

STATE OF MAINE

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. SRP-25-410**

**STATE OF MAINE,
Plaintiff/Appellee**

v.

**ZACHARY CONWAY,
Defendant/Appellant**

**ON APPEAL OF SENTENCE FROM THE
UNIFIED CRIMINAL DOCKET IN CUMBERLAND COUNTY**

BRIEF FOR APPELLEE STATE OF MAINE

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INTRODUCTION

Zachary Conway appeals from a sentence imposed after a jury found him guilty of robbery, kidnapping, aggravated assault and theft. The sentence was 14 years in prison, all but 8 years suspended, and 4 years of probation. Conway argues the trial court erred by giving “little value” to his claim of remorse and improperly punished him for having a trial, based on the fact that a codefendant who pleaded guilty received a shorter sentence. However, the trial court did not err in giving “little value” to Conway’s claim of remorse, nor did it punish him for exercising the right to have a trial. Instead, it properly followed the statutory sentencing process, giving due consideration to the sentencing purposes, and Conway’s sentence was lawful and proportionate to his crimes. Comparison with the codefendant’s sentence is unnecessary, and the difference merely reflects substantial differences between their two cases, not sentencing impropriety. Therefore, the Law Court should affirm Conway’s sentence.

FACTS AND PROCEDURAL HISTORY

Uncontroverted evidence at trial established the following facts. Kristina Parker lived in Bridgton with her husband, Steven Price, and her two teenage children. *Trial Tr. 4/6/2022, 75.*

Zachary Conway, also known as “Kuwala,” had been their friend for at least a couple years and frequently visited their home. *Trial Tr. 4/6/2022, 76-78, 115-117.* Conway regularly obtained marijuana from Price, owed him about \$800 to \$1,000 for marijuana, knew Price collected cash “donations” in exchange for marijuana, knew the marijuana and the money were kept in the basement, and knew that Price would be away at work and Parker would be home alone on October 5, 2019. *Trial Tr. 4/6/2022, 22-23, 26-19.*

On that date Conway arrived unexpectedly at Parker’s residence with two men Parker did not know, later identified by investigators as Brandon Desaulniers (described by Parker as the shorter man with a shaved head) and Ryan Barden (described by Parker as the taller man). *Trial Tr. 4/6/2022, 79-80, 82-83; Trial Tr. 4/7/2022, 81.* After confirming Price wasn’t home, Conway and Desaulniers asked for and received Parker’s permission to enter her house to use the bathroom. *Trial Tr. 4/6/2022, 79-84.*

When Conway and Desaulniers came out of the bathroom they both pointed handguns at Parker, while Barden came from the car carrying a blue crowbar, and the three men demanded the marijuana and the money from the basement. *Trial Tr. 4/6/2022, 92-94.* Parker resisted, blocking the basement door, but Barden struck her head with the crowbar, Conway handed Barden a can of canine flea spray to spray Parker with, Conway kicked her in the ribs, and Barden struck her again with the crowbar, then the three men pulled her away from the door. *Trial Tr. 4/6/2022, 93-95.*

Conway and Desaulniers then entered the basement, while Parker continued to struggle with Barden, who slammed and locked the front door to prevent her from leaving, struck her in the leg, and put the crowbar around her neck to strangle her. *Trial Tr. 4/6/2022, 95.* Parker lost consciousness, and later awakened to see the three men running by her carrying about five pounds of marijuana from the basement, and at that point Desaulniers threatened to kill Parker and her children if she called the police. *Trial Tr. 4/6/2022, 63-64, 95, 119.*

The men left Parker injured, crying, distraught, and so upset that she couldn't manage to use her cell phone, so she just

screamed until neighbors came. *Trial Tr. 4/6/2022, 32, 96.* After police and EMTs arrived she was taken by ambulance to a hospital for treatment of injuries to her head, neck, shoulder, and legs, including a severe concussion that caused recurring migraines, damage to a disc in her lower back that required orthopedic surgery, and damage to her knee that required ongoing treatment for over two years. *Trial Tr. 4/6/2022, 97-98, 120-121; Trial Tr. 4/7/2022, 11-13.*

After Stephen Price learned of the robbery he texted Conway but received no response. *Trial Tr. 4/6/2022, 34.* In October of 2019 Detective Nicholas Georgoulis of the Manchester Police Department in New Hampshire tried to interview Conway about the robbery, but Conway “got defensive... and didn’t want to answer any more questions.” *Trial Tr. 4/7/2022, 56.*

Although Parker did not know the two men who accompanied Conway, police investigators learned that around the time of the robbery Conway was in the company of Desaulniers and Barden, and that before the robbery Conway had phoned Dylan Munn of New Hampshire to ask if he “wanted to hit somebody and make

some money real quick,” but Munn had declined. *Trial Tr.*

4/7/2022, 41-42, 81.

On October 21, 2019, the State filed a criminal complaint charging Conway with three counts of robbery (Class A), one count of aggravated assault with a dangerous weapon (Class B), and one count of theft (Class E). *App.* 3, 58-59. On December 5, 2019, a grand jury returned an indictment with an additional count of kidnapping (Class A). *App.* 4, 60-62. A three day jury trial was held on April 6-8, 2022, before Justice Thomas McKeon. *App.* 13.

