

**STATE OF MAINE  
SOMERSET, ss.**

**SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT  
DOCKET NO: SRP-24-198**

**STATE OF MAINE,  
Appellee**

**v.**

**JASON SERVIL,  
Appellant**

**ON APPEAL FROM THE SUPERIOR COURT**

**BRIEF OF APPELLEE**

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## **STATEMENT OF THE ISSUES**

- I. Whether the sentencing court abused its discretion or violated Jason Servil's due process rights in setting his maximum and final sentence on the charge of murder, and whether any perceived error was harmless.**
  
- II. Whether the sentencing court abused its discretion by declining to impose consecutive sentences.**

## **SUMMARY OF ARGUMENT**

1. The sentencing court did not abuse its discretion or violate Jason Servil's due process rights in setting his maximum and final sentence on the charge of murder. The information contained in the obituary was substantially similar to the information already submitted into the record, both in writing and orally, regarding the subjective victim impact of Servil's crimes. The brief biblical references occurred after the court had imposed sentence, were directly responsive to the belief system and sentiments articulated by the victim's family, were intended to calm the atmosphere in the courtroom, and did not serve as a basis for Servil's sentence. Thus, even if the sentencing court committed error by reading the victim's obituary or making brief biblical references, any error was harmless.

2. The sentencing court did not abuse its discretion by declining to impose consecutive sentences. While the facts could have supported imposition of consecutive sentences pursuant to 17-A M.R.S. § 1608(1)(A) (2021), the statute does not mandate that a court impose consecutive sentences, and the court's decision not to do so inured to the benefit of Servil. Thus, any perceived error on the part of the sentencing court was harmless.

## **PROCEDURAL HISTORY**

On August 25, 2022, the Somerset County Grand Jury returned a two-count indictment charging Jason Servil (Servil) with intentional or knowing or depraved indifference murder<sup>1</sup> and aggravated assault.<sup>2</sup> (*State of Maine v. Jason Servil*, SOMCD-CR-2022-00764, Appendix 23-24 (A. \_\_\_)). On August 31, 2022, Servil was arraigned on the indictment and entered pleas of not guilty. (A. 3).

On January 17, 2024, Servil pled guilty to the indictment during a hearing held pursuant to Maine Rule of Unified Criminal Procedure 11. (A. 9). On April 12, 2024, the court (*Mullen, C.J.*) conducted a sentencing hearing. (A. 10). Following argument by the parties, the court sentenced Servil to a term of imprisonment of 45 years in the custody of the Department of Corrections on the charge of murder, and a concurrent term of imprisonment of 10 years on the charge of aggravated assault. (A. 10). On May 1, 2024, Servil filed an application for leave to appeal his sentence pursuant to M.R. App. P. 20. (A. 11). On July 31, 2024, the Maine Supreme Judicial Court's Sentence Review Panel granted Servil's application, and this appeal followed. (A. 11).

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<sup>1</sup> 17-A M.R.S. § 201(1)(A) & (B) (2021).

<sup>2</sup> 17-A M.R.S. § 208(1)(B) (2021).

## **STATEMENT OF FACTS**

During the summer of 2022, Servil and Alice Abbott (Abbott) met online and began a brief romantic relationship. (Rule 11 Transcript 16-17 (R. 11, \_\_\_)). In mid-June 2022, Servil began residing with Abbott and her parents in Skowhegan. (Id. at 15-17). On the evening of July 15, 2022, Abbott told Servil she was ending their romantic relationship and that he needed to return to his home in Massachusetts. (Id. at 17). Abbott then left the residence to sleep in her grandfather's camper approximately 200 yards away. (Id. at 16).

Servil remained at the Abbott residence, began looking at Abbott's Facebook page, and discovered messages between Abbott and Nick Rice (Rice) indicating that they were meeting that evening. (Id. at 16-18). After viewing the messages, Servil retrieved a large knife and a crowbar from the residence and walked the approximately 200 yards to the camper where Abbott was sleeping. (Id.; Sentencing Transcript, 20 (S. Tr. \_\_\_)). Upon opening the camper door and seeing Rice asleep with Abbott, Servil struck Rice in the head with a crowbar. (R. 11, 16-18). Rice, bleeding from lacerations to his head, escaped Servil's attack and fled the camper. (Id. at 14-20). Rather than pursue Rice, Servil immediately began stabbing Abbott with the knife. (Id. at 16). Abbott attempted to flee for her life, fell against the camper's door, and



then onto the ground outside the camper. (Id.). Servil, believing Abbott was dead, walked into the woods behind the camper. (Id.).

