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February 16, 2024

Allison Wood, Clerk
Washington County Superior Court
85 Court Street
P.O. Box 526
Machias, Maine 04654-0526

FILED VIA SHAREFILE

Re: State of Maine v. Kailie Brackett
Docket Number: CR-22-20121

Dear Allison:

Enclosed for filing please find the State of Maine's Sentencing Memorandum in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

/s/ Donald W. Macomber

Donald W. Macomber
Assistant Attorney General
Criminal Division

DWM/tlc
Enclosure

cc: David Bate, Esq. (via email only w/encs.)
Jeff Toothaker, Esq. (via email only w/encs.)

FILED
FEB 16 2024
CLERK OF COURT

STATE OF MAINE
WASHINGTON, ss.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-22-20121

STATE OF MAINE)	
)	STATE'S
v.)	SENTENCING
)	MEMORANDUM
KAILIE BRACKETT,)	
Defendant)	<u>filed via ShareFile</u>

INTRODUCTION

The State of Maine, by and through Assistant Attorneys General Donald W. Macomber and Leane Zainea, submits this memorandum to assist the Court in imposing sentence upon Kailie Brackett, whom the jury concluded beyond a reasonable doubt was guilty of the Depraved Indifference Murder of Kimberly Neptune on April 21, 2022.

The State will be seeking a final sentence of life imprisonment to the Department of Corrections, and restitution in the amount of \$952.50 to the Victims Compensation Board, which paid for funeral expenses.

FACTS

This Court is very familiar with the facts upon which the jury found beyond a reasonable that Kailie Brackett caused the death of Kimberly Neptune. The following is a brief synopsis of the evidence presented.

On April 20, 2022, Defendant Brackett was overheard in a convenience store making a threatening comment that Kimberly Neptune was going to pay. That night, the defendant went into Kim's apartment in Pleasant Point and

stabbed her 484 times. She was seen walking away on a neighbor's surveillance camera early that morning.

Later that day, the defendant was caught on surveillance cameras using Kim's bank cards at two Eastport ATMs and at the Eastport Family Dollar. A few days later, the defendant, along with co-defendant Donnell Dana (who just pled guilty to Hindering Apprehension or Prosecution for disposing of evidence related to Defendant Brackett's murder charge), was seen by a neighbor loading trash bags into her car and then leaving with Dana and their minor child. No trash bags were seen on surveillance cameras at the motel in Brewer that the defendant checked into while their child had surgery on an arm.

LEGAL FRAMEWORK

By statute, a person convicted of murder "shall be sentenced to imprisonment for life or for any term of years that is not less than 25." 17-A M.R.S. § 1251. A sentencing court in a murder case follows a two-step process for determining the sentence. See 17-A M.R.S. §§ 1201(1)(A), 1252-C; *State v. Waterman*, 2010 ME 45, ¶ 25 n. 1, 995 A.2d 243 (noting that the usual third step of the sentencing process—suspension of part or all of a sentence and imposition of probation—is inapplicable in murder cases, citing to 17-A M.R.S. §§ 1201(1)(A) and 1252-C).

First, the court determines the basic term of imprisonment based on an objective consideration of the nature and seriousness of the crime, considering the sentencing principles of deterrence, restraint, minimization of correctional experience that may promote future criminality, and the elimination of

inequalities in sentencing that are unrelated to legitimate criminological goals. 17-A M.R.S. § 1252-C(1); *State v. Reese*, 2010 ME 30, ¶18, 991 A.2d 806; see 17-A M.R.S. § 1151(1), (3), (5).

Second and finally, the court determines the maximum period of incarceration based on the relevant aggravating and mitigating factors, also considering sentencing principles related to rehabilitation, restitution, and differentiation of sentences to account for the individual circumstances of the defendant and to achieve a just outcome. 17-A M.R.S. § 1252-C(2); *Reese*, 2010 ME 30, ¶19, 991 A.2d 806; see 17-A M.R.S. § 1151(1), (2), (6); see also *Waterman*, 2010 ME 45, ¶25 n. 1, 995 A.2d 243.