The trial court observed that Parker was “an emotional witness.” *Trial Tr.* 4/6/2022, 89. She wore a back brace and exhibited palpable trauma and fear as she testified about the robbery, “hyperventilating” and “shaking” and needing to use an inhaler, which prompted the court to excuse the jury for a recess. *Trial Tr.* 4/6/2022, 84-88.¹ Parker also testified about the terror she continued to feel for herself and her children.

When I came to I was by the sink and... the bald kid said if I called the cops he was going to kill me and my son,

¹ Conway objected to Parker’s use of a back brace and an inhaler on the witness stand, arguing it was “unduly prejudicial” and “can be seen as... making her look more sympathetic than is necessary.” *Trial Tr.* 4/6/2022, 86-88.

and he knew where my daughter was. He was going to kill us. He was going to kill us. He was going to kill us – my baby girl. [...] I can't even feel safe in my house because the locks – they locked me in. They locked me in. I can't lock a door and feel safe. No locks make me feel safe anymore.

Trial Tr. 4/6/2022, 95-96. She said she blamed Conway for what the other two men did and said to her, because he planned the robbery and brought them to her house.

He brought them there. He brought them to my house. He brought them there. My kids are my whole world, and he brought them there.

Trial Tr. 4/6/2022, 95-96.

In closing argument Conway's counsel did not merely rely on the presumption of innocence and the burden of proof, but directly attacked Parker by arguing that she faked her injuries (*Trial Tr. 4/7/2022, 124-126*) and that she and Price made up the whole robbery story.

Why not call the police immediately? Because Steven Price and Kristina Parker had to get their story straight. ... [They] needed time to come up with a story. They needed time to curate the scene.

Trial Tr. 4/7/2022, 122. The jury returned a verdict finding Conway guilty of all counts. *App.* 13-14.²

On May 5, 2022, the trial court held a sentencing hearing. *App.* 14. The prosecutor explained that Parker could not attend because her mental health had “devolved” since the trial, but read aloud her victim impact statement describing the lasting effects of the crimes.

I cannot face him again. It’s too much for me. I’ve gone so far backwards since the trial. My counselor says I’m in acute traumatic stress disorder... along with other medical issues that were caused by this that I have to deal with on my own, out-of-pocket expenses. ... I’m on the verge of being hospitalized. ...

I can’t deal with being in this house with the flashbacks I’ve been having since the trial. I feel like I’m going crazy[.] ... What he got with the trial was me being victimized all over again in front of an audience. ... I’ve got a life sentence because of the reckless choice he made after being given more than one chance to leave before it got worse. When the gun was pointed at me, when I heard the threat, I relive it every day, every night, while I drive, when I’m spending time with my family. ...

I’ve got nerve damage in my lower back and lower left lateral disc pushing on nerves, making pain shoot down my legs and up through my back. I have to be on medication just to be able to walk and push through the

² The trial court instructed the jury on accomplice liability. *Trial Tr. 4/7/2022*, 103; *Trial Tr. 4/8/2022*, 14.

pain. I put my knee brace on at 4 AM just to get ready for work. ...

I can't feel safe with a deadbolt in my home because when I see it lock, I panic because that's another way to lock me in like they locked me in my safe place, my home. No matter where I am, nothing makes me feel safe. I see your eyes. I see your gun. I see your face. I cry daily, and I hurt daily. ...

I still have to have surgery where they will put a needle into my spine... then weeks after the surgery I'll have to have another for them to shave back the lower left lateral disc, and after I go from that there's another surgery. This is from my back bouncing off the cellar doorknob and outside door doorknob. ... Almost three years later, and still in the midst of all this. ...

I have to serve a life sentence reliving this trauma. ... I will always have the scars of what happened. ... You changed my world. I used to go to activities. I'm scared of everything now. ... He brought a gun into the home of a woman he knew who had children, who was unarmed, knowing what he and his friends were going to do[.] ...

I don't believe that they won't come after me. My whole world has changed. My children have changed. I was their support system. I was strong, and now some days, I can barely get up. ... I was my children's strength, their driving force, the one thing that was consistent. When they returned home to see me that day beaten, I had to tell them what happened to me and to our family, that their mother could have lost everything. Everything changed that day. You turned our lives upside-down. ... I will never be who I was. You took that woman away.

Sent. Tr. 5/5/2022, 7-12.

Conway addressed the trial court briefly, apologizing “from the bottom of my heart and the depth of my soul,” saying he was “truly humbled” and had learned “valuable and lifelong lessons,” and vowing to “change my life and... become a functioning and productive member of society.” *Sent. Tr. 5/5/2022*, 25-26.