During Abbott's autopsy, Chief Medical Examiner Dr. Mark Flomenbaum documented 99 stab wounds all over Abbott's body, ranging from two-and-a-half to five inches deep. The stabbing penetrated her heart, lungs, and liver. (Id. at 20-21). Fifteen of the stab wounds were potentially fatal. (Id. at 21). Dr. Flomenbaum determined that Abbott's cause of death was homicide by exsanguination - Abbott had bled to death from the multiple stab wounds inflicted by Servil. (Id.). The knife Servil used to stab Abbott to death was later recovered in the woods approximately 50 yards from the camper in which Rice and Abbott had been sleeping. (Id. at 18-21).

After fleeing the camper and while Servil viciously attacked Abbott, Rice ran for help, and awoke a neighbor, who called 911 to report the assault at approximately 5:39 a.m. (Id. at 13-15). Sergeant Timothy Williams of the Skowhegan Police Department responded to the 911 call, and spoke with Rice before he was transported to the hospital. (Id.) Rice advised that he did not know the man who had attacked him, but provided a description of his attacker. (Id. at 14-15). Sgt. Williams also went to the camper and discovered a woman he recognized as Abbott, lying dead on the ground just outside the camper. (Id. at 14). She appeared to have suffered multiple stab wounds. (Id.).

Maine State Police Detectives Hugh Landry and Christopher Crawford responded to Abbott residence. (Id. at 15). While they were knocking on the door, a man emerged from the woods behind the Abbott residence and identified himself as Servil. (Id. at 15-16). Servil told the detectives he knew why they were at the Abbott residence, that he had no weapons, and that he would cooperate with the police. (Id. at 16). Servil also stated that he had just lost it, felt terrible for what he had done, and asked if Abbott was dead. (Id.).

During sentencing, the court heard extensively about Abbott's "beautiful, nurturing, [and] motherly" personality. (S. Tr., 9). Abbott's mother described her as "caring, protective, a dreamer, a romantic ... a hard worker, a young woman with strong values, solid goals ... affection for others, [and] always there to lend anybody a hand; family, friends, anything." (Id. at 14). Abbott had "saved two lives in her short lifetime and never even talked about it, because it is just something you do." (Id. at 15). The court also heard extensively about the central role Abbott occupied in her family, and the significant impact of her loss: when Abbott's brother and sister-in-law became pregnant after nearly six years of trying, Abbott was the first person they told (Id. at 9); her murder rendered her brother "never fully in the moment anymore" (Id. at 6), and her sister-in-law has "lost a big piece of [her] husband and almost every ounce of joy that [they] had felt about being pregnant (Id. at

10); Abbott made her mother's life "bright, full of surprises and fun" (Id. at 15); now her mother is "always alone, even in a room full of people" (Id. at 13); and Abbott "will be forever missing from the rest of the important moments in [her family's] lives." (Id. at 6).

Every family member who spoke addressed the court regarding the enormity of their loss, unambiguously expressed displeasure with the plea agreement, and requested the court to impose a life sentence. (Id. at 5, 7, 11-13, 18). Specifically, her brother advocated to the court that Servil's "penance for his crime should be no less than what he took, life;" and her sister-in-law described Servil as the "only person [who] has decided that it was okay to play God and end someone's life." (Id. at 7, 11).

Following the parties' arguments, the sentencing court began its analysis by declining to impose consecutive sentences. (Id. at 51-53). The sentencing court concluded that if it imposed consecutive sentences "there would be a real chance [of] a longer period of" incarceration than the proposed 45 years because it "would [not] necessarily suspend the amount of time" requested by Servil. (Id.). The sentencing court further concluded that even if it believed consecutive sentences were appropriate, it did not have the authority under the facts of the case to impose consecutive sentences. (Id.).

The sentencing court then engaged in the two-step sentencing analysis on the charge of murder. 17-A M.R.S. §§ 1602(1)(A)-(B), 1602(2) (2021).

