevant conduct occurred over a five-month period—from October 1, 2021, to March 3, 2022. With respect to Count III, the relevant conduct occurred from March 4, 2022, to March 3, 2023. App. 27-29.

The Trial Court began its sentencing analysis by setting the basic term of imprisonment with respect to Count I. During its analysis, the Trial Court erroneously noted that the conduct for Count I took place “over a period of a number of years.” App. 20-21. The Court noted that this was a “severe aggravating factor” and an “enormous aggravating factor”. App. 18. In so doing, the Trial Court, again with respect, improperly set the basic sentence on Count I by using conduct that occurred outside of

the relevant timeframe. Said conduct was relevant to both Counts I and Count III. Therefore, the Trial Court effectively punished Mr. Merchant for the same crime twice. This violated Mr. Merchant's rights under the double jeopardy clause of the Maine and federal constitutions.

The Trial Court also failed to consider whether to impose consecutive sentences before moving onto the third step in the *Hewey* analysis. This prejudiced Mr. Merchant as the Trial Court determined not to suspend any portion of his sentence on Count I, citing its intent to impose a period of supervised release, while similarly declining to suspend any portion of the sentence with respect to Count III based on the same intention. However, the Trial Court did not actually impose supervised release with respect to Count I. Therefore, respectfully, the Trial Court should have determined whether to impose consecutive sentences before conducting the third step of the *Hewey* analysis on Count I.

Finally, Mr. Merchant's unsuspended sentence was more than the mandatory minimum sentence for murder and double the mandatory minimum basic sentence imposed in gross sexual assault cases where the victim is under 12 years of age. This creates an inference of disproportionality under the Maine Constitution warranting a comparison of sentences imposed in similar and more severe cases. In conducting this analysis, Mr. Merchant's unsuspended sentence is, respectfully, excessive and should be vacated.



## **ARGUMENT**

15 M.R.S. § 2155 provides:

In reviewing a criminal sentence, the Supreme Judicial Court shall 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. § 2154 provides:

The general objectives of sentence review by the Supreme Judicial Court are:

**1. Sentence correction.** To provide for the correction of sentences imposed without due regard for the sentencing factors set forth in this chapter;

**2. Promote respect for law.** To promote respect for law by correcting abuses of the sentencing power and by increasing the fairness of the sentencing process;

**3. Rehabilitation.** To facilitate the possible rehabilitation of an offender by reducing manifest and unwarranted inequalities among the sentences of comparable offenders; and

**4. Sentencing criteria.** To promote the development and application of criteria for sentencing which are both rational and just.

This Court reviews “the proportionality or excessiveness of a sentence pursuant to the Maine Constitution, article I, section 9 and [17-A M.R.S. § 1602]”. *State v.*

*Stanislaw*, 2013 ME 43, ¶ 15, 65 A.3d 1242. Under 17-A M.R.S. § 1602:

**1. Class A, Class B or Class C crimes.** In imposing a sentencing alternative pursuant to section 1502 that includes a term of imprisonment for a Class A, Class B or Class C crime, in setting the appropriate length of that term as well as any unsuspended portion of that term accompanied by a period of probation or administrative release, the court shall employ the following 3-step process.

**A.** First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual.

**B.** Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest.

**C.** Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension.

*See also State v. Hewey*, 622 A.2d 1151, 1154-55 (Me. 1993).

**A. The Trial Court combined conduct relating to Counts I and III when setting the basic sentence on Count I and failed to consider consecutive sentences before moving on to the third step in the sentencing process on Count I.**

**1. The Trial Court combined conduct relating to Counts I and III when setting the basic sentence on Count I, violating Mr. Merchant's rights under the Maine and Federal Constitutions.**

“When reviewing the sentencing court's application of the *Hewey* analysis we review the basic sentence de novo for misapplication of principle and we review the maximum sentence and the final sentence for an abuse of discretion.” *Stanislaw*, 2013 ME 43, ¶ 17. “However, we review all three statutory steps for whether the sentencing court disregarded the relevant sentencing factors or abused its sentencing power.” *Id.* The “double jeopardy clauses of the Maine and federal constitutions prohibit, among other things, ‘multiple punishments for the same offense.’” *State v. Armstrong*, 2020 ME 97, ¶ 7, 237 A.3d 185.

