MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. Pis-25-93

STATE OF MAINE v. RYAN REARDON

On Appeal from the Unified Criminal Docket (Piscataquis County)

Brief of Appellant
Ryan Reardon

WALTER F. MCKEE
Attorney for Appellant
Maine Bar No. 7848
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
wmckee@mckeemorgan.com

KURT C. PETERSON
Attorney for Appellant
Maine Bar No. 6235
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
kpeterson@mckeemorgan.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes/Rules

Other Authorities

STATEMENT OF FACTS

The following facts derive from the trial court's "Order Regarding Court's Permissible Actions Upon Finding of Excusable Failure to Comply with Requirements of Deferred Dispositions Agreement" ("Order"), the Deferred Disposition Agreement, and the procedural record.

Ryan Reardon ("Reardon") was indicted on June 24, 2021, with Aggravated Assault (Class B), *see* 17-A M.R.S. § 208(1)(C), Domestic Violence Assault (Class D), *see* 17-A M.R.S. § 207-A(1)(A), and Criminal Threatening with a Dangerous Weapon (Class C), *see* 17-A M.R.S. § 209(1). (A. 28-29.) Reardon pled not guilty to the charges on September 30, 2021, and the parties engaged in pre-trial motion practice. (A. 4-7.) Eventually, an agreement was reached between the parties, and a misdemeanor plea hearing was held on July 7, 2022. (A. 8, 30-31.) During that misdemeanor plea hearing, the State dismissed the felony charges in Count 1 (Aggravated Assault) and Count 3 (Criminal Threatening with a Dangerous Weapon), and Reardon entered a guilty plea to the misdemeanor charge of Domestic Violence Assault pursuant to a two-year deferred disposition agreement ("Deferred Disposition Agreement" or "Agreement"). (A. 8, 30-31.) The trial court deferred the matter for approximately 2 years, to July 22, 2024. (A. 8, 30-31.)

The Deferred Disposition Agreement that Reardon entered into included the colloquially called "standard conditions," which requires defendants to appear in

court as required, refrain from any new criminal conduct, requires defendants to identify themselves to law enforcement if arrested or questioned and to subsequently notify the District Attorney's Office within 96 hours, and to update the trial court in the event of a change of contact information. (A. 30.) Additionally, an addendum to the Deferred Disposition Agreement provided five additional "special conditions of deferred disposition":

1. Complete the Certified Domestic Violence Intervention Program[.]

2. Undergo a substance abuse evaluation and engage in treatment as recommended by the evaluator. Must provide the police report to the evaluator.

3. No use or possession of alcohol, subject to random search and test.

4. No use or possession of firearms or dangerous weapons, subject to random search.

5. Have no contact, direct or indirect, with [the alleged victim]. Not to enter any place of residence, employment, or education.

(A. 31.) Finally, the Deferred Disposition Agreement required Reardon to comply with a bail bond, which substantively mimicked the standard and special conditions of the Deferred Disposition Agreement. (A. 8, 30.)

The "good outcome" of the Deferred Disposition Agreement called for Reardon to withdraw his guilty plea to Domestic Violence Assault, the State to file a dismissal of that charge, and Reardon to plead guilty and be sentenced to a newly-filed Information charging Count 4: Domestic Violence Reckless Conduct. (A. 30-

31.) The recommended sentence for his guilty plea would be a $500 fine. (A. 30-31.) The "bad outcome" of the Deferred Disposition Agreement was an "open plea," which would expose Reardon to any lawful sentence the trial court could impose after performing a sentencing analysis. (A. 30-31.)

After a continuance, the parties appeared for the final dispositional hearing on the Deferred Disposition Agreement on September 23, 2024. (A. 8-10, 17-18.) Reardon had not completed a certified domestic violence intervention program or a substance abuse evaluation. (A. 18.) However, the trial court found, "based on the credible testimony of the Defendant's mother, Linda Reardon, and his physician, Dr. Niamh Houlihan," that his failure to comply with those terms was not "inexcusable":

> (1) in the late summer or early autumn of 2022, the Defendant fell twice and injured his knee, which delayed his ability to start a Certified Domestic Violence Program and undergo a substance abuse evaluation; (2) in the autumn of 2022, the Defendant fell and hit his head; and (3) as a result of that fall, the Defendant suffered a significant head injury which continued to impact his cognitive abilities and has left him with practically no executive functioning.