However, he did not demonstrate any understanding of the impact of the crime on Parker or Price, nor any insight into why he committed the crimes other than saying “at that time my life was tumultuous.” *Id.*

Conway pointed out that codefendant Desaulniers had pleaded guilty to robbery (Class A), kidnapping (Class A) and aggravated assault (Class B) before a different judge, and received an agreed-upon sentence of 10 years in prison, all but 4 years and 11 months suspended, and 4 years of probation. *App.* 70. Conway argued that his conduct and Desaulniers’s conduct during the robbery were “essentially identical,” and therefore to give Conway a greater sentence would be to impose a “trial tax” that would punish him for exercising his right to a trial. *App.* 70, 75, 100-103. Conway

argued for a sentence of 10 years in prison, all but 5 years and six months suspended, and 4 years of probation. *App.* 75.³

The State conceded that Conway's and Desaulniers's conduct *during* the robbery "was almost identical," but argued "the circumstances of [Desaulniers's] plea are completely different" (*App.* 100), and identified several factors that distinguished the two cases besides Desaulniers's guilty plea, including the following:

- Conway alone betrayed a personal friendship with Parker and Price, and exploited Parker's trust to gain entry into her home, which significantly impacted the victims (*App.* 78, 99, 107);
- Conway alone had the knowledge needed to plan the crime, including that there was marijuana and money in the basement and that Price would be at work and Parker would be home alone (*App.* 78, 99, 106-107);
- Conway planned the robbery and recruited others to help him (*App.* 79-80, 106-108);
- Only Conway kicked Parker in the ribs (*App.* 78);
- Conway alone was charged with negligent manslaughter of a young child in New Hampshire just two days after the robbery (*App.* 80, 108);
- Although Parker easily could identify Conway because she knew him, the identification of Desaulniers was problematic

³ Although Conway argued that any sentence longer than Desaulniers's sentence would constitute an unfair "trial tax," he actually recommended a sentence that would have required him to serve seven more months in prison than Desaulniers. *App.* 66, 75.

because Parker did not know him and his out-of-court identification arguably was unconstitutionally suggestive (*App.* 79, 100).

Based on those differences, the State argued “the landscape in terms of the pre-trial litigation in Mr. Desaulniers’s case was very, very different, and that sentence should not be so instruct[ive] to the Court.” *App.* 100, 108. The State recommended a sentence of 18 years in prison, all but 12 years suspended, and 4 years of probation. *App.* 80.

The trial court followed the familiar statutory three-step sentencing analysis, in the first step setting a basic sentence of 12 years. *App.* 29. It found the crimes involved “a violent home invasion,” with use of weapons and threats against a woman who was alone. *App.* 28. It observed that Conway and Desaulniers engaged in basically “the same conduct” during the robbery, and therefore reasoned “I can’t, in the interests of justice, ignore the sentence in the Desaulniers case,” but it also noted that “this case is different” and therefore it was “not tied to” the Desaulniers sentence. *App.* 28. Specifically, the court found Conway’s conduct was “worse” because he committed a “severe” betrayal of his

personal relationship with the victims, and he recruited the other men.

[P]robably the worst part of a home invasion is when it's someone you know who comes in... and shatters the peace of a home like that, and it was Mr. Conway that did that, that brought the other two participants to the house... that arranged it so that the weapons were at the house. It would not have happened but for Mr. Conway's decision to tell his friends where the marijuana was and to go there with the intent of taking it even by force and by threat.

So in many respects, this defendant's conduct is... the same, but in some very important factors... it's worse than what Mr. Desaulniers did. I mean, ... to have someone you know do something like this is a true betrayal, and I think that... is part of what's informing the rage of Ms. Parker.

App. 29.

In the second step the trial court found “the aggravating factors outweigh the mitigating factors,” and set the maximum sentence at 14 years. *App.* 32. As mitigating factors it noted “Conway is a young man,” he had “no criminal record,” and he said “he wants to change while he’s incarcerated.” *App.* 29-31. As aggravating factors the trial court found Conway’s actions were premeditated and planned (noting it was “a crime of planning and intent,” and he “consciously made the decision to do this”), and his

motive was greed (“the motivation here is pecuniary gain... or the ability to score... a large quantity of marijuana.”) *App.* 29-32.

Additionally, it found “the impact on the victim... is a huge aggravating factor,” noting “it has had a profound effect on Ms. Parker,” which was “truly... as bad as it could be,” referring particularly to the impression left by “her testimony at trial,” and noting the court “learned during trial” that Ms. Parker might be more sensitive than other people. *App.* 29-32.⁴

Regarding Conway’s claim of remorse, the trial court said “I’ve heard some remorse today, but it does come late at a sentencing hearing, ... so I am going to give it little value.” *App.* 31. Noting Conway’s expressed concerns about an improper “trial tax,” the trial court further explained that it was not punishing Conway for having a trial, stating “Mr. Conway certainly had the right to exercise his right to trial” and “I’m not considering the fact that he exercised that right as an aggravation.” *App.* 31.

In the third step the trial court determined the final sentences on the Class A robbery and kidnapping charges: 14 years in prison,

⁴ Regarding risk of reoffending, the trial court concluded “I can’t say one way or the other.” *App.* 30.

all but 8 years suspended, and 4 years of probation, with concurrent lesser sentences on the lesser charges. *App.* 33, 36.⁵ In doing so it specifically noted “the purposes of sentencing,” including minimizing incarceration and promoting rehabilitation.

Mr. Conway shows a predilection to not just dabbling in a criminal enterprise, but going all in on what was a home invasion. I don’t know that spending this time... with incarcerated folks is going to promote further criminality. I’m afraid it is. I am considering that, however, when I’m considering how much of the sentence to suspend. I’m also considering the hope of rehabilitation of Mr. Conway. [...] I have hope for Mr. Conway.