In examining aggravating and mitigating factors, a court may also consider the following: whether a defendant has an antisocial, hostile, unstable, or psychopathic character, *State v. Shortsleeves*, 580 A.2d 145, 150 (Me. 1990); the defendant's age, intelligence, and prior criminal history, *id.* at 150-51; the defendant's susceptibility to rehabilitation, *id.* at 150; the defendant's lack of remorse, *State v. Wood*, 662 A.2d 908, 913 (Me.1995); and the defendant's refusal to take responsibility, *State v. Gauthier*, 2007 ME 156, ¶33 n. 7, 939 A.2d 77; *State v. Bates*, 2003 ME 67, ¶27, 822 A.2d 1129.

DISCUSSION

I. Basic Period of Incarceration

In *State v. Shortsleeves*, the Court held that a life sentence may be justified where the underlying offense is accompanied by at least one component from a list of factors which the Court set forth. 580 A.2d 145, 149-

151 (Me. 1990). See also, *State v. St. Pierre*, 584 A.2d 618, 621 (Me. 1990).

The factors included:

1. whether the offender's intent to kill was accompanied by premeditation-in-fact;
2. whether the offender, at the time of the crime, intended to cause multiple deaths;
3. whether the offender had previously been convicted of criminal homicide or any other crime involving the use of deadly force against a victim;
4. whether the murder was accompanied by torture, sexual assault, or other extreme cruelty inflicted upon the victim;
5. whether the murder was committed in a penal institution by an inmate of that institution against another inmate or against prison personnel;
6. whether the murder was committed against a law enforcement officer while the officer was acting in the performance of the officer's duties; and
7. whether the murder was committed against a hostage.

The existence of one of the aggravating factors listed above does not require that a sentencing court impose a life sentence. Such factors serve as "gateways" through which a court may consider the imposition of a life sentence. Where such "gateway" factors exist, the court still has the responsibility to examine both the additional aggravating and mitigating factors to determine the final sentence.

The murder of Kim Neptune involved torture and extreme cruelty. Kim was brutally stabbed 484 times, the most in Maine history according to the Medical Examiner's Office. Dr. Liam Funte documented sharp force injuries to Kim's head, face, neck, shoulders, chest back, torso, arms and legs. *State v.*

Hutchinson, 2009 ME 44, 969 A.2d 923 (life sentence justified based upon the trial court's finding that defendant's conduct was extremely serious based on the "simple savagery of the killing"); *State v. Cookson*, 2003 ME 136, 837 A.2d 10 (life sentence upheld where extreme cruelty was found by the trial court).

To the extent that case comparison is a useful enterprise given the judicial branch's lack of available step-one sentencing data (see *State v. Nichols*, 2013 ME 71, ¶21, 72 A.3d 503), the cases that are most comparable to the facts of this case are *State v. Derek Poulin*, 2016 ME 110, ¶ 3, 144 A.3d 574 (victim stabbed over 70 times, basic sentence life), *State v. Michael Hutchinson*, 2009 ME 44, ¶ 41, 969 A.2d 923 (victim stabbed over 50 times, basic sentence life) and *State v. Roland Cummings*, 2017 ME 143, ¶ 10, 166 A.2d 996 (victim stabbed 15 times, basic sentence life).¹

In this case, Kim Neptune was stabbed *hundreds* of times in her own home during the dead of night by her supposed best friend for what the defendant believed was some type of wrongdoing by the victim to her. This is not, if there is such a thing, a "run of the mill" murder. It is a murder characterized by, in the words of the definition of depraved indifference, such outrageous, revolting, savage, brutal or shocking conduct that readily demonstrates an almost total lack of concern or appreciation for the value of human life on the part of the defendant.

¹ The Law Court has emphasized that only basic sentences should be compared because of the individualization of sentences involved in the second and third steps of the sentencing process. *State v. Berube*, 1997 ME 165, ¶3, 698 A.2d 509.

It is a murder involving extreme cruelty warranting the most significant basic sentence. The nature and seriousness of the way this murder was committed justifies a basic sentence of life imprisonment.

II. Maximum Period of Incarceration

In arriving at the maximum period of incarceration, the sentencing court must look beyond the nature and seriousness of the offense and examine the factors that are unique or peculiar to the offender as well as the subjective victim impact. *Hewey*, at 1154. These circumstances that are unique or peculiar to the defendant may include both aggravating and mitigating factors. 17-A M.R.S. § 1252-C. The sentencing court has broad discretion in weighing such aggravating and mitigating factors. *State v. Weir*, 600 A.2d 1105, 1106 (Me. 1991); *See also, State v. Cooper*, 617 A.2d 1011, 1016 (Me. 1992).

