

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. SPR-24-439

STATE OF MAINE v. KEITH MERCHANT

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

REPLY BRIEF OF APPELLANT

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INTRODUCTION

The State's Appellee's Brief mischaracterizes Appellant Keith Merchant's arguments and downplays clear errors in the sentencing court's *Hewey* analysis and the disproportionate nature of the 30-year unsuspended sentence. Contrary to the State's assertions, the court improperly combined conduct from Counts I and III when setting the basic sentence for Count I, constituting a double jeopardy violation, and failed to decide on consecutive sentences before completing the third *Hewey* step, prejudicing Mr. Merchant.

Further, the State's refusal to engage with comparable sentences cannot obscure the gross disproportionality of a sentence that exceeds penalties for murder and far surpasses sentences for similar or worse crimes. This reply addresses these points and respectfully requests that the Court vacate the sentence and remand for resentencing.

ARGUMENT

I. The Sentencing Court Erred in Its *Hewey* Analysis

A. The Court Combined Conduct from Counts I and III, Violating Double Jeopardy

The State contends that the sentencing court “could not have been clearer” in distinguishing Counts I and III as separate incidents. Red Br. 7. This assertion ignores the court's explicit error when setting the basic sentence for Count I, where it described the conduct as occurring “over a period of a number of years” App. 20. Count I, as charged, spans only five months—October 1, 2021, to March 3, 2022 App. 27. By attributing a multi-year timeframe to Count I, the court necessarily incorporated conduct

from Count III (March 4, 2022–March 3, 2023), inflating the basic sentence of 18 years with facts beyond the relevant period. *See* App. 21.

The court’s later “clarification” that Count III involved “a separate series of incidents” does not cure the mistake, as the Court still indicated that the conduct for Count I occurred over the course of a year. App. 24. Moreover, the Court had already, expressly, set the basic sentence on Count I emphasizing:

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 (emphasis added). The State’s reliance on *State v. Martinelli* is misplaced. 2017 ME 217, 175 A.3d 636. Mr. Merchant does not argue that Counts I and III are the same offense but that the Court expressly and improperly considered Count III’s conduct when sentencing for Count I, thereby punishing Mr. Merchant for overlapping conduct in violation of the double jeopardy clauses of the Maine and U.S. Constitutions. *See State v. Armstrong*, 2020 ME 97, ¶ 7, 237 A.3d 185.

The State’s claim that the court’s reference to “multiple incidents” was appropriate, Blue Br. 11, fails to address the specific error: the court’s use of “a number of years” directly contradicts the indictment’s timeframe for Count I. This factual inaccuracy undermines the sentence’s propriety under 15 M.R.S. § 2155(2), which requires sentences to be based on accurate information.

For all of these reasons, this Court should vacate the sentence and remand for resentencing based solely on Count I’s five-month period.

B. The Court Failed to Consider Consecutive Sentences Before the Third Hewey Step, Prejudicing Mr. Merchant

The State admits that *Stanislaw* recommends deciding whether to impose consecutive sentences before the third *Hewey* step but argues that the court’s early mention of consecutive sentences satisfied this requirement. Blue Br. 13–14. This misreads *Stanislaw*, which mandates that “a sentencing court *should make its decision* about concurrent or consecutive imposition before it undertakes the third step” to ensure the sentence reflects the appropriate structure for multiple offenses. 2013 ME 43, ¶ 16, 65 A.3d 1242. (emphasis added). Mere consideration is insufficient; the court must decide.

Here, the court completed the third *Hewey* step for Count I—declining to suspend any of the 20-year sentence—before addressing Count III’s consecutive sentence. App. 24-25. The court justified its decision not to suspend Count I’s sentence by citing an intent to impose supervised release, yet no supervised release was imposed for Count I—only for Count III. *Id.* at 25. This discrepancy prejudiced Mr. Merchant by locking in a fully unsuspended 20-year sentence for Count I without accounting for the consecutive 10-year sentence on Count III, resulting in a harsher overall punishment.

The State’s assertion of “no prejudice” is untenable. Had the court decided on consecutive sentences first, it could have adjusted Count I’s suspension to align with its supervised release goal, and likely reduced the unsuspended term. The court’s procedural error violated the fairness and individualization required by 15 M.R.S. § 2154.

