STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. KEN-24-341

STATE OF MAINE,

Appellee

v.

DENIS LEMIEUX,

Appellant

ON APPEAL FROM THE SUPERIOR COURT
COUNTY OF KENNEBEC/SOMERSET

APPELLANT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes:

United States Supreme Court Cases:

United States Circuit Court Cases:

Maine Supreme Court Cases:

Maine Unified Criminal Docket Cases:

Other States' Court Cases:

Maine Session Laws:

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On October 17, 2023, Denis Lemieux was convicted of domestic violence terrorizing under the authority of 17-A M.R.S. section 210-A after pleading nolo contendere and sentenced to a partially suspended sentence with probation. (A. at 28.) Because it was not an element of the statutory offense, his conviction did not require allegation or proof of a culpable mental state. Nonetheless, the trial court (Kennebec County, *D. Mitchell, J.*) imposed a sentence that included probation and a partially suspended sentence. (A. at 28–30.)

On February 5, 2024, the State moved to revoke Mr. Lemieux's probation. (A. at 31–2.) The basis for the motion included an allegation that Mr. Lemieux committed the crime of Domestic Violence Terrorizing on or about January 25, 2024. (A. at 31.) On June 3, 2024, the trial court, (Kennebec County, *J. Lipez, J.*) held a hearing on the State's motion. (A. at 8.) At that hearing, Mr. Lemieux argued that the terrorizing statute, as written and in effect for all relevant times, was unconstitutional and that, therefore: (1) the alleged new criminal conduct of terrorizing should not be considered as a basis for the probation violation or sentencing, and (2) the court could not impose his suspended sentence because the underlying conviction was void. (Prb'n Rev. Tr. 30–1.) The trial court made factual findings on the evidence, but asked Mr. Lemieux to brief the court on its

legal arguments before sentencing. (Prb'n Rev. Tr. 35–6.) Accordingly, Mr. Lemieux filed a Brief in Relation to Probation Violation Sentencing (A. at 33–47.)

The trial court declined to address the constitutionality of the terrorizing statutes or the implications of *Counterman v. Colorado*, 600 U.S. 66 (2023) for Mr. Lemieux's case. (A. at 12-4.) Citing precedent with different procedural postures, the court held that "although the law court has not directly addressed the issue of whether an underlying conviction can be collaterally attacked in a probation violation proceeding, I conclude that the law does not support doing that" because (1) laws governing post-conviction review are the exclusive method of reviewing criminal judgments, and (2) the weight of authority from other jurisdictions supports the notion that a defendant cannot collaterally attack a conviction or sentence in a probation revocation proceeding. (A. at 12-4.)

For those reasons, the court denied the Motion to Dismiss and treated the sentencing hearing "just like a normal sentencing in a probation revocation proceeding." (A. at 14.) Thus, setting aside the constitutional issues, the Court imposed eighteen months of the defendant's suspended sentence. (A. at 27.) Mr. Lemieux filed a request for findings of fact, which was denied. (A. at 9.) He then filed a notice of appeal on July 18, 2024, and is challenging the constitutionality of his probated sentence.

ISSUE PRESENTED FOR REVIEW

The Court has determined that Mr. Lemieux's appeal raises the following issue that is worthy of full appellate review by the Law Court:

> Whether the trial court abused its discretion by refusing to address the constitutionality of Lemieux's underlying conviction during a probation revocation proceeding.

STANDARD OF REVIEW

In appeals from judgments issued in post-conviction proceedings, this Court reviews questions of law de novo and applies a deferential standard of review to factual findings. *Theriault v. State*, 2015 ME 137, ¶ 12, 125 A.3d 1163 (citing *Roberts v. State*, 2014 ME 125, ¶ 21, 103 A.3d 1031). Mr. Lemieux does not challenge the factual findings made by the trial court. The trial court's error concerned questions of law. The Court should apply a de novo review to those questions.