In this case, in relevant part, Mr. Merchant pled guilty to two Counts of gross sexual assault, Counts I and III. The Indictment makes clear that, with respect to Count I,

the conduct occurred between October 1, 2021, and March 3, 2022. App. 27. This was a five-month period. With respect to Count III, the conduct occurred between March 4, 2022 and March 3, 2023. This was a one-year period.

During its sentencing the Trial Court first set the basic sentence for Count I, and noted in relevant part:

Another enormous aggravating factor in the view of the Court is the fact that we're not talking about a single incident. As Det. Leal testified, this case is somewhat unusual in light of the fact that there were multiple -- ***several multiples of incident over a period of a number of years***. It is not unheard of for this sort of thing to take place over multiple occasions, yet any time that it does, the Court does consider that a severe aggravating factor.

App. 20. Respectfully, the Court improperly combined conduct outside of the relevant timeframe, and must have include conduct pertaining to Count III, occurring only between March of 2022 and March of 2023, with the conduct in Count I occurring only between October 1, 2021, and March 3, 2022, in setting the basic sentence on Count I. The Court referred to this conduct as an “enormous aggravating factor” and a “severe aggravating factor.” The relevant conduct relating to Count I occurred only over a five-month period. By referencing conduct “over a period of a number of years” the Court must have combined conduct from Count III when setting the basic sentence on Count I. Not only did the Court inappropriately consider this conduct, but it also gave it significant weight. Therefore, Mr. Merchant was inappropriately sentenced to consecutive terms of imprisonment on Counts I and III for the same conduct in violation of the double jeopardy clauses of the Maine and federal constitutions.

The Court later, when setting the sentence on Count III, referenced that the conduct underlying Count I took place over the course of one year. App. 24. As the conduct relevant to Count I took place over a five-month period, this only served to confirm that the Court must have inappropriately considered conduct relating to Count III when setting the basic sentence on Count I and sentenced Mr. Merchant twice for the same conduct. For these reasons, Mr. Merchant respectfully requests the Court vacate his sentence and remand his case for resentencing solely based upon conduct during the relevant timeframe.

**2. The Trial Court failed to consider consecutive sentences before proceeding to the third step in the *Hewey* analysis**

If the court decides to impose consecutive sentences for various convictions, it must perform a separate *Hewey* analysis for each conviction. *Stanislaw*, 2013 ME 43, ¶ 16. In “order to ensure that its final sentence accurately reflects the court’s determination of an appropriate sentence for multiple offenses, a sentencing court should make its decision about concurrent or consecutive imposition *before* it undertakes the third step of the *Hewey* analysis.” *Id.* (emphasis added).

In this case, again with respect, the Trial Court conducted the third step of the *Hewey* analysis before considering consecutive sentences. See App. 24-25. This prejudiced Mr. Merchant, as the reason for the Court imposing a 20-year unsuspended sentence on Count I was its stated intention to impose a period of supervised release on Count I, stating “[t]he Court arrives at this conclusion being aware of the availability of supervised release, with the intention of imposing a period of supervised release rather

than probation.” App. 24. The Court declined to suspend any of the sentence on Count I given the availability of supervised release. However, the Court did not actually impose supervised release with respect to Count I. The Court only imposed supervised release with respect to Count III. *See* App. 13, 25.

Moreover, relating to Count III, the Trial Court also declined to suspend any portion of the maximum term of imprisonment also citing the availability of supervised release. App. 25. The Trial Court could have accomplished its stated goal to impose supervised release while still fully suspending the sentence on Count III by sentencing Mr. Merchant to 10 years of supervised release with respect to Count I. There are likely other sentencing alternatives the Trial Court could have imposed to accomplish its stated goal to impose supervised release, which is why it is necessary for the Court to consider consecutive sentences before imposing a final sentence on any particular Count. This is consistent with this Court’s mandate in *Stanislaw*, 2013 ME 43, ¶ 16.