The sentencing court first set Servil's basic sentence at 45 years. (S. Tr., 60).<sup>3</sup> Next, the trial court examined the aggravating and mitigating factors to determine Servil's maximum sentence. (Id.). The sentencing court noted that it was "not required to assign a particular weight ... to each mitigating or aggravating factor," but rather it must "determine their combined impact on the basic sentence" in deciding whether the basic sentence should be increased or decreased. (Id. at 61). After reciting the mitigating factors, the court began its analysis of the aggravating factors with the subjective victim impact of the crime. (Id. at 62).<sup>4</sup> The sentencing court acknowledged that "everything [it] had been provided," including the written statements "coupled with those made [orally at the hearing] helped address that goal." (Id.). The court then proceeded to read Abbott's obituary and concluded its analysis of this aggravating factor by stating:

[c]ertainly the outpouring of grief expressed here today as well as the many victim impact statements filed ... has made me appropriately aware of the subjective effect on the victims of this

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<sup>3</sup> Servil has raised no issue as to the sentencing court's setting of the basic sentence and thus the State will not elaborate on the court's first step analysis.

<sup>4</sup> Mitigating factors: Servil's lack of a criminal record, his "youthfulness," acceptance of responsibility, remorsefulness, and his childhood and "mental health issues." (S. Tr. 61-62).

crime, not simply the subjective effect on the victim who paid the ultimate price.

(Id. at 62-64).<sup>5</sup> The sentencing court ultimately determined that “the mitigating and aggravating factors [had no] significant difference in weight,” and imposed a sentence of 45 years on the charge of murder. (Id. at 65).

Following imposition of Servil’s sentence for murder, the sentencing court expressed that it was “not without empathy for [him] and what [he] endured growing up,” but that “[he had] committed and [he had] also pled guilty to the most serious classification of crime ... and one that merits a very serious sentence.” (Id. at 65-66). Considering the clear displeasure previously expressed by Abbott’s family, the sentencing court went on to state:

[r]egardless of what some people will say, this is a serious sentence. Anyone who claims otherwise, at least in my mind, hasn’t served years behind bars. I get it, completely, it is nearly impossible for someone who has lost a loved one at the hands of another to find solace in this sentence, whatever it might be, that is ultimately handed down to the perpetrator.

(Id. at 66). The court then imposed a concurrent 10-year sentence on the charge of aggravated assault against Rice. (Id. at 67). In closing, and *after* setting the sentence, the court addressed its remarks directly to “the family and friends of” Abbott, indicating that “it was probably futile,” but “it still

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<sup>5</sup> The court found the following additional aggravating factors: “the sheer viciousness of the crime, the need to protect public interest, and the volatile unstable character of the defendant at least when this offense was committed.” (S. Tr. 64).

might provide you with some small level of solace concerning your unimaginable loss” and proceeded to read a psalm to reassure them that their faith would help them cope with Abbott’s tragic death. (Id. at 67-68).

Thereafter, counsel for Servil requested a side bar and “a brawl broke out in the courtroom when [Abbott’s] brother jumped over the railing and into the well.” (Id. at 68). The parties convened in chambers wherein the sentencing court addressed its reading of the psalm, stating the intent was “to calm things [in the courtroom].” (Id. at 71).

## ARGUMENT

### **I. Any perceived error by the sentencing court in setting Servil's maximum and final sentence was harmless.**

Servil contends that the sentencing court committed errors and violated his due process rights because it improperly relied on Abbott's obituary and religious references in imposing his maximum and final sentence. (Blue Brief 11-26 (Bl. Br. \_\_\_)). When the court imposes a sentence on a conviction for murder, the maximum period of incarceration is the final sentence imposed by the court. *State v. Bentley*, 2021 ME 39, ¶ 10, 254 A.3d 1171; 17-A M.R.S. §§ 1602(1)(A)-(B), (2) (2021). This Court reviews a sentencing court's "determination of the maximum period of incarceration for abuse of discretion." *State v. Sweeney*, 2019 ME 164, ¶ 17, 221 A.3d 130 (quotation marks and citation omitted).