ARGUMENT

In 2023, the U.S. Supreme Court clarified the parameters surrounding government regulation of speech in *Counterman v. Colorado*. *See* 600 U.S. 66. Specifically, the Court held that to convict a defendant for threatening speech, the state must demonstrate that the threats were made with some culpable state of mind. *Id.* This element is necessary to ensure that the power of the state does not intrude upon protected speech. *Id.* Speech that is perceived as threatening is nonetheless protected if the speaker is unaware of its threatening nature. *Id.*

In clarifying the "true threat" doctrine, the Court exposed the unconstitutionality of Maine's terrorizing statutes, 17-A M.R.S. sections 210 and 210-A. [1] Those statutes exceed the constitutional parameters set forth in *Counterman* by allowing the government to criminalize threatening speech without any proof that the speaker intended or was aware that the speech was threatening.[2]

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[1] In response to *Counterman v. Colorado*, the Legislature amended 17-A sections 210 and 210-B to conform to the Supreme Court's true-threats standard. *See* P.L. 2023, c.519, § 1. That amendment became effective as emergency legislation on March 6, 2024. *See* P.L. 2023, c.519, Emergency Clause. Because Mr. Lemieux's conviction predates these amendments, reference to the terrorizing statutes in this motion refers to the pre-amended version, unless otherwise indicated.

[2] During all relevant times during Mr. Lemieux's charge and conviction, section 210 read:

> 1. A person is guilty of terrorizing if that person *in fact* communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, and the natural and probable consequence of such a threat, whether or not such consequence *in fact* occurs, is:

Because they are not capable of any legitimate application, those statutes are unconstitutional on their faces, void *ab initio*, and cannot be a cause of imprisonment. Instead of giving effect to the First and Fourteenth Amendments, however, the trial court circumvented the issue by deciding that procedural laws precluded its consideration.

This was error. No procedural law requires a trial court to enforce an unconstitutional statute. To the contrary, constitutional principles preclude them from doing so. The trial court here should have dismissed the State's Motion for Probation Revocation or, at the very least, declined to impose a sanction.

I. The statute that provides the basis for Mr. Lemieux's probated sentence is unconstitutional on its face.

Although the First and Fourteenth Amendments generally protect the individual right to free speech, "true threats" of violence fall outside those constitutional protections. *See Counterman*, 600 U.S. at 73. True threats, however, must be distinguished from jests, hyperbole, and other statements that "when taken into context do not convey a real possibility that violence will follow." *Id.* Lest

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> A. To place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed. Violation of this paragraph is a Class D crime.

See 17-A M.R.S.A. section 210 (2013) (emphasis added). The phrase "in fact" indicates that "a culpable mental state need not be proved." *See* 17-A M.R.S.A. § 34. Domestic violence terrorizing is terrorizing with the added element of a victim who is a family or household member. *See* § 210-B.

they criminalize protected speech, statutes that criminalize threatening language must limit their application to instances in which a person acts recklessly in making the threatening statement. *See id.* The test is whether a speaker delivered a threat "while aware that others could regard his [or her] statements as threatening violence." *Id.* at 79.

Maine's terrorizing statute, as written and in effect at the time of Mr. Lemieux's 2013 terrorizing conviction, is unconstitutional on its face. Contrary to the U.S. Supreme Court, that statute criminalizes protected speech by utilizing a purely objective standard for identifying true threats. Because the statute is not susceptible to any legitimate application, it is unconstitutional on its face.

i. Maine's terrorizing statutes do not include the mens rea required to separate true threats from protected speech.