App. 32-33. It also specifically referred to the sentencing goals of deterrence and giving fair warning of the type of sentence that may result from serious criminal conduct, stating “this is the type of crime we, as a society, can’t allow,” and “it’s something that a sentence has to show deterrence, and it’s something that we have to give fair warning to anyone else who would contemplate such a scheme that [the court will] impose a serious sentence as a result.” *App.* 33.

⁵ The trial court imposed concurrent sentences of 3 years for aggravated assault (Class B) and 6 months for theft (Class E). *App.* 13-15, 38-40.

On May 6, 2022, Conway filed notice of direct appeal, and on February 9, 2023, the Law Court issued a memorandum of decision affirming the judgment. *App.* 15; *State v. Conway*, Mem-23-32 (Feb. 9, 2023).⁶

On April 13, 2023, Conway filed a letter requesting post-conviction review based on ineffective assistance of counsel. *App.* 18. Following appointment of new counsel and a final hearing, on August 1, 2025, the trial court granted post-conviction relief by enlarging the deadline for Conway to appeal the sentence. *App.* 23, 49-55.⁷ On August 22, 2025, having been granted permission from the sentence review panel, Conway filed notice of this sentence appeal. *App.* 23.

⁶ As suggested by a footnote in the Law Court's memorandum of decision (*State v. Conway*, Mem-23-32, n.1 (Feb. 9, 2023)), on February 14, 2023, Defendant moved to amend the judgment to merge the three Class A robbery counts, which the trial court immediately granted without objection, but otherwise there was no change to the original sentence. *App.* 18.

⁷ The post-conviction review court found that Conway's trial counsel and appellate counsel failed to consult with him about appealing the sentence, although the trial court had specifically advised Conway at the sentencing hearing that he had the right to appeal the sentence by filing notice of appeal within 21 days and Conway had acknowledged that he understood. *App.* 52; *Sent. Tr.* 5/5/2022, 6.

On March 3, 2026, Conway filed an unopposed motion to supplement the record on appeal with court documents from the case against codefendant Brandon Desaulniers. Without ruling on that motion, on March 9, 2026, the Law Court issued an order requiring the parties to brief the issue of whether the Law Court may consider a codefendant's sentencing proceedings in reviewing an appellant's sentence.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred in assigning "little value" to Conway's claim of remorse, or improperly punished him for exercising the right to have a trial, or whether it properly followed the statutory sentencing process, with due consideration of the sentencing purposes, and imposed a sentence that was lawful and proportionate to Conway's crimes?

2. Whether, for purposes of comparing sentences, the Law Court should consider additional court records from codefendant Desaulniers's case that were not part of the record in this case?

ARGUMENT

1) The trial court did not err in giving “little value” to Conway’s claim of remorse, nor did it punish him for exercising the right to have a trial; instead it properly followed the statutory sentencing process, with due consideration of the sentencing purposes, and imposed a sentence that was lawful and proportionate to Conway’s crimes.

In a sentence appeal the Law Court considers the propriety of the sentence and the manner in which it was imposed, including the accuracy of the information on which it was based. 15 M.R.S. § 2155 (2019); *State v. Reese*, 2010 ME 30, ¶ 21, 991 A.2d 806. The objectives are to correct sentences imposed without regard for proper sentencing factors, to promote respect for the law by correcting abuses of sentencing power and increasing the fairness of the sentencing process, to facilitate possible rehabilitation by reducing manifest and unwarranted inequalities among sentences of comparable offenders, and to promote development and application of criteria for sentencing which are both rational and just. 15 M.R.S. § 2154 (2019); *Reese*, 2010 ME 30, ¶ 21, 991 A.2d 806.

The Law Court reviews the legality of a sentence de novo, examining the determination of the basic sentence for

misapplication of legal principles, and the determination of the maximum sentence and the final sentence for abuse of discretion. *State v. Averill*, 2026 ME 48, ¶ 35, __ A.3d __. It affords considerable discretion to the trial court, allowing “significant leeway in what factors it may consider and the weight any given factor is due,” limited only by a requirement that such information is relevant and factually reliable. *Id.*, 2026 ME 48, ¶¶ 35, 39, 42, __ A.3d __.

“[T]rial courts have wide discretion in determining the sources and types of information to consider when imposing a sentence.” *State v. Bentley*, 2021 ME 39, ¶ 13, 254 A.3d 1171. Information derived from the trial process is considered factually reliable because it comes from sworn testimony of witnesses who are subject to cross-examination and observation by the court. *State v. Seamon*, 2017 ME 123, ¶¶ 24-26, 165 A.3d 342.

In this case the trial court properly followed the three-step sentencing process with due regard for the statutory sentencing purposes, and imposed a sentence that was lawful and proportionate to Conway’s crimes.

Following the three-step statutory sentencing process set forth at 17-A M.R.S. § 1602(1) (2019), at the first step the trial court appropriately set a basic term of 12 years in prison based on the particular nature and seriousness of Conway's crimes, noting that they involved a violent and premeditated armed robbery and kidnapping in which he and two other men beat an unarmed woman and threatened to kill her children if she called the police. At the second step the trial court appropriately set a maximum term of 14 years in prison because the mitigating factors, including Conway's youth and lack of criminal history, were outweighed by the aggravating factors, including premeditation and victim impact.⁸ As the trial court noted, at trial Parker exhibited severe victim impact, resulting in part from her trauma and physical injuries and in part from Conway's betrayal of their personal friendship.⁹ At the

⁸ Premeditation and victim impact are appropriate aggravating factors. *State v. Leng*, 2021 ME 3, ¶¶ 21, 23, 244 A.2d 238.