As part of its sentence review, this Court "must consider (1) '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) 'the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.'" *State v. Watson*, 2024 ME 24, ¶ 20, 319 A.3d 430 (citing 15 M.R.S. § 2155(1)-(2))

(2023)). “In determining whether the sentencing court ... abused its sentencing power ... or acted irrationally or unjustly in fashioning a sentence, [this Court] afford[s] the [sentencing] court considerable discretion.” *Watson*, 2024 ME at ¶ 20, 319 A.3d 430 (citation omitted).

Although this Court reviews “alleged due process violations de novo,” *State v. Moore*, 2023 ME 18, ¶ 14, 290 A.3d 533, a sentencing court has “wide discretion in determining the sources and types of information to consider when imposing a sentence.” *Bentley*, 2021 ME at ¶ 13, 254 A.3d 1171 (quoting *State v. Reese*, 2010 ME 30, ¶ 28, 991 A.2d 806). The only limitation due process places on this discretion is “that such information [be] factually reliable and relevant.” *State v. Rosario*, 2022 ME 46, ¶ 38, 280 A.3d 199 (quotation marks, alterations, and citation omitted).

**A. Reading of Abbott’s Obituary.**

Even if the sentencing court erred by reading Abbott’s obituary into the record, this error was harmless.<sup>6</sup> “[E]rrors in sentencing are subject to a harmless error analysis.” *State v. Bean*, 2018 ME 58, ¶ 30, 184 A.3d 373. An error is harmless if it does not affect “the substantial rights of the defendant.” *State v. Judkins*, 2024 ME 45, ¶ 20, 319 A.3d 443 (citation omitted); see M.R.U. Crim. P. 52(a) (“Any error, defect, irregularity, or variance that does not affect

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<sup>6</sup> The State is not conceding error.



substantial rights shall be disregarded.”). If the claimed error is also of a constitutional dimension, this Court must be convinced “beyond a reasonable doubt that the error did not contribute to the [sentence imposed].” *Judkins*, 2024 ME at ¶ 20, 319 A.3d 443 (citation omitted). “When conducting a constitutional harmless error analysis, [this Court] review[s] the trial record as a whole.” *State v. Patton*, 2012 ME 101, ¶ 17, 50 A.3d 544

During the sentence hearing, the court heard extensively from Abbott’s family about her personality,<sup>7</sup> life, integral importance to their respective lives, and the subjective negative impact they had suffered because of her murder by Servil.<sup>8</sup> (S. Tr. 4-19). Prior to reading the obituary, the sentencing court correctly noted that setting the maximum sentence involved its consideration of the subjective victim impact of Servil’s crimes. (Id. at 62). The sentencing court acknowledged that “everything [it] had been provided,” including the written statements “coupled with those made [orally at the hearing] helped address that goal.” (Id.). Following the reading of the obituary, the sentencing court again stated:

[c]ertainly the outpouring of grief expressed here today as well as

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<sup>7</sup> Abbott was “beautiful, nurturing, [and] motherly (S. Tr. 9); as well as “caring, protective, a dreamer, a romantic ... a hard worker, a young woman with strong values, solid goals ... affection for others, [and] always there to lend anybody a hand; family, friends, anything.” (Id. at 14).

<sup>8</sup> First family member told of a long-awaited pregnancy (S. Tr. 9), made life “bright, full of surprises and fun” (Id. at 15); but now her family members are “never fully in the moment” and Abbott “will be forever missing the rest of the important moments in [her family’s] lives.” (Id. at 6).

the many victim impact statements filed for me, as I have already mentioned, has made me appropriately aware of the subjective effect on the victims of this crime, not simply the subjective effect on the victim who paid the ultimate price .... And as I have already referenced the heavy impact on the family of the victim.

(Id. at 64).

The foregoing demonstrates that the “key focus” of the court’s maximum and final sentence analysis was the overall consideration of the subjective victim impact of Servil’s crime; an aggravating factor the sentencing court was required to consider. *State v. Gray*, 2006 ME 29, ¶ 13, 893 A.2d 611; 17-A M.R.S. § 1602(1)(B) (2021).