In *Counterman v. Colorado*, the U.S. Supreme Court added to its so-called "true threats doctrine" by holding that objective tests alone do not appropriately separate true threats from speech that is protected by the First and Fourteenth Amendments. *Id.* at 82. The case involved the application of a Colorado statute making it unlawful to "repeatedly make any form of communication with another person in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person to suffer serious emotional distress." *Id.* at 70, quoting Colo. Rev. Stat. § 18-3-602(1)(c). The state convicted the

defendant of violating that statute without pleading or proving that he had any kind of "subjective intent to threaten" the target of the statements. *Id.* The trial court assessed the defendant's argument that his speech was constitutionally protected using an objective "reasonable person" standard, which required the state to show only that a reasonable person would have viewed messages as threatening, not any subjective intent on the part of the defendant. *See id.*

The U.S. Supreme Court vacated the judgment, determining that proof of a subjective intent is necessary to evaluate whether a statement is a "true threat" and therefore not protected. *Id.* at 83. A purely objective standard, the Court reasoned, would have a chilling effect on the uninhibited, robust, and wide-open public debate that the First Amendment is intended to protect. *Id.* Speakers' fear that they will face prosecution for statements that were not intended to be threatening could lead them "to swallow words that are in fact not true threats." *Id.* The Court held that a subjective standard of recklessness, one that requires that a defendant consciously disregard a substantial and unjustifiable risk that a statement will cause harm to another, was permissive enough to allow states to police true threats without unduly chilling the freedom of speech. *Id.*

Like Colorado's law, Maine's terrorizing statute employs a purely objective standard to separate true threats from protected speech. Indeed, Maine's statute is even more explicit on this point. The statute criminalizes a threat when a person

"in fact" communicates a threat and "the natural and probable consequence of such a threat, whether or not such consequence in fact occurs, is . . . [t]o place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed." 17-A M.R.S. §§ 210(1)(A), 210-B(1)(A). There is no *mens rea* element in this language. It purports to criminalize threats when "the natural and probable consequence" of the threat is to put another in reasonable fear even if the speaker had no awareness that the statements would cause such fear. *See id.* As the Supreme Court explained in *Counterman*, this standard intrudes upon the sacred space that is protected by the First Amendment.

ii. Maine's terrorizing statutes are not susceptible to a saving interpretation and therefore are unconstitutional on their faces.

In the context of protected speech, the Law Court has stated that "[a] state statute which contains language broad enough to reach protected speech will be struck down as unconstitutional on its face unless the state court has by construction limited the reach of the statute to unprotected speech." *See State v. Hotham*, 307 A.2d 185, 186 (Me. 1973) (citing *Gooding v. Wilson*, 405 U.S. 518 (1972)). Thus, if it were possible to shoehorn the requisite *mens rea* element into the terrorizing statute, section 210(1)(A) could conceivably survive a facial challenge to its constitutionality.

Such a saving interpretation is not possible. The statute criminalizes communications that "in fact" are made. The words "in fact," when used in the

Maine Criminal Code, indicate that a culpable state need not be proved. *See* 17-A M.R.S.A. § 4 ("Unless otherwise expressly provided, a culpable mental state need not be proved with respect to . . . [a]ny element of the crime as to which it is expressly stated that it must 'in fact' exist."). Even before the addition of "in fact" to the statute, the Law Court interpreted section 210 as not requiring a culpable mental state. *See State v. Porter*, 384 A.2d 429, 433–34 (Me. 1978).[3]

Because of the clear language of the statute, as read by the Law Court, a saving interpretation of the terrorizing statute is impossible without usurping the authority of the legislature. *See U.S. v. Stevens*, 559 U.S. 460, 481 (2010) ("We will not rewrite a law to conform it to constitutional requirements, for doing so would constitute a serious invasion of the legislative domain and sharply diminish Congress's incentive to draft a narrowly tailored law in the first place.") (quotes and citations omitted). Thus, they are unconstitutional on their faces. *See id.*

[3] In *State v. Porter*, the Law Court unequivocally stated:

> Section 210 nowhere expressly prescribes a culpable mental state. Although section 210 does not otherwise expressly state the legislature's intention to impose liability without culpability, such an intention appears upon fair examination of the language of section 210, as we construe it . . . . As a consequence, no culpable mental state need be pleaded. or proven. . . . The drafters' omission from section 210 of any of the code's culpable states of mind cannot be viewed as merely inadvertent. The legislature enacted section 210 in full awareness of the predecessor statutes and the case law interpreting them.

See id. at 434.