For all of these reasons, Mr. Merchant respectfully requests this Court vacate his sentence and remand the case for resentencing with instructions that the Trial Court consider consecutive sentences before moving onto the third and final *Hewey* factor.

**B. Mr. Merchant’s 30 year sentence was disproportionate and excessive under the Maine Constitution**

“When consecutive sentences are imposed, the sentencing court must make a determination that the unsuspended portion of any consecutive sentence is not excessive and is proportionate to the offense. *Stanislaw*, 2013 ME 43, ¶ 24; ME Const. art. I § 9.

This Court has explained:

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.

*Stanislaw*, 2013 ME 43, ¶ 29. This Court has explained it is appropriate to “consider the facts of the case in conjunction with ‘the commonly accepted goals of punishment.” *Id.* ¶ 30 (citing to *Bult v. Leapley*, 507 N.W. 2d 325, 327 (S.D. 1993)). The Maine Criminal Code provides nine purposes of sentencing:

The general purposes of the provisions of this Part are to:

- 1. Prevent crime.** Prevent crime through the deterrent effect of sentences, the rehabilitation of persons and the restraint of individuals when required in the interest of public safety;
- 2. Encourage restitution.** Encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served;
- 3. Minimize correctional experiences.** Minimize correctional experiences that serve to promote further criminality;
- 4. Provide notice of nature of sentences that may be imposed.** Give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;
- 5. Eliminate inequalities in sentences.** Eliminate inequalities in sentences that are unrelated to legitimate criminological goals;
- 6. Encourage just individualization of sentences.** Encourage differentiation among persons with a view to a just individualization of sentences;
- 7. Elicit cooperation of individuals through correctional programs.** Promote the development of correctional programs that elicit the cooperation of convicted individuals;

**8. Permit sentences based on factors of crime committed.** Permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of:

**A.** The age of the victim, particularly of a victim of an advanced age or of a young age who has a reduced ability to self-protect or who suffers more significant harm due to age;

**B.** The selection by the person of the victim or of the property that was damaged or otherwise affected by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation, gender identity or homelessness of the victim or of the owner or occupant of that property; and

**C.** The discriminatory motive of the person in making a false public alarm or report or an aggravated false public alarm in violation of section 509; and

**9. Recognize domestic violence and certified domestic violence intervention programs.** Recognize domestic violence as a serious crime against the individual and society and to recognize domestic violence intervention programs certified pursuant to Title 19-A, section 4116 as the most appropriate and effective community intervention in cases involving domestic violence.

17-A M.R.S. § 1501.

In this case, Mr. Merchant pled guilty to all eight counts of the Indictment. He committed gross sexual assault among the other crimes on [REDACTED] while she was between the ages of 12 and 14. The Court set the basic sentence on Count I at 18 years and the maximum term of imprisonment on Count I at 20 years. As noted above, the Court suspended none of the sentence on Count I. The Court also sentenced Mr. Merchant to a 10-year sentence on Count III to be served consecutively to the 20-year sentence on Count I. This resulted in an unsuspended sentence of 30 years on the gross sexual assault charges.

In *Stanislaw*, the defendant in that case was sentenced to three consecutive 8-year sentences on Class B unlawful sexual contact charges as well as a 3-year consecutive sentence on a Class C unlawful sexual contact charge. This Court found “no error in the court’s determination concerning the maximum sentence for each crime, nor in its determination that the sentences for these four felonies should be imposed consecutively.” *Stanislaw*, 2013 ME 43, ¶ 33. This Court explained “however, by failing to suspend any portion of the three eight-year sentences imposed for the Class B convictions, and then suspending only one year of the four-year sentence imposed for the Class C felony, the court imposed a sentence that does not comport with section [1501] and cannot be upheld.” *Id.*

Mr. Merchant’s sentence is similar to that in *Stanislaw*. Here, Mr. Merchant’s unsuspended sentence on both Counts I and III, 30 years, is the maximum sentence for a Class A crime. Without minimizing Mr. Merchant’s conduct, respectfully, his sentence exceeds that of even more serious crimes. Moreover, Mr. Merchant’s sentence precludes any opportunity for rehabilitation and does not minimize correctional experiences that promote further criminality.