(A. 19.) Accordingly, the trial court found, "by a preponderance of the evidence[,] that the Defendant failed to comply with the conditions of the deferred disposition," but that his "failure to comply was excusable." (A. 19.)

Despite this, the State did not agree that Reardon was entitled to the good outcome, refused to allow Reardon to withdraw his guilty plea, and did not file the new Information pursuant to the terms of the Deferred Disposition Agreement. (A.

19.) The trial court, unsure about "whether it had the authority to order the State" to facilitate the good outcome of the Deferred Disposition Agreement, continued the case so that the parties could brief the issues presented at the final dispositional hearing. (A. 8-10, 19-20.) The parties filed their respective briefs on November 1, 2024. (A. 20.)

On December 12, 2024, the trial court issued an Order that authorized the bad outcome of the Deferred Disposition Agreement. (A. 17-27.) Relying on legal principles of contract law and the constitutional doctrine of separation of powers, the trial court explained that (1) the State was "excused" from performance under the Deferred Disposition Agreement because Reardon had not complied with a material term of the contract, and (2) that trial court could not order the State to perform its obligations under the Deferred Disposition Agreement to effectuate a good outcome where a Defendant has excusably not complied with the terms of that agreement. (A. 17-27.)

A sentencing hearing was held on February 24, 2025, where the trial court imposed a split sentence of 90 days, all but 4 days suspended, with one year of probation. (A. 10-11, 13-16.) This timely appeal followed. (A. 12.)

ISSUES PRESENTED FOR REVIEW

I. Whether this Court has jurisdiction to adjudicate the present appeal.

II. Whether the trial court erred by imposing the sentencing alternative authorized for the crime to which the person pled guilty (the "bad outcome") of the Deferred Disposition Agreement.

SUMMARY OF THE ARGUMENT

If a person accused of committing a crime cannot rely upon an agreement made with the State that is reduced to writing, signed, put on the record in open court, and approved by a Maine jurist, the fairness and efficacy of the criminal justice system would be thrown into chaos. The State, through its various prosecutorial offices, does not have the unilateral authority to renege on its agreements when it is inconsistent with the Maine Rules of Criminal Procedure, *see* M.R.U. Crim. P. 11A(f); Maine law, *see* 17-A M.R.S. §§ 1902-1903; and this Court's jurisprudence. Reardon, through no fault or "bad faith" on his part, was not able to comply with two conditions of the Deferred Disposition Agreement. In other words, his non-compliance was "excusable." The trial court made these factual findings, yet Reardon was penalized with the bad outcome of the Deferred Disposition Agreement anyway because the prosecution failed to uphold its end of the plea bargain.

Contrary to the trial court's Order, the judiciary has the authority to enforce plea agreements, including deferred dispositions, pursuant to statutory law and contract law, and the separation of powers doctrine does not undermine this authority. The record before this Court clearly compels a contrary result that gives meaning to the Rules, the applicable statutory framework, and fundamental fairness in criminal matters. This Court must vacate the trial court's Order and remand with a mandate that will effectuate the good outcome of the Agreement.

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER THE PRESENT APPEAL.

To begin, this Court has asked the parties to this appeal to brief the issue of "whether the Legislature has authorized appeals from judgments of conviction entered after determinations that the defendant *excusably* failed to comply with deferment requirements." (R. 04/17/2025, Order Governing Course of Appeal, p. 2.) "In the Law Court, in criminal as in civil appeals, questions raising jurisdictions of subject matter will be examined by the Court to determine the court's own jurisdiction as well as that of the lower court . . . ." *State v. Michaud,* 473 A.2d 399, 402 (Me. 1984).