("[T]his Court may impose a limiting construction on a statute only if it is readily susceptible to such a construction.").

Notably, this case differs from constitutional challenges to stalking statutes, which the United States Supreme Court and this Court have fielded as "as-applied" challenges. *See State v. Labbe*, 2024 ME 15, ¶¶ 49-50. In *Labbe*, the Law Court addressed a challenge to Maine's stalking statute on *Counterman* grounds. In upholding the facial constitutionality of the statute, the Court noted that while some stalking prosecutions can be proven based on the content of a defendant's speech—in which case the *Counterman* standard would apply—others can be sustained based solely on a "course of conduct" where the content of the speech is irrelevant. *See id.* ¶ 51. Because the defendant's case involved a course of conduct and the content of his words were not dispositive, the stalking statute was not unconstitutional as applied. *Id.* ("[I]t was Labbe's actions, not his words, that constituted the 'course of conduct' for which he was convicted.").

As the Court stated in a footnote, however, the constitutionality of the terrorizing statutes is a different matter. *Id.* fn. 24. The Court wrote:

> We note that Labbe was not charged with terrorizing or domestic violence terrorizing, 17-A M.R.S. §§ 210, 210-B (2023), criminal offenses that are based directly on the content of the defendant's speech, that are defined without any *mens rea* requirement, and that impose criminal liability for threats of criminal violence that have 'the natural and probable consequence' of inducing

> fear in the person threatened or the person who heard the threat, "whether or not such consequence in fact occurs."

Id. Unlike the crime of stalking, where the content of a defendant's speech might not be relevant to a charge, the content of a communication—i.e., whether or not it is of a threatening nature—is integral to the crime of terrorizing. Every case will necessarily involve proof that a defendant communicated a "threat." Consequently, every case will call upon courts to distinguish between "true threats" and protected speech, and in every case, section 210 will provide an unconstitutional standard. Because "the separation of legitimate from illegitimate speech calls for more sensitive tools" than the legislature has supplied, the terrorizing statutes must be treated as unconstitutional on their faces. *See Gooding v. Wilson*, 405 U.S. 518, 528 (1972).

II. The trial court erred by determining that Mr. Lemieux's conviction was not subject to collateral attack.

Instead of giving effect to the constitutional principles of *Counterman*, the trial court cited state procedural rules and non-binding foreign precedent to determine that Mr. Lemieux could not collaterally attack his underlying conviction during his probation proceeding. Those authorities do not compel that conclusion. Mr. Lemieux's underlying conviction is not only procedurally defective, it is void *ab initio*. He was entitled to seek recognition of that fact as a remedy "incidental to proceedings in the trial court." Authorities that prohibit defendants from contesting

the validity of a sentence on procedural grounds during post-conviction proceedings are not applicable to situations such as Mr. Lemieux's, where the facial constitutionality of a statute renders the court without jurisdiction to impose further sanction.

i. The unconstitutionality of Maine's terrorizing statutes must be given retroactive effect.

Substantive rules of constitutional law, including "decisions that narrow the scope of a criminal statute by interpreting its terms," must be given retroactive effect. *See Montgomery v. Louisiana*, 577 U.S. 190, 199–200 (2016). Retroactivity ensures that defendants will not be convicted for acts that the law no longer criminalizes and will not face punishments that the law cannot impose. *See Bousley v. U.S.*, 523 U.S. 614, 620-621, (1998); *Schriro v. Summerlin*, 542 U.S. 348, 351-352 (2004). Accordingly, when a substantive change in procedural law invalidates a criminal statute, any conviction pursuant to that statute is also invalid. "An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment." *See Ex Parte Siebold*, 100 U.S. 371, 372 (1880); *Hiett v. U.S.*, 415 F.2d 664, 666 (5th Cir. 1969) ("It is well settled that if the statute under which appellant has been convicted is unconstitutional, he has not in the contemplation of the law engaged in criminal activity; for an unconstitutional statute in the criminal area is to be considered no statute at all.");

see also Collins v. Yellen, 594 U.S. 220, 259 (2021). Moreover, when the constitutionality of a statute is brought into question during an action to enforce that statute, it raises jurisdictional concerns that cannot be ignored, because a court has no jurisdiction to enforce an unconstitutional statute. *See U.S. v. Walker*, 59 F.3d 1196, 1198 (11th Cir. 1995) ("We can think of no plainer error than to allow a conviction to stand under a statute which Congress was without power to enact. In essence, the statute was void *ab initio*, and consequently, the district court below lacked subject matter jurisdiction with respect to that charge.").