Therefore, the sentence must be vacated to correct this misstep.

II. The 30-Year Sentence Remains Disproportionate and Excessive

A. The Sentence Raises an Inference of Gross Disproportionality

The State argues that the 30-year sentence does not raise an inference of gross disproportionality because it is within the statutory maximum for two Class A crimes. Blue Br. 15. This ignores the Maine Constitution’s mandate that “all penalties and punishments shall be proportioned to the offense.” Me. Const. art. I, § 9. A 30-year unsuspended sentence—20 years for Count I and 10 years consecutive for Count III—exceeds the mandatory minimum for murder (25 years, 17-A M.R.S. § 1603) and is 50% higher than the mandatory minimum basic sentence for gross sexual assault of a minor under 12 (20 years, 17-A M.R.S. § 253-A(2)), which was inapplicable here as the victim was over 12.

The court relied on the victim’s age, position of trust, and multiple incidents as aggravating factors, but these do not justify a 30-year unsuspended sentence exceeding penalties for murder or gross sexual assault of younger victims. App. 20–21; see 17-A M.R.S. § 1603 (25-year minimum for murder); 17-A M.R.S. § 253-A(2) (20-year minimum for victims under 12). The court found “enormous victim impact,” citing lifelong trauma, [REDACTED], and loss of a normal childhood, and concluded this “grossly outweighs” mitigating factors. App. 23. However, these findings, while specific, lack detailed evidence tying them to the victim’s statements and overemphasize harm relative to mitigating factors—Mr. Merchant’s guilty plea, history of sexual abuse, addiction, and brain injuries—which received cursory treatment. App. 23. The State

echoes this imbalance, focusing solely on victim impact without addressing mitigation. Blue Br. 16. This minimal weight to mitigating factors suggests an abuse of discretion at *Hewey* steps two and three, as the court failed to fully individualize the sentence.

B. Comparisons to Other Cases Confirm the Sentence's Excessiveness

The State's refusal to engage with Mr. Merchant's cited cases concedes their relevance. Under *Stanislaw*'s two-part test, once an inference of gross disproportionality arises, the Court compares the sentence to those for similar or worse crimes in Maine. 2013 ME 43, ¶ 29. Mr. Merchant's 30-year unsuspended sentence dwarfs penalties in comparable cases:

- *State v. Bradbury*: 15 years unsuspended for unlawful sexual contact with a victim under 12.
- *State v. Cushman*: 10 years unsuspended for unlawful sexual contact against two victims.
- *State v. Parker*: 14 years unsuspended for multiple counts of gross sexual assault on a minor under 12. 2017 ME 28, 156 A.3d 118.
- *State v. Miller*: 12 years unsuspended for 28 counts of gross sexual assault over three years. 2018 ME 112, 191 A.3d 356.
- *State v. Reynolds*: 10 years unsuspended for gross sexual assault from ages 9 to 16. 2018 ME 124, 193 A.3d 168.

Even for more severe crimes, sentences are lighter: *State v. Archer*, 2011 ME 80, 25 A.3d 103 (13 years unsuspended for attempted murder) and *State v. Hallowell*, 2022 ME 55, 285 A.3d 276 (25 years unsuspended for attempted murder with firearms). Mr. Merchant's sentence matches that for intentional murder in *State v. Massie*, ANDCD-CR-18-2776 and ANDCD-CR-18-4186 (30 years), an offense far graver than gross sexual assault.

The State's reliance on the statutory maximum, Blue Br. 15, ignores sentencing norms reflected in these cases. A 30-year unsuspended sentence for two counts of gross sexual assault, without minimizing Mr. Merchant's conduct, is an outlier that violates the goals of fairness and rehabilitation under 17-A M.R.S. § 1501. The Court should vacate the sentence as excessive and disproportionate.

CONCLUSION

The State's defenses do not negate the sentencing court's errors in combining Counts I and III, failing to decide on consecutive sentences before the third *Hewey* step, and imposing a grossly disproportionate 30-year sentence. For these reasons, Mr. Merchant respectfully requests that this Court vacate his sentence and remand for resentencing consistent with *State v. Hewey*, *State v. Stanislaw*, and Article I, Section 9 of the Maine Constitution.

Dated: April 22, 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:

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