The right to take an appeal is not a constitutional one; rather, it is a legislative allowance. *See Small v. Gartley,* 363 A.2d 724, 728 (Me. 1976); *see also State v. Huntley,* 676 A.2d 501, 502 (Me. 1996) ("Direct appeal to this Court from a judgment of conviction is strictly statutory."); *State v. Heald,* 382 A.2d 290, 299 (Me. 1978) ("Review by the Law Court, whether by way of exceptions of by appeal from the denial of a motion for a new trial, is a purely statutory proceeding and the scope, limits and conditions of such appellate procedure must either be found in express terms in the statutes authorizing the same or be implied from the nature and purpose of the legislation itself."). In Maine, the Legislature has provided the following statutory authority for appeals in criminal matters:

> In *any criminal proceeding* in the Superior Court, *any defendant aggrieved by a judgment of conviction, ruling or order* may appeal to the Supreme Judicial Court sitting as the Law Court. The Supreme Judicial Court shall provide by rule the time for taking the appeal and the manner and any conditions for the taking of the appeal.

15 M.R.S. § 2115 (emphasis added).

In *State v. Huntley*, this Court elaborated on the legislative allowance for the appeal of criminal matters set forth in Section 2115 and explained that this statute "establish[es] a defendant's statutory right to appeal directly from a judgment of conviction." 676 A.2d 501, 502-503 (Me. 1996). This Court was tasked in *Huntley* with construing Section 2115 in an appeal of a conviction after a guilty plea, which it had formerly prohibited in *Dow v. State,* 275 A.2d 815 (Me. 1971). *See Huntley,* 676 A.2d at 503. This Court held that the revisions made in Section 2115 did not change its earlier reasoning that a direct appeal from a conviction after a guilty plea is disallowed because "a voluntary and intelligent plea of guilty by an accused is a self-supplied conviction precluding trial on the issue of guilt or innocence and authorizing in and of itself the imposition of the punishment fixed by law." *Id* (quotation marks omitted). Further, this Court reasoned that a voluntary and intelligent guilty plea "is an effective waiver of all defenses other than those jurisdictional in nature." *Id*. (quotation marks omitted).

However, critically, this Court explained the following in *Huntley*:

> A conviction after a guilty plea involves no decision by the court regarding the defendant's criminal guilt and therefore provides no

> source of decisional error by the court regarding guilt. No *direct* appeal pursuant to [Section 2115] asserting errors in the determination of criminal guilty may be taken from a conviction after a guilty plea (other than a condition guilty plea entered pursuant to M.R. Crim. P. 11(a)(2)), except of grounds of jurisdiction or excessive, cruel or unusual punishment, because there is no decision by the court to appeal from.

Id.

Contrary to *Huntley,* "[t]he decision that leads to conviction," in this case, was the trial court's Order—not Reardon's mere guilty plea pursuant to a deferred disposition that was *absent any finding of guilt*. *See id.* The present case is a far cry from *Huntley* because Reardon's guilty plea pursuant to the Deferred Disposition Agreement is not at issue—it is specifically the trial court's legal findings and conclusions that provide the "source of decisional error" which resulted in Reardon's subsequent finding of guilt and subsequent sentencing/criminal conviction. Furthermore, the trial court's Order relates to the interpretation and application of the criminal statutes dealing with deferred dispositions.

Again, this is not a *Huntley*-like case where there is a "self-supplied conviction." *See id.* Put simply, because the final dispositional hearing on a deferred disposition agreement is a "criminal proceeding" that preceded any finding of guilt and sentence, and because Reardon was aggrieved by the trial court's Order, he has a statutory right to directly appeal that decision. *See* 15 M.R.S. § 2115; *see also State v. Hasenbank,* 425 A.2d 1330 (Me. 1981) ("As a legal conclusion drawn from uncontroverted facts, the Superior Court's ruling is independently reviewable on

appeal."); *Rafferty v. Hassett,* 154 A. 646 (Me. 1931) (noting, in a *habeas* case after a defendant was barred from appealing his sentence on a probation violation, that the defendant was in-fact is a "person aggrieved" for purposes of then Section 18, chapter 133, Rev. St. 1930 (now codified in 15 M.R.S. § 2115), and not allowing defendant to appeal as of right was error).