In the eyes of the law, Maine's terrorizing statutes did not *become* unconstitutional when the U.S. Supreme Court decided *Counterman*, when a Maine trial court first determined them to be unconstitutional, or at any other time. For all intents and purposes, Maine's terrorizing statutes have been unconstitutional since the time of their enactment and courts must treat them as such. Convictions under those laws are and should be treated as invalid because "an unconstitutional statute in the criminal area is to be considered no statute at all." *Hiett*, 415 F.2d at 666. Accordingly, courts lack the jurisdiction to punish criminal defendants who committed no cognizable offense.

By ignoring the constitutional question after it had been raised, the Court ignored an issue that went to the heart of its jurisdiction. If, as Mr. Lemieux argued, the statute underlying his conviction was unconstitutional, then the court

had no power to punish him for violating an illegal probation. In the eyes of the law, Mr. Lemieux committed no offense that warranted punishment.

ii. Maine's post-conviction review law does not preclude a trial court from considering the constitutionality of a prior sentence.

The authority cited by the trial court does not justify its refusal to touch the constitutional question. The court cited 15 M.R.S. section 2122 as making post-conviction review proceedings the exclusive method for reviewing a conviction except for direct appeals. But, read in its entirety, that provision is designed to consolidate various remedies that previously would have been sought under separate actions.[4] Moreover, that section contains a carve-out to the exclusivity rule for "remedies that are incidental to proceedings in the trial court." *Id.* Section 2122 should not be read as a bar to considering the validity of a sentence in a probation revocation proceeding when the sentence relates to a conviction that is void *ab initio*.

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[4] Section 2122 provides:

> [This chapter] replaces the remedies available pursuant to post-conviction habeas corpus, to the extent that review of a criminal conviction or proceedings were reviewable, the remedies available pursuant to common law habeas corpus, including habeas corpus as recognized in Title 14, sections 5501 and 5509 to 5546, coram nobis, audita querela, writ of error, declaratory judgment and any other previous common law or statutory method of review, except appeal of a judgment of conviction or juvenile adjudication *and remedies that are incidental to proceedings in the trial court*.

Id. at § 2122 (emphasis added).

This is consistent with the legislative design of the post-conviction review law. By allowing litigants to seek remedies that are "incidental to proceedings in the trial court," the Legislature established the law as a backstop to be used only when an issue cannot be raised in a trial court proceeding. Accordingly, post-conviction relief is only available to defendants who have exhausted "remedies incidental to proceedings in the trial court, on appeal or administrative remedies." *See* § 2126; *see also State v. Ngo*, 2007 ME 2, ¶ 4 ("When the legality of a criminal conviction cannot be resolved by direct appeal or any 'remedies that are incidental to proceedings in the trial court,' the post-conviction review process is the exclusive means for judicial review."). Post-conviction review becomes the exclusive means of reviewing the legality of a judgment only when the issue cannot, as a procedural matter, be brought before a trial court. *See, e.g., State v. Huntley*, 676 A.2d 501, 503 (Me. 1996) (determining that post-conviction relief was the exclusive remedy available to a defendant challenging a guilty plea because no appeal of the plea was possible).