It should be noted that sentences for murder carry a prison term of 25 years to life. 17-A M.R.S. § 1603. In addition, the victim in this case was over the age of 12 and therefore, the mandatory minimum basic sentence of 20 years was inapplicable. 17-A M.R.S. § 253-A(2). Accordingly, Mr. Merchant’s unsuspended sentence exceeds the mandatory minimum sentence for murder and the minimum basic sentence for gross sexual assault of a minor under 12 years of age. Indeed, Mr. Merchant’s sentence is 50%



higher than the mandatory minimum basic sentence for gross sexual assault on a minor under 12, and approximately 17% higher than the mandatory minimum sentence for murder. Mr. Merchant's conduct was serious however and respectfully, the conduct is not equivalent to murder or gross sexual assault on a minor under 12. For these reasons, Mr. Merchant respectfully submits that his sentence gives rise to an inference of gross disproportionality.

As the inference of gross disproportionality is raised, the Court should review Mr. Merchant's sentence to the sentences imposed for similar or more severe crimes within Maine. *Stanislaw*, 2013 ME 43, ¶ 34. The State did not present any comparable sentences for the Court to review as part of setting the basic sentence. Mr. Merchant provided two comparable sentences:

- *State v. Richard Bradbury*. The victim was under 12 years old. The defendant was charged with two counts of unlawful sexual contact charges, Class A, one count of unlawful sexual contact, Class B, and visual sexual aggression against a child, Class C. The defendant received a sentence of 23 years with all but 15 years suspended and 15 years of probation.
- *State v. John Cushman*. The defendant in that case worked on a farm and was pled guilty to unlawful sexual contact against two victims. The defendant was sentenced to 30 years with all but 10 years suspended and 15 years of probation.

Both of these cases involved similar circumstances as in this case. Mr. Merchant's unsuspended sentence was double the sentence imposed on the defendant in *Bradbury* and triple the sentence imposed on the defendant in *Cushman*.

Turning to cases involving comparable unsuspended prison terms:

- *State v. Massie*, ANDCD-CR-18-2776 and ANDCD-CR-18-4186. The defendant 30 years for intentional and knowing murder with a firearm.

- *State v. Armstrong*, 2020 ME 97, 237 A.3d 185. In that case, the defendant was sentenced to 30 years on felony murder charge and 30 years on robbery charge, with all but 29 years suspended, concurrent. After appeal, the robbery charge was dismissed. *Id.* ¶ 4. The defendant was alleged to have planned to rob the victim and steal drugs. *State v. Armstrong*, 2019 ME 117, ¶ 9, 212 A.3d 856. The defendant traveled to a nearby apartment with other conspirators, and smashed “the victim across the head with a bottle”, and proceeded to assault the victim with a “property stick.” *Id.* See also *State v. Armstrong*, 2022 WL 22897015 (denying the defendant’s third appeal).
- *State v. Archer*, 2011 ME 80, 25 A.3d 103. The defendant was convicted of attempted murder, elevated aggravated assault and aggravated assault. *Id.* ¶¶ 9, 14. The defendant stabbed his ex-girlfriend in the abdomen twice and ran away. *Id.* ¶ 6. The defendant was sentenced to 18 years in prison with all but 13 years suspended on the attempted murder charge and 13 years concurrent on the elevated aggravated assault charge. *Id.* ¶ 16.
- *State v. Hallowell*, 2022 ME 55, 285 A.3d 276. In that case, the defendant “packed multiple weapons into a ‘go-bag’ and walked approximately ten minutes to the barn where his relatives kept their animals because he knew that they went to the barn every day to care for the animals.” *Id.* ¶ 3. After waiting several hours, the victim entered the barn, and the defendant shot the victim in her hip with a handgun. *Id.* The defendant was holding a handgun and had a rifle strapped to his chest. *Id.* ¶ 4. The victim ran the length of the barn as the defendant continued to fire at her. *Id.* The defendant tased the victim and hit her in the head with his rifle. *Id.* ¶ 5. The victim hailed a nearby vehicle and climbed into the back seat. The vehicle sped away as the defendant continued to fire at the vehicle. *Id.* ¶ 6. The defendant led police on a high-speed chase, eventually crashing into a field. *Id.* ¶ 7. The defendant was convicted on 8 charges, the most serious being attempted murder. The defendant was sentenced to thirty years in prison with all but 25 years suspended and four years of probation. *Id.* ¶ 14. The remaining sentences all ran concurrently to the 25-year sentence.