⁹ The trial court also properly may have considered as an aggravating factor Conway's subsequent criminal conduct in New Hampshire that resulted in the death of an infant. *State v. Weir*, 600 A.2d 1105, 1107 (Me. 1991) (upholding a robbery sentence that was greater than the sentences of the two codefendants, noting only the defendant committed another robbery while on bail.)

third and final step the trial court properly suspended 6 years of the prison sentence and added 4 years of probation, based on the need for rehabilitation and supervision after release from custody. Thus, the final sentence of 14 years in prison, all but 8 years suspended, and 4 years of probation, resulted from proper application of the statutory sentencing analysis.

The trial court also properly considered the sentencing purposes listed under 17-A M.R.S. § 1501 (2019). Although the statute sets forth a variety of purposes, “[t]he selection for appropriate emphasis among those disparate purposes rests in the discretion of the court.” *State v. Hamel*, 2013 ME 16, ¶ 8, 60 A.3d 783; *State v. Aldrich*, 2026 ME 8, ¶ 81, 353 A.3d 987. Accordingly, the Law Court “afford[s] the court significant leeway in what factors it may consider and the weight any given factor is due when determining a sentence.” *Id.*, quoting *Bentley*, 2021 ME 39, ¶ 11, 254 A.3d 1171.¹⁰ Here, the trial court correctly noted the final

¹⁰ “The court is not required to discuss every argument or factor that the defendant raises, as long as it does not disregard significant and relevant sentencing factors.” *State v. Aldrich*, 2026 ME 8, ¶ 81, 353 A.3d 987, quoting *State v. Reese*, 2010 ME 30, ¶ 34, 991 A.2d 806.

sentence served several purposes, including preventing crime through deterrence and rehabilitation, minimizing correctional experiences that promote further criminality, providing notice of the nature of sentences that may be imposed for serious violent crimes, eliminating inequalities in sentences that are unrelated to legitimate criminological goals, encouraging just individualization of sentences, eliciting cooperation of individuals through correctional programs, and permitting sentences that do not diminish the gravity of serious violent crimes.

Additionally, the 14-year sentence for the robbery and kidnapping charges was lawful, in that it was less than half of the 30-year maximum allowed by the Legislature for Class A crimes. 17-A M.R.S. § 1604(1)(A) (2019). Likewise, the concurrent sentences imposed for the lesser offenses of aggravated assault and theft did not exceed the statutory maximums for Class B and Class E offenses. 17-A M.R.S. § 1604(1)(B) & (E) (2019)

Nor can it be said that the sentence was unconstitutionally disproportionate. To decide if a sentence is unconstitutionally disproportionate, “first we look to see whether [it] is greatly disproportionate to the offense for which it is imposed,” and

“[s]econd, if it is not greatly disproportionate, we examine whether it offends prevailing notions of decency.” *State v. Lopez*, 2018 ME 59, ¶¶ 14-15, 184 A.3d 880; *State v. Asante*, 2023 ME 24, ¶ 33, 294 A.3d 131. Only in rare instances will the comparison of the sentence to the offense give rise to an inference that the sentence is grossly disproportionate to the offense, and only then must the Law Court compare it with sentences received by other offenders. *State v. Hansen*, 2020 ME 43, ¶¶ 33, 37, 228 A.3d 1082. Given the premeditated and violent nature of his crimes, and the severe and lasting victim impact, Conway’s 14-year sentence was not disproportionate and did not offend prevailing notions of decency, and therefore comparison with other cases is not necessary.¹¹

¹¹ Because there is no inference of gross disproportionality, the Law Court need not compare Conway's sentence. *State v. Hansen*, 2020 ME 43, ¶¶ 33, 37, 228 A.3d 1082. But if such comparison were needed, Conway’s sentence withstands scrutiny because it compares favorably to harsher sentences upheld by the Law Court in other robbery cases. See e.g., *State v. Corrieri*, 654 A.2d 419, 423-424 (Me. 1995) (upholding robbery and burglary sentence of 20 years, all but 12 years suspended and 6 years of probation, where defendant drove two other men to the victim’s residence and they attempted to rob the victim of marijuana at gunpoint); *Weir*, 600 A.2d at 1107 (upholding sentence of 20 years, all but 9 years suspended, and 8 years of probation for 2 armed robbery charges for an 18-year-old defendant with no criminal record).