17-A M.R.S. § 1904 does not undercut this argument. The plain language of that statute, read in conjunction with the broad legislative allowance to appeal laid out in 15 M.R.S. § 2115, supports this proposition. As this Court accurately noted in its Order Governing Course of Appeal, the Legislature has limited appeals concerning deferred dispositions pursuant to this statute, but only when it concerns an "attack [on] the legality of a deferred disposition" or the "final disposition." *See* 17-A M.R.S. § 1904. Reardon, however, is neither attacking the legality of the Deferred Disposition nor the sentence imposed by the trial court.

Section 1904 is unmistakably silent on appealable issues related to the trial court's construction of deferred dispositions and the relevant statutes, judicial authority to enforce deferred disposition terms and outcomes, and many other hypothetically appealable issues as they relate to deferred dispositions cases where there *is not a finding of an inexcusable failure to comply* with the deferred disposition. *See id.* The plain language of Section 1904 neither bars Reardon from

taking a direct appeal on the trial court's Order, nor does it only expressly allow his appeal on a discretionary basis.[1]

Moreover, Maine Rule of Appellate Procedure 19 "covers those criminal appeals that are subject to preliminary review and full consideration as a matter of discretion by the Law Court," as opposed to appeals that are taken as a matter of right. M.R. App. P. 19. Subsection (a)(2) of Rule 19 lays out ten types of appeals that constitute discretionary criminal appeals. *See* M.R. App. P. 19(a)(2)(A)-(J). Relevant to this appeal is subparagraph D, which provides that "[a]n appeal by a person *determined to have inexcusably failed to comply* with a court-imposed deferred disposition requirement and thereafter sentenced, when the appeal is authorized pursuant to 17-A M.R.S. § 1348-C" may seek appellate review through the discretionary criminal appeal process outlined in Rule 19. *See* M.R. App. R. 19(a)(2)(D) (emphasis added). As this Court aptly recognized in its Order Governing Course of Appeal on April 17, 2025, the trial court, in this case, did not determine that Reardon *inexcusably* failed to comply with the deferment requirement, and, therefore, M.R. App. P. 19(a)(2)(D) does not apply in the present case. *See* M.R. App. P. 19(a)(2)(D).

[1] As an aside, even if there was any ambiguity in this statute, this Court should apply the rule of lenity to permit Reardon's appeal. *See State v. Stevens,* 2007 ME 5, ¶ 5, 912 A.2d 1229 ("The rule of lenity counsels us to resolve ambiguities in favor of the more lenient punishment when construing an ambiguous criminal statute that sets out multiple or inconsistent punishments.").

For all of these above-articulated reasons, this Court has jurisdiction to adjudicate the present direct appeal. However, assuming *arguendo* that this Court finds that this case is not reviewable on direct appeal, but is subject to the discretionary appeal appellate rule in M.R. App. R. 19(a)(2)(D), then Reardon requests this Court to treat this appeal as if this Court had received and granted a petition for a certificate of probable cause, as it did in *State v. Catruch,* 2020 ME 52, ¶ 10, 230 A.3d 934 (holding in the context of a Veterans Treatment Court case that, because the defendant-veteran did "not have the clarity of that analysis when he failed to seek a certificate of probable cause to allow him to pursue his appeal. In the case before the court, which provides us with the first opportunity to clarify the process in Veterans Court proceedings, we treat this appeal as if we had received—and granted—a petition for a certificate of probable cause, which is the only route of appeal from a deferred disposition. By doing so, we assure that Catruch has a route of appeal in the matter before us."). Alternatively, Reardon would request an opportunity from the Court to permit him to file a memorandum in support of a request for a certificate of probable cause to allow this appeal on a discretionary basis, given, as the Court has acknowledged, a lack of clarity in the applicable statutes at play.