Contrary to Servil’s argument, this case is not analogous to *DiGiovanni v. Deutsche Bank Nat’l Tr. Co.*, 226 So.3d 984 (Fla. 2017), *Commonwealth v. Hilaire*, 95 N.E.3d 278 (Mass. 2018), or *Vent v. State*, 288 P.3d 752 (Alaska. 2012). In *DiGiovanni*, the trial court not only conducted independent research that generated new evidence in favor of one party, but also allowed the hearing to be reopened for presentation of that evidence, and then, despite its original inclination, ruled in favor of that party. 226 So.3d at 987-989 (Fla. 2017). In *Hilaire*, the trial court “expanded the factual record with independent research,” and this expansion, on which the trial court partially based its decision to deny Hilaire’s motion to suppress, involved information irrelevant to the ultimate issue of whether reasonable articulable suspicion

existed. 95 N.E.3d at 280-284 (Mass. 2018). In *Vent*, the trial court utilized its post-hearing independent research to impeach Vent's primary witness, resulting in the court denying Vent post-conviction relief. 288 P.3d at 755-758 (Alaska. 2012).

Here, the sentencing court's reading of the obituary did not generate "new" evidence against Servil or expand the factual record. The information contained in the obituary was substantially similar to the information that had been presented to the court, both in writing and orally, and for which Servil had been present or had previously been provided. (S. Tr. 4-19). Thus, even if the sentencing court erred, the information in the obituary was already in the record, and its reliability was not at issue, making the sentencing court's decision to read the obituary "not sufficiently prejudicial to affect the outcome of the proceeding and [thus it] did not affect [Servil's] substantial rights." *Bean*, 2018 ME at ¶ 34, 184 A.3d 373.

## **B. Biblical References.**

Similarly, even if the sentencing court's brief biblical references constituted error, any error was harmless.<sup>9</sup> Both statements occurred *after* the sentencing court had imposed a sentence of 45 years on the charge of murder. (S. Tr. 65-68). Thus, "the court's statements in no way suggest that

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<sup>9</sup> The State is not conceding error.

the sentence was based upon [any religious belief]" or contributed to the sentence imposed. *State v. Butsitsi*, 2015 ME 74, ¶ 26, 118 A.3d 222.

The sentencing justice was in a superior position to observe and respond to the atmosphere in the courtroom during the sentencing proceeding. The record unambiguously demonstrates that the sentencing of Servil was highly contentious and involved a family extremely displeased with the plea agreement. (S. Tr. 4-18). Abbott's grandfather requested that the sentencing court impose a life sentence "plus 99 years for each time [Servil] stabbed her." (Id. at 5). Abbott's brother requested the sentencing court to "reject this deal in its entirety so that the State will be forced to seek a life sentence" because "the *penance* for his crime should be no less than what he took, life." (Id. at 7 (emphasis added)). Her sister-in-law requested "the maximum sentence be enforced" because "only one person has decided that it was okay to *play God* and end someone's life because of [a] bruised ego and broken heart." (Id. at 11-12 (emphasis added)). Abbott's mother stated that "45 years is not enough for the vicious and violent way [Servil] stabbed my child" and urged the sentencing court to impose "the maximum plus sentence." (Id. at 13, 18).

The sentencing court was keenly aware of the volatile atmosphere. Before reciting its analysis on the record, the court took pains to assure

Abbott's family that while the sentencing process seemed formulaic, it could "sense the impact [Abbott's murder] has had on everybody." (Id. at 51). The court explicitly acknowledged the family's "unimaginable loss." (Id. at 68). Despite the court's efforts, "a brawl broke out in the courtroom" at the end of the proceeding. (Id.).

Following the brawl, in response to Servil's objection "to the reading of the Psalm,"<sup>10</sup> the sentencing court specifically stated that the intent of doing so was "to calm things down," and recognized that despite its intent there was nothing the court "could have [done to] calm things down other than give a life sentence plus." (Id.). Thus, the record demonstrates that the sentencing court's comments were (1) directly responsive to the belief system and sentiments as articulated by Abbott's family, and (2) intended to provide her family solace and closure considering their clear displeasure that the man who had murdered their beloved family member by stabbing her ninety-nine times did not receive a life sentence. (Id. at 4-18, 71).<sup>11</sup>

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<sup>10</sup> Servil did not specifically object to the "Power" reference articulated on page 21 of his brief. (S. Tr. 71).