Nor did the trial court err by giving “little value” to Conway’s expression of “some remorse” at sentencing. While a defendant’s genuine remorse may be a mitigating sentencing factor and lack of remorse may be an aggravating factor, the trial court is uniquely positioned to assess whether an expression of remorse is genuine and how much weight it deserves, and therefore that judicial determination warrants substantial deference. *State v. Roberts*, 641 A.2d 177, 179 (Me. 1994) (noting trial court’s “unique position” to assess the defendant, justifying greater deference to its balancing of aggravating and mitigating factors); *State v. Ellis*, 2025 ME 56, ¶ 23, 339 A.3d 794. A trial court need not accept a defendant’s claim of remorse as genuine. *State v. Gaston*, 2021 ME 25, ¶¶ 15, 36-37, 250 A.3d 137.¹² Instead, in making that assessment it may consider both the defendant’s demeanor at sentencing and his conduct at the time of the crime and thereafter.¹³ Furthermore,

¹² See also, *State v. Berube*, 1997 ME 165, ¶ 14, 698 A.2d 509 (upholding trial court’s finding that the defendant’s expressions of remorse deserved no weight, noting reliable contrary evidence).

¹³ See e.g., *State v. Coleman*, 2024 ME 35, ¶ 26, 315 A.3d 698 (“[t]here is no constitutional right to be free from a court considering a disassembling sentencing allocution”); *Reese*, 2010 ME 30, ¶ 31, 991 A.2d 806 (upholding a finding that the defendant lacked

even genuine remorse does not guarantee a sentence reduction if it is outweighed by aggravating factors, such as victim impact. *State v. Dalli*, 2010 ME 113, ¶¶ 9-11, 8 A.3d 632.

Here the trial court acted well within its discretion in finding that Conway expressed only “some remorse” and that it was of “little value,” and that judicial finding warrants substantial deference in light of its unique position to observe Conway’s demeanor at sentencing and to weigh the evidence of his conduct at the time of the crimes and thereafter. *App.* 31. Conway exhibited no remorse at the time of the robbery, or at any time thereafter until the sentencing hearing, based on evidence that he betrayed a personal friendship with Parker and Price, planned the armed

genuine remorse based on reliable trial evidence that he shot at the victim 9 times, hitting her twice, then abandoned her with life-threatening injuries on the side of the road at night); *State v. Averill*, 2026 ME 48, ¶¶ 34, 37, __ A.3d __ (upholding finding that defendant failed to accept responsibility for causing the death of a child, based on reliable evidence that immediately afterwards defendant falsely told EMTs that the child went limp by choking on formula, which the court found was “a plain attempt to minimize the harm he inflicted and redirect the focus of inquiry”); *State v. Ellis*, 2025 ME 56, ¶¶ 23, 25, 339 A.3d 794 (holding that in assessing remorse and acceptance of responsibility, a sentencing court may consider the defendant’s “conduct at trial,” and “information learned at trial.”)

robbery, recruited others to join him, selected a time when Parker would be alone, savagely beat her with two other men, did not disengage from the crime when it became violent, failed to offer her any care or medical treatment for her injuries, fled from the scene and left Conway alone and afraid to call the police, and later failed to respond to Price's text messages or to cooperate with the investigators. Furthermore, at the sentencing hearing Conway basically just apologized and said he had learned his lesson and would be a better person, but failed to demonstrate any empathy for the victims and what they suffered, or any real insight into why he committed the crimes. Based on the evidence in the record, as well as the trial court's opportunity to assess Conway's demeanor at trial and at sentencing, the assignment of "little value" to Conway's expression of remorse was not an abuse of discretion.

Additionally, it was within the trial court's judicial discretion to find Conway's expression of remorse was outweighed by the aggravating factors, including his premeditation and financial motive as well as the severe victim impact. *Dalli*, 2010 ME 113, ¶¶ 9-11, 8 A.3d 632.

Nor did the trial court improperly impose a “trial tax” by punishing Conway for exercising his right to a trial. It is black letter law that a criminal defendant cannot be punished with a more severe sentence for exercising the right to stand trial rather than pleading guilty, or for exercising his right not to testify at trial. *Averill*, 2026 ME 48, ¶ 36, __ A.3d __.¹⁴ However, “[t]hat rule does not immunize a defendant from evaluation of his or her conduct at trial by the trial court.” *State v. Corrieri*, 654 A.2d 419, n.5 (Me. 1995).

[T]here is a difference between increasing a defendant’s sentence because the defendant chooses to exercise the right to a trial... and considering a defendant’s conduct at trial and information learned at trial, along with other factors, in determining the genuineness of a defendant’s claim of personal reform and contrition.

State v. Moore, 2023 ME 18, ¶ 25, 290 A.2d 533. Furthermore, it is normal and proper that information that comes to light at trial may support a longer sentence for reasons having nothing to do with the fact that the defendant exercised the right to have a trial.

¹⁴ See also, U.S. Const. amend. V; U.S. Const. amend. VI; Me. Const. art. I, § 6; *Dadiego v. Clemmons*, 649 F.Supp. 1426, 1432 (1st Cir. 1986) (collecting cases); *State v. Moore*, 2023 ME 18, ¶¶ 25-27, 290 A.2d 533 (vacating sentence where trial court cited defendant’s decision to have a trial as evidence of lack of remorse.)

It is to be expected that, on the whole, defendants who plead guilty to criminal offenses receive more lenient sentences than defendants who go to trial. Remorse and acceptance of responsibility are factors that courts look at in sentencing, and defendants who plead guilty are more likely to demonstrate sincere remorse than defendants who do not plead guilty. The trial exposes a defendant to a much lengthier scrutiny by the sentencing court than would take place with a plea of guilty. The trial may bring to light facts about the defendant and the crime that are unfavorable to the defendant and that may not come to the attention of the court in a plea proceeding. [...] It is permissible for plea agreements to involve a recommendation of a more lenient sentence than the prosecutor would recommend after trial.