II. THE TRIAL COURT RECORD COMPELS A DIFFERENT OUTCOME; NAMELY, THAT REARDON IS ENTITLED TO THE GOOD OUTCOME OF THE DEFERRED DISPOSITION BECAUSE HE DID NOT INEXCUSABLY FAIL TO COMPLY WITH THE DEFERRED DISPOSITION AGREEMENT.

A. Standard of Review, Statutory Framework, and State v. Palmer.

Because a deferred disposition agreement is a contract between the State and the defendant, this Court will interpret deferred dispositions in the same manner: "We review the interpretation of a contract, including whether or not its terms are ambiguous, de novo as a question of law." *Id*. ¶ 13 (quotation marks omitted). Further, this Court will only overturn a factual finding about whether a defendant on a deferred disposition has inexcusably failed to comply with a requirement of the deferred disposition if the record compels a contrary conclusion. *See id.* ¶ 11.

An accused charged with a misdemeanor, Class C felony, or a Class B felony under chapter 45 (i.e., drug-related charges) is eligible to receive the (potential) benefits of a deferred disposition. *See* 17-A M.R.S. § 1901. Following the trial court's acceptance of a guilty plea pursuant to a deferred disposition, the court defers a finding of guilt and sentencing for a specific period of time. *See* 17-A M.R.S. § 1902(1). Over that period of deferment, the deferred disposition imposes certain "requirements upon the person . . . considered by the court to be reasonable and appropriate to assist the person in leading a law-abiding life." *See id*.

Absent the State filing a motion seeking to terminate a deferred disposition, *see* 17-A M.R.S. § 1903(3), the court schedules a colloquially referred to "return date" where the deferred disposition-bound defendant "shall return to court for a hearing on final disposition." *See* 17-A M.R.S. § 1903(1). At the final dispositional hearing on the deferred disposition agreement, the defendant bears the burden under Section 1903 of "demonstrat[ing] by a preponderance of the evidence that the person has complied with the court-imposed deferment requirements." *Id.* However, "[i]f the court finds that the person has inexcusably failed to comply with the court-imposed deferment requirements, the court shall impose a sentencing alternative authorized for the crime to which the person pled guilty." *Id*.

In a 2016 case of first impression, this Court held that in order to determine whether a defendant has "inexcusably failed to comply with the requirements of [a deferred disposition], the [trial] court's scrutiny should begin with the requirements laid out in 17-A M.R.S. § 1348-B(1). *See State v. Palmer,* 2016 ME 120, 145 A.3d 561. Pursuant to those statutory requirements, this Court articulated the following statutory analysis:

> (1) the defendant must demonstrate, by a preponderance of the evidence, that she has complied with the court-imposed deferment requirements; (2) if the defendant fails to meet this burden, the court must determine whether her failure to comply was inexcusable; and (3) if the failure was inexcusable, the court is then required to impose a sentencing alternative.

Id. ¶ 12.

In *Palmer*, the defendant took a discretionary appeal of a judgment of conviction entered by the trial court following a final dispositional hearing on a six-month deferred disposition agreement. *See id*. ¶¶ 1-2. In that deferred disposition agreement, a special condition of the deferred disposition agreement was that the defendant would undergo a psychological evaluation and complete parent-focused counseling. *See id*. ¶¶ 4-5. The defendant was required to provide proof of the same to the District Attorney's Office. *See id.* When Palmer appeared at the final dispositional hearing on the deferred disposition, she presented a 21-page psychological evaluation and conceded that it was not conducted in a timely manner consistent with the underlying deferred disposition. *See id*. ¶ 5.