Turning to cases involving the more serious crime of gross sexual assault on a minor under 12:

- *State v. Ringuette*, 2022 ME 61, 288 A.3d 393. In that case, the defendant was sentenced to a 5-year sentence on a single charge of gross sexual assault on a minor under 12. *Id.* ¶5. The defendant was indicted on a

theory of accomplice liability and had encouraged the victim to engage in a sexual act with a third party. The defendant was also present where a subsequent sexual assault occurred, and approved of the assault. *Id.* ¶ 3.

- *State v. Parker*, 2017 ME 28, 156 A.3d 118. The defendant sexually assaulted a nine-year-old victim on several occasions over an extended period of time. The defendant was also in a position of trust and acted as a parental figure. *Id.* ¶ 4. The defendant was indicted and pled guilty to three counts of gross sexual assault on a minor under 12, and two counts of unlawful sexual contact. *Id.* ¶¶ 5-6. The defendant's sentence was 22 years with all but 14 years suspended, and 18 years' probation. *Id.* ¶ 11.

Turning to cases involving the crime of gross sexual assault:

- *State v. Miller*, 2018 ME 112, 191 A.3d 356. The defendant was the biological father of the victim and raped the victim on a weekly basis for 3 years. *Id.* ¶ 4. The defendant was found guilty on twenty-eight counts of gross sexual assault. *Id.* ¶¶ 8-9, n.3. The defendant was sentenced to an 8-year sentence on the fifth count, to be served concurrently with sentences on 26 other counts, and 8 years all but 4 suspended to be served consecutively, for a total unsuspended sentence of 12 years. *Id.* ¶ 10.
- *State v. Reynolds*, 2018 ME 124, 193 A.3d 168. The defendant sexually abused the victim from when she was nine years old until she was 16. *Id.* ¶ 7. The defendant was sentenced to fifteen years all but ten suspended and six years of probation on each gross sexual assault count to be served concurrently. *Id.* ¶ 12.

In reviewing the different sentences imposed above, Mr. Merchant respectfully submits that his sentence was excessive. Mr. Merchant's sentence was double the unsuspended sentence imposed in *Bradbury*, and three times the sentence imposed in *Cushman*.

Mr. Merchant's sentence was equivalent to that imposed in *Massie*, where the defendant was guilty of intentional and knowing murder with a firearm, and that imposed in *Armstrong*, where the defendant was convicted of felony murder

involving blunt force trauma. Mr. Merchant's sentence was more than double the sentence of the defendant in *Archer*, who was convicted of attempted murder. Mr. Merchant's sentence is also 5 years more than the unsuspended sentence imposed in *Hallowell* for attempted murder involving an ambush with multiple firearms and a high-speed chase.

Mr. Merchant's sentence is also significantly greater than sentences imposed in more serious gross sexual assault cases and similar gross sexual assault cases, as noted above.

For all of these reasons, Mr. Merchant respectfully requests the Court vacate his sentence as excessive and order resentencing compliant with the Maine Constitution.

### **CONCLUSION**

WHEREFORE for the reasons noted above, Mr. Merchant respectfully requests this Court vacate his sentence and remand this matter to the Trial Court for resentencing in accordance with the forgoing.

Dated: February 7, 2025

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**CERTIFICATE OF SERVICE**

I, John E. Baldacci, Jr., certify that on the date indicated below, I have sent two copies of the Appellant's Brief to the party listed below by email and U.S. Mail, first-class, postage prepaid, addressed as listed below:

Dated: February 7, 2025

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