State v. Winslow, 2007 ME 124, ¶ 31, 930 A.2d 1080.¹⁵

¹⁵ The Law Court has rejected the “trial tax” argument and upheld a sentencing court’s finding that lack of genuine remorse or lack of acceptance of responsibility were aggravating factors where that finding was supported by affirmative evidence in the record. See e.g., *Averill*, 2026 ME 48, ¶¶ 36-37, __ A.3d __ (rejecting “trial tax” argument and upholding sentencing court’s finding that the defendant’s failure to take responsibility was an aggravating factor based on evidence that he made false statements to EMTs about the circumstances of his child’s death in order to minimize the harm he inflicted); *State v. Woodward*, 2025 ME 32, ¶¶ 25-26, 334 A.2d 667 (rejecting “trial tax” argument and upholding trial court’s finding that the defendant’s lack of remorse and failure to accept responsibility were aggravating factors based on his letter to the court characterizing the criminal conduct as merely a misunderstanding); *State v. Hayden*, 2014 ME 31, ¶ 23-25, 86 A.3d 1221 (rejecting “trial tax” argument and upholding sentence, even though sentencing court commented that in taking his case to trial defendant had forced his 8-year-old son to testify against him, finding that the comment was merely made in response to the defendant’s assertion at trial that he loved his son.)

When a sentencing court mentions the fact that a defendant chose to have a trial, the Law Court evaluates that reference “in the context of the entire sentencing process,” focusing on whether in determining the sentence “it reasonably appears from the record that the trial court relied in whole or in part upon the defendant’s election to stand trial,” and “any doubt as to whether the defendant was punished for exercising his right to trial must be resolved in favor of the defendant.” *Moore*, 2023 ME 18, ¶ 26, 290 A.2d 533 (vacating sentence where sentencing court improperly stated “if you get convicted after a trial, then you’re showing no remorse.”)

Here, the trial court did mention the fact that Conway exercised the right to have a trial, but the context plainly shows the trial court did not punish Conway for exercising that right. Instead, it merely acknowledged Conway’s expression of concern about an improper “trial tax,” and addressed that concern by explaining it was not punishing him for exercising his right to a trial, stating unequivocally “Mr. Conway certainly had the right to exercise his right to trial,” and “I’m not considering the fact that he exercised that right as an aggravation.” *App.* 31. Thus, the record plainly

shows the trial court did not abuse its discretion by punishing Conway for exercising his right to a trial.¹⁶

Finally, comparison of Conway's sentence to codefendant Desaulniers's sentence is unwarranted, nor does such comparison prove an improper "trial tax" because there were substantial differences between their cases that rationally explain the difference in sentences. "[T]here is no constitutional requirement that codefendants receive the same final disposition." *Lopez*, 2018 ME 59, ¶ 25, 184 A.3d 880 (collecting cases).¹⁷ Indeed, a trial court is

¹⁶ Conway's reliance on *State v. Ellis* is misplaced. In *Ellis* the Law Court vacated a sentence because the trial court improperly found as an aggravating factor that the defendant failed to take responsibility for his conduct, when the record contained absolutely no evidence to support that finding other than the fact that he exercised his right to have a trial. 2025 ME 56, ¶¶ 23, 26, 339 A.3d 794. However, the *Ellis* opinion also noted that "[c]ourts may... consider... lack of remorse and rejection of responsibility as aggravating factors" as long as those findings are "based on affirmative evidence in the record." *Id.* In this case, unlike *Ellis*, the trial court made no finding regarding acceptance of responsibility, and its finding that Conway's claim of remorse deserved "little value" was supported by evidence in the record based on his conduct at the time of the crime and thereafter (as discussed above).

¹⁷ See also, *State v. Ringuette*, 2022 ME 61, ¶ 12 & n.4, 288 A.3d 393 (noting that even for a principal and an accomplice, whose guilt is "indistinguishable," nevertheless the sentencing court has "discretion in coming to different final sentences... after considering

not required to consider comparable cases at all, and if it elects to consider a comparable sentence then “the comparison may take into account whether the comparable sentence resulted from a plea or a trial.” *Bentley*, 2021 ME 39, ¶¶ 13-15, 254 A.3d 1171.

Furthermore, similarly situated codefendants may receive different sentences as a result of factors that distinguish their cases, including differences in their individual criminal conduct, the strength of the State’s evidence against them, whether they accepted responsibility by pleading guilty, the evidence presented at trial or sentencing, and the judge presiding over each case.¹⁸

aggravating and mitigating factors at step two... or sentence enhancements that apply to one defendant but not the other”); *State v. Jandreau*, 2022 ME 59, n.3, 288 A.3d 371 (summarily rejecting defendant’s objection to his sentence after trial based on mere fact that a codefendant received a more lenient sentence after pleading guilty.)