The State contended that she was not in compliance with the deferred disposition because she "had not undergone a psychological evaluation that 'focused on parenting' and mentioned only briefly that she had neither completed counseling nor submitted corresponding reports." *See id*. The trial court found that Palmer's deferred disposition was "unsuccessful" and imposed a split sentence of 60 days, all but 5 days suspended, with six months of probation. *See id*. ¶ 6. Reasoning, the trial court explained orally on the record: "Okay. She hasn't completed yet the evaluation, is what it sounds like," and, in response to the State seeking clarification on a parent-focused evaluation, the trial court stated: "let me further say if for some reason there's no such evaluation, which I doubt, I think you can get that, an

evaluation focusing on parenting issues, but if you go and ask and they tell you it doesn't exist, then tell your probation officer." *Id*.

On appeal, Palmer asserted that the trial court erred when it found that she inexcusably failed to comply with the deferred disposition requirements, pointing to the terms of the deferred disposition and how no evaluation "focused on parenting" was required. *See id.* ¶ 8. *Palmer*, however, did not resolve the issue presented in this appeal. Instead, this Court's analysis ended at step one of the above-referenced statutory analysis and the matter was remanded to the trial court to determine whether the defendant complied with all of the terms of the deferred disposition, and, if not, to then determine "whether Palmer inexcusably failed to comply with the requirements of the deferred disposition agreement." *Id*. In *Palmer,* this Court did note that: "In determining whether Palmer inexcusably failed to comply with the requirements of the deferred disposition agreement, the court may consider evidence supporting the explanations offered by Palmer, along with any other relevant evidence." *Id.* ¶ 20.

In the case before this Court, there were three separate legal theories argued by the parties and addressed by the trial court in its Order that is the subject of this appeal. (A. 17-27.) This brief addresses the two theories that were relied upon by

the trial court in imposing the bad outcome of the Deferred Disposition Agreement.[2] (A. 23-26.)

B. Trial Courts Maintain the Authority to Compel the State's Performance Under the Deferred Disposition Agreement to Award a Defendant the Good Outcome, and the Trial Court Erred in Its Contract Law Analysis and Holding Otherwise.

The trial court found that Reardon's non-compliance with the Deferred Disposition Agreement was not done in "bad faith" and that his medical condition supported the notion that he would never be able to perform the two conditions, which were found to be "material" terms of the Deferred Disposition Agreement. (A. 19, 24.) Because of this material, yet "excusable," non-performance, the trial court applied principles of contract law in determining that Reardon's "failure to perform that does not constitute a breach may also excuse the injured party's performance." (A. 23-25.)

> The Court finds that Defendant's failure to comply with the two (2) requirements of the agreement, although excusable, is also material. Therefore, the State's performance of the "good outcome" under the agreement—moving to allow the Defendant to withdraw his plea, dismissing the Domestic Violence Assault charge, and filing an

[2] The trial court's Order first addressed the parties' arguments under the above-described statutory framework in deferred disposition cases. First, the trial court declined to require the State to effectuate the good outcome of the Deferred Disposition Agreement because the statute relied upon in making that argument, 17-A M.R.S. 1903(3), lies in the context of a motion by the State to terminate the remainder of a period of deferment, instead of a final dispositional hearing. Second, the trial court considered 17-A M.R.S. § 1902(3), which provides a mechanism for relief to individuals who are subject to deferred dispositions but who are unable to comply with the deferred disposition's requirements. *See* 17-A M.R.S. § 1902(2)-(3). Ultimately, the trial court "decline[d] to rule that the Defendant's failure to seek relief pursuant to § 1902(3) is dispositive to the outcome at the hearing on final disposition."

information charging Domestic Violence Reckless Conduct—is excused.

(A. 24-25.)

"Plea agreements are contracts and contract principles apply when interpreting them." *State v. Murphy,* 2004 ME 118, ¶ 8, 861 A.2d 657. Contract law is applied in criminal cases based on the premise that the "negotiated guilty plea represents a bargained-for quid pro quo." *Id*. ¶ 10 (quotation marks omitted). "Plea agreements, however, receive greater scrutiny than commercial contracts because the defendant's fundamental rights are implicated, and the government will bear responsibility for any lack of clarity." *State v. Newbert,* 2007 ME 110, ¶ 19, 928 A.2d 769.