The validity of Mr. Lemieux's underlying sentence was not only "incidental" to the trial court proceedings, it was a critical issue that should have been addressed. Even if trial courts may ordinarily presume the validity of a conviction that is not challenged, Mr. Lemieux raised a constitutional issue that, if addressed, would have rendered his conviction void. *See Ex Parte Siebold*, 100

U.S. 371, 372 (1880). It was also a jurisdictional question, which could be raised at any time. *See State v. Sloboda*, 2020 ME 103, fn. 8. The question struck at the heart of the proceeding, and the power of the trial court to impose a sanction hinged on the answer. The trial court erred by not addressing it.

iii. The authority relied upon by the trial court is inapplicable to Mr. Lemieux's situation.

The trial court cited *State v. Johnson*, 2012 ME 39 and *U.S. v. Warren*, 335 F.3d 76 (2003) in support of its conclusion that Mr. Lemieux could not collaterally attack the validity of his terrorizing conviction. These, like other cases, are easily distinguishable from Mr. Lemieux's because they do not involve attacks to prior convictions that were entered under a facially unconstitutional law. *State v. Johnson* involved a challenge to a prior conviction used to enhance a new charge based on an argument from the defendant that he had not been fully advised of his rights and information prior to entering a guilty plea. *See* 2012 ME 39, ¶ 15. *U.S. v. Warren* involved a challenge to an underlying conviction raised in the defense of a supervised release revocation. *See* 335 F.3d 76, 78 (2d Cir. 2003). On appeal, but not at the trial level, the defendant argued that the underlying conviction was defective because the drug quantity element of his offense was not properly charged or proven and that he should only have been subject to a two-year, not three-year, maximum sentence. *See id.* at 78. In both cases, the courts declined to entertain the challenges to the prior convictions based on practical concerns about

revisiting the circumstances surrounding a prior conviction in a proceeding designed for another purpose. *See Johnson*, 2012 ME 39, ¶ 15 (noting that the "detailed process for post-conviction review" would be "for naught" if a defendant could strike a prior conviction in a subsequent criminal conviction."); *see also Warren*, 335 F.3d 76 at 79 ("A violation of supervised release is a serious matter, and prosecution of it should not be impeded by the threat of consuming judicial and prosecutorial resources in addressing a host of issues unrelated to the violation.").

In the context of challenges based on some procedural impropriety of a prior conviction, the rationale of these decisions is understandable. To allow a defendant to collaterally attack a prior conviction for case-specific reasons, such as a defect in notice, insufficient pleadings, or even an as-applied challenge to the constitutionality of a statute, would require courts to inquire into facts and circumstances better addressed elsewhere. Unearthing a final judgment in this way could create trials within trials, something that the finality of judgments seeks to avoid, even if it means that errors will remain buried with their convictions.

But concerns about judicial economy and the finality of judgments are less pressing when a challenge is based on the facial constitutionality of a penal statute. By definition, such a challenge would not require *any* case-specific inquiry. *See In re Guardianship of Chamberlain*, 2015 ME 76, ¶ 10 ("Thus, a facial challenge will

be considered only if there is a reasoned argument that a challenged statute cannot be applied constitutionally on any set of facts."). A court can determine the merits of a facial challenge without testimony, affidavits, or evidentiary hearings. Facial challenges are rare, and the legal arguments and judicial decisions related to them are easily reproduced because they will be essentially unchanged from case to case. Indeed, the Maine trial courts have issued several decisions on the constitutionality of Maine's terrorizing statutes, and precedent is therefore readily available. *See, e.g., State v. Therrien,* SKOCD-CR-2023-122 Unified Criminal Docket (Somerset Cnty., March 7, 2024) (Bristol, J.); *State v. Tracy*, KENCD-CR-2023-20868 Unified Criminal Docket (Kennebec Cnty., March 27, 2024) (Mitchell, J.); *State v. Brown*, KENCD-CR-2021-1654, Unified Criminal Docket (Kennebec Cnty., April 24, 2024) (Dow, J.); *State v. Levasseur*, KENCD-CR-2024-516 Unified Criminal Docket (Kennebec Cnty., Oct. 31, 2024).