<sup>11</sup> Contrary to Servil's contentions, this case differs significantly from *United States v. Bakker*, 925 F.2d 728 (4th Cir. 1991), and *State v. Pattno*, 579 N.W.2d 503 (Neb. 1998). (Bl. Br. 23-26). In *Bakker*, the sentencing judge's statements were so inflammatory that the Fourth Circuit was apprehensive that the sentence imposed following a jury trial "reflected ... *the court's own* sense of religious propriety had somehow been betrayed." 925 F.2d at 732, 741 (4th Cir. 1991) (emphasis added). In *Pattno*, the judge imposed sentence based on "the circumstances of the case and the nature ... of the

“On this record, there can be little question that” even if the sentencing court had not read Abbott’s obituary, or made brief biblical references, the court would have imposed the same sentence. *Bean*, 2018 ME at ¶ 34, 184 A.3d 373. Therefore, even if the sentencing court erred in these two respects, the errors were harmless beyond a reasonable doubt.

**II. The sentencing court did not abuse its discretion by declining to impose consecutive sentences.**

Finally, Servil contends that the sentencing court erred in concluding that 17-A M.R.S. § 1608(1) (2021) did not authorize the court to impose consecutive sentences in the factual circumstances of this case. (Bl. Br. 26-30). The decision regarding consecutive sentences is made in the final step of the sentencing analysis and is reviewed for an abuse of discretion. *Watson*, 2024 ME at ¶ 18, 319 A.3d 430 (“We review for an abuse of discretion a challenge to a court’s determination of the final sentence.”). A sentencing “court’s determination as to the presence [or lack thereof] of one of the factors listed in 17-A M.R.S. § [1608(1)]” is reviewed for “clear error.” *State v. Treadway*, 2020 ME 127, ¶ 13, 240 A.3d 66 (alterations and citations omitted). Regarding statutory interpretation, this Court reviews such questions de novo. *State v. Beeler*, 2022 ME 47, ¶ 12, 281 A.3d 637 (citation omitted).

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defendant” *directly after* reciting a lengthy biblical passage unambiguously aimed at religious condemnation of homosexuality. 579 N.W.2d at 506 (Neb. 1998).

If the sentencing court erred in determining it was without authority to impose consecutive sentences, the error was harmless.<sup>12</sup> A court may impose consecutive sentences if “[t]he convictions are for offenses based on different conduct or arising from different criminal episodes.” 17-A M.R.S. § 1608(1)(A) (2021). Thus, even if the court had correctly determined that it had the authority to impose consecutive sentences, the authority to do so is permissive, not mandatory. *See* 17-A M.R.S. § 1608(1) (2021) (“[t]he sentences must be concurrent” unless one of the enumerated factors is present.); *State v. Horr*, 2003 ME 110, ¶ 10, 831 A.2d 407 (“the statute favors concurrent, as opposed to consecutive sentences.”). Given the length of sentence available to the sentencing court on the charge of murder, and the need to take mitigating circumstances into account, the court was well within its discretion to not impose consecutive sentences.

Conversely, just as the court was well within its permissive authority to not impose consecutive sentences, the court would have been well within its discretion based on the facts of this case – premeditation, two victims, two different weapons, and committing a murder after an aggravated assault – to impose consecutive sentences. (R. 11 Tr. 14-21). Given the horrific facts of this

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<sup>12</sup> “[E]rrors in sentencing are subject to a harmless error analysis.” *Bean*, 2018 ME at ¶ 30, 184 A.3d 373.

case, the court would have been well within its discretion not to impose a fully suspended consecutive sentence as proposed by Servil; resulting in “a real chance that” Servil’s prison sentence would have been longer than 45 years. (S. Tr. 36, 52). Thus, the sentencing court did not abuse its discretion by declining to impose consecutive sentences, and any perceived error was harmless because declining to impose consecutive sentences ultimately benefitted Servil.



**CONCLUSION**

For the foregoing reasons, Servil's sentence should be affirmed.

Respectfully submitted

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**CERTIFICATE OF SERVICE**

I, Katie Sibley, Assistant Attorney General, certify that I have emailed two copies of the foregoing “BRIEF OF APPELLEE” to Servil’s attorneys of record, Jeremy Pratt, Esq. and Ellen Simmons, Esq.

Dated: December 20, 2024

/s/ KATIE SIBLEY

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