The only mitigating factor that the State is aware of is that the defendant has a minor child. Conversely, the aggravating factors are significant. The first, and most significant and overwhelming aggravating factor is the impact that Kim Neptune's death had on her family and community. The effect on Kim's family and community is an appropriate factor for the Court to consider. *See State v. Wilson*, 669 A.2d 766, 769-770 (Me. 1996). It is simply unbearable to think of a loved one being subjected 484 times to stabs, cuts and punctures. Because of the defendant's savage attack on Kim, her family and friends will never have the opportunity to spend life events or daily visits with her. On April 20, 2022, the defendant made the decision to savagely kill Kim and as a result Kim's family will forever suffer with her loss.

The Court could not help but notice that Kim's family and many members of the Pleasant Point community attended every court appearance in this case, including every day of trial. Throughout the court proceedings and trial Kim's family and community were attentive, thoughtful and did not engage in outbursts. Their ability to remain resolute is a testament to their deep love for Kim and their desire for justice.

A further aggravating factor that the Court is encouraged to consider is the conscious suffering that Kim endured. Although the sequence of injuries is unknown, Kim was clearly conscious for a period before she bled to death. Dr. Funte testified that Kim had sustained injuries to her hands that were characterized by the doctor as defensive wounds.² At trial, photographs were introduced that depicted significant injuries to Kim's hands and fingers that were the result of her attempt to deflect the knife. Even if it was just minutes, Kim tried desperately to fight off her attacker but was ultimately unsuccessful. Her conscious suffering is an aggravating factor that cannot be ignored.

An additional aggravating factor is that even after Kim had died, the defendant continued to mutilate Kim by further stabbing and cutting her. Dr. Funte testified that many of the injuries were post-mortem. This factor is not only an aggravating factor but also an extremely disturbing one and reflects the depravity of the defendant's actions.

Another aggravating factor that the court is encouraged to consider is the defendant's extensive prior criminal record. She has prior convictions for

² State's Trial Exhibits 142 through 147.

robbery, burglary, theft, aggravated forgery, forgery, unlawful possession of scheduled drugs, trafficking in prison contraband, endangering the welfare of a child, and eluding an officer.³

Another aggravating factor that the court is encouraged to consider is the defendant's failure to accept responsibility for her crime. She testified at trial that she did not commit this crime. By its verdict, the jury unanimously concluded beyond a reasonable doubt that the defendant committed perjury.

The many aggravating factors clearly outweigh the sole mitigating factor, and therefore do not warrant a downward deviation from the basic sentence. The State is therefore recommending a maximum (and thus final) sentence of life imprisonment. A sentence of life imprisonment takes into consideration the defendant's conduct in causing the death of Kim Neptune and her utter disregard for the value of human life. The fact that the defendant has a minor child does not mitigate a downward departure from a sentence of life imprisonment. Instead, a sentence of life imprisonment addresses the overwhelming and everlasting impact on Kim's family and community, her conscious suffering, the defendant's prior criminal history, and her lack of remorse.

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³ Attached to the State's sentencing memorandum is a copy of the defendant's criminal record as maintained by the State Bureau of Identification.

CONCLUSION

For the foregoing reasons, the State respectfully recommends that the Court impose a final sentence of life imprisonment to the custody of the Department of Corrections. The State also asks the court to order restitution in the amount of \$952.50 to the Victims Compensation Board, which paid for funeral expenses.

Respectfully submitted,

Dated: February 16, 2024

/s/ Donald W. Macomber
DONALD W. MACOMBER
Assistant Attorney General
Maine Bar No. 6883

/s/ Leane Zainea
LEANE ZAINEA
Assistant Attorney General
Maine Bar No. 3707

CERTIFICATE OF SERVICE

I, Donald W. Macomber, Assistant Attorney General for the State of Maine Department of the Attorney General, Criminal Division, do hereby certify that I have served a copy of the State's Sentencing Memorandum upon defendant's counsel, David Bate, Esq. and Jeffrey Toothaker, Esq via ShareFile.

Dated: February 16, 2024

/s/ Donald W. Macomber
DONALD W. MACOMBER
Assistant Attorney General
Maine Bar No. 6883

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