Addressing the validity of Mr. Lemieux's underlying conviction would not have been an onerous undertaking for the trial court. Unlike the challenges in *Johnson*, *Warren*, and other similar cases, Mr. Lemieux's could have been addressed and dispensed with based on arguments alone. Those cases' rationale for letting a buried error rest was not applicable to Mr. Lemieux's case, and the trial court erred by relying on them.

iv. Other legal authority persuasively demonstrates that the unconstitutionality of Mr. Lemieux's terrorizing conviction should have been determinative in his probation revocation proceeding.

Whereas Maine has not reached the issue, other courts have recognized that it is inappropriate to impose a suspended sentence that was unlawful from the start. *See Commonwealth v. Stanley*, 259 A.3d 989, 993 (Pa. 2021) ("[A]ny violation of probation resulting from [the defendant's] conviction for that offense cannot be a legal cause of imprisonment . . . . Therefore, any violation of probation predicated on the void statute—or resentencing in connection therewith—was void, since, in effect, that statute never existed."); *see also King v. State*, 677 So.2d 836, 838 (Ala. Crim. App. 1996) ("The trial court could not lawfully revoke the appellant's probation for her conviction for attempted possession of a forged instrument because the sentence initially imposed by the trial court was void."). As these cases recognize, to impose a punishment on a defendant when it is clear from the face of things that his or her conviction was unlawful would be an injustice and contrary to sound legal principles. The trial court should have treated the underlying sentence as if it did not exist, and the State's Motion for Probation Revocation as lacking the most critical element: a valid conviction and sentence. Because Mr. Lemieux's probation relates to a conviction that cannot be proof of illegal conduct, no probation violation can be found and no sentence can be legally imposed.

III. The trial court erred by refusing to consider remedies short of a full collateral review of Mr. Lemieux's underlying conviction.

Even if, for the sake of argument, the law limited the trial court's ability to void Mr. Lemieux's conviction as unconstitutional, it does not follow that the court was correct to operate under the fiction that there was no constitutional question whatsoever and to treat his case as "just like a normal sentencing."

Trial courts have discretion to sentence defendants for probation violations, but they must do so "considering the nature of the violation and the reasons for granting probation." *See* 17-A M.R.S. § 1812. This mandate does not call on the court to ignore the circumstances of the underlying conviction. Indeed, the contrary is true. A court must evaluate why a defendant was placed on probation and consider those reasons in crafting an appropriate sanction.

Even if the Court did not feel that it had the power to invalidate Mr. Lemieux's conviction, it certainly had the power to consider the dubious legality of his probation when imposing an appropriate sanction. The trial court could have found a probation violation but declined to impose a sentence of incarceration while Mr. Lemieux sought further relief under the post-conviction relief law. It could have sentenced Mr. Lemieux to time served and released him subject to the terms of his probation, again allowing him time to avail himself of relief under the post-conviction relief law.

Instead, the trial court violated long-standing constitutional principles by imposing a lengthy prison sentence. It refused to even consider that his probation stemmed from the violation of a statute that a simple legal analysis would have shown to be invalid. This error stems not from a mere error in discretion, but a misconception of what the trial court can and cannot consider for sentencing purposes.

CONCLUSION

The trial court treated Mr. Lemieux's hearing as "just like a normal sentencing in a probation revocation." (A. at 14.) But the outcome was highly abnormal. Mr. Lemieux, having been convicted of a statute that is void *ab initio*, was wrongly imprisoned. Rectifying this constitutional error does not require the exhumation of a corpse, the analysis of recovered DNA or the reevaluation of a suspect confession. Rather, it merely requires the Court to give effect to the well-established constitutional principle that one cannot be punished for violating a statute that is contrary to our nation's highest law.

The trial court reached this abnormal outcome by taking an unjustifiably narrow view of its own authority to rectify a constitutional injustice. Where it should have recognized that the Constitution constrained its power to sanction Mr. Lemieux, it instead acted as if the post-conviction review law constrained it from giving effect to the First Amendment.

Based on the foregoing arguments, Appellant respectfully asks this honorable Court to Reverse and Remand the trial court's ruling on the State's Motion for Probation Revocation.

Dated: March 28, 2025

Respectfully submitted,

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