¹⁸ See e.g., *State v. Hamel*, 2013 ME 16, ¶ 9, 60 A.3d 783 (affirming a sentence that was substantially longer than the sentences of two codefendants, where “distinctions between [their] actions support the differences in their respective sentences”); *Corrieri*, 654 A.2d at 423-24 (affirming sentence that was longer than two codefendants’ sentences, noting the sentencing court appropriately considered the fact that the defendant showed lack of remorse and failed to accept responsibility based on his “rendition of a fanciful story of duress” at trial, whereas codefendants accepted responsibility by pleading guilty); *State v. Lopez*, 2018 ME 59, ¶¶ 8-9, 23-25, 184 A.3d 880 (upholding sentence even though a

Here, several important factors distinguished Conway's case from Desaulniers's case and provided a rational explanation for Conway receiving a longer sentence, including the following differences:

- **Conduct.** Although their conduct during the robbery was similar, it was not identical, as only Conway betrayed a personal relationship with the victims, exploited knowledge he gained from that friendship, recruited others to join him, and kicked Parker in the ribs;
- **Proof Problems.** The case against Desaulniers (a stranger to Parker) was weakened by an arguably improper out-of-court identification procedure, whereas the case against Conway had no such weakness because Parker knew Conway personally and could easily identify him;
- **Acceptance of Responsibility.** Desaulniers accepted responsibility for his crimes by pleading guilty early, whereas evidence at trial showed Conway did not demonstrate acceptance of responsibility before sentencing (as discussed above);
- **Awareness of Case Facts and Victim Impact.** Desaulniers did not have a trial or a contested sentencing hearing, so his sentencing judge had only minimal information about the crimes and victim impact, whereas in Conway's case the trial court gained extensive knowledge of the details of the crime

codefendant had received a substantially lower sentence and they had "substantially similar roles in the crime," as the prosecutor had explained to the sentencing court that the case against the codefendant was weakened by uncertainty about the availability of witnesses needed to prove his involvement, and therefore the sentencing disparity was rationally related to a legitimate State interest.)

and the severe victim impact, both at trial and at the contested sentencing hearing;

- **Different Judges.** The sentences were imposed by different judges, who in their discretion may have viewed the cases differently.

Thus, rather than proving an improper “trial tax,” or any other sentencing impropriety, Conway’s longer sentence rationally reflects substantial differences between the two cases.

2) The Law Court should not consider additional court records from codefendant Desaulniers’s case, because comparison of the sentences is unnecessary and the additional court records were not before the trial court in this case.

In response to Conway’s unopposed motion to supplement the record on appeal, the Law Court ordered the parties to brief the issue of whether it may consider the record and court documents from the Desaulniers case in reviewing Conway’s sentence.¹⁹ The Law Court should not consider the additional court records because comparison with the Desaulniers sentence is unnecessary and the additional records were not before the trial court in this case.

¹⁹ The additional court documents from the Desaulniers case (Docket No. CUMCD-CR-2019-05821) would include the following: the docket record, the indictment, the judgment and commitment, the motion to suppress identification, and a police affidavit that described the identification procedure.

Ordinarily the record on appeal is limited to information that was part of the trial court's file. M.R. App. P. 8(g)(1). Here, however, Conway asks the court to compare his sentence to the sentence of Desaulniers, who pleaded guilty and was sentenced by a different judge pursuant to a negotiated agreement, and to infer from the difference in their sentences that his longer sentence resulted from an improper "trial tax." Enlargement of the record for comparison of the sentences is unnecessary because, as discussed above, codefendants are not entitled to equal sentences and therefore side-by-side comparison of the sentences is unwarranted. Additionally, as discussed above, the record already shows the difference in the sentences rationally is explained by substantial differences between the cases, rather than sentencing impropriety.

Finally, as the party requesting the comparison it was Conway's burden to present complete information about Desaulniers's case before the trial court, and having failed to do so he should be precluded from requesting such comparison on appeal. *State v. Weir*, 600 A.2d 1105, 1107 (Me. 1991) (rejecting argument that armed robbery sentence was excessive in relation to

sentences of codefendants, where “[t]he record does not reflect, and Weir has not provided... specific information[.]”)

Therefore, the Law Court need not consider the additional court records from the Desaulniers case.²⁰

CONCLUSION

For all of the foregoing reasons, the Law Court should affirm Conway’s sentence.

Respectfully submitted,

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Dated: July 15, 2026

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²⁰ However, if comparison of the two sentences were appropriate, then additional documents from the Desaulniers case would be needed to fully understand the factors that contributed to his sentence. The record in Conway’s case contains some information about the Desaulniers case, but that information is incomplete because it does not show how much the judge who sentenced Desaulniers knew about the crimes or the victim impact, and it does not fully explore the weakness in the State’s case against Desaulniers from an arguably improper out-of-court identification procedure. Without that information the Law Court lacks full understanding of the factors that contributed to Desaulniers’s negotiated sentence, and therefore it cannot responsibly draw inferences based on comparison of the sentences.

CERTIFICATE OF SERVICE

I certify that on this date I caused a true copy of the foregoing brief to be served upon counsel for Appellant, Michelle King, Esq., by email addressed to mking@kinglaw-me.com, and that upon approval of the brief by the Clerk of the Law Court I shall serve two printed copies by first class United States mail addressed to her at King Law LLC, 52 Center Street, Second Floor, Portland, Maine 04101.



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