This Court has acknowledged that a plea agreement which "secur[es] to the State the entry of a plea of guilty or nolo contendere on the part of the accused is a serious and sobering occasion for a criminal defendant." *Shorette v. State,* 402 A.2d 450, 459 (Me. 1979). Not only does it involve a criminal defendant's waiver of fundamental constitutional rights and privileges, but, in the case of deferred dispositions, it often comes at the unknown risk of an "open plea." *See id.* In light of this, this Court has held that it will "resort to [its] own canon of interpretation which says that criminal rules, as criminal statutes, are to be strictly construed in favor of criminal defendants, especially where substantial rights are involved." *Id*. at 459-460.

Here, the trial court's Order imposing the bad outcome of the Deferred Disposition Agreement because Reardon "excusably" but "materially" violated the agreement cannot stand for the following reasons:

1) Statutory law mandates that a defendant on a deferred disposition, who excusably does not perform a condition of the deferred disposition, is not subject to the imposition of the sentencing alternative authorized for the crime to which the person pled guilty.

Statutory law can affect the formation, interpretation, enforceability, validity, and legality of contracts—both in the civil and criminal context. "It is well settled that the law in effect at the time of the execution of a contract becomes part of that contract." *Portland Savings Bank v. Landry,* 372 A.2d 573, 575 (Me. 1977).

> The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced, by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of the means impairs the obligation. If it tends to postpone or retard the enforcement of the contract, the obligation of the latter is to that extent weakened.

Id. at 576. "Thus, if a contract provision is contrary to a mandatory statutory provision, it is void and unenforceable." *Molleur, v. Dairyland Ins. Co.,* 2008 ME 46, ¶ 11, 942 A.2d 1197; *see also State v. LeBlanc-Simpson,* 2018 ME 109, ¶ 15, 304 A.3d 290 (interpreting a bail statute to be incorporated into a pretrial order setting forth conditions of release).

Pursuant to Section 1903's statutory requirements, this Court has explained that, at the final disposition hearing:

> (1) the defendant must demonstrate, by a preponderance of the evidence, that she has complied with the court-imposed deferment requirements; (2) if the defendant fails to meet this burden, the court must determine whether her failure to comply was inexcusable; and (3) if the failure was inexcusable, the court is then required to impose a sentencing alternative.

Palmer, 2016 ME 120, ¶ 12, 145 A.3d 561. Although it deals with a filing agreement pursuant to M.R.U. Crim. P. 48, and not a deferred disposition agreement, *State v. Russo* is enlightening and supportive of Reardon's position.

In *State v. Russo*, this Court held that the express terms of a plea agreement must be upheld when the State commits a substantial breach of that agreement:

> Once a filing agreement has been approved by the court . . . the State's right to reinitiate the same proceeding that has been dismissed without prejudice is subject to the supervision and approval of the court. A judicially approved filing agreement "leaves it *within the power of the court* at any time, upon the motion of either party, to bring the case forward and pass any lawful order or judgment therein. The "without prejudice" provision in Rule 48(c) does not authorize the State to reinitiate the same proceeding or, as in this case, initiate a separate proceeding, without court approval. When, as here, the parties intended the agreement to be the end of the matter, a court will not frustrate their intentions by granting such approval absent a breach of the agreement's terms by the defendant.

2008 ME 31, ¶ 19, 942 A.2d 694 (citations, footnote, and quotation marks omitted). This Court explained that, like a deferred disposition agreement, a filing agreement is "not a final judgment," but "is instead a mutually agreed-to suspension and possible dismissal of the proceeding, subject to conditions set forth in the filing agreement and the control of the court[.]" *Id.* ¶ 11. Moreover, like plea agreements

and deferred disposition agreements, this Court reasoned that filings "are an essential and desirable part of the criminal justice system," and to give the State free rein to circumvent such an agreement would render them unenforceable. *See id.* ¶ 18; *see also State v. Telford,* 2010 ME 33, ¶ 14, 993 A.2d 8 (*Jabar*, concurring) ("This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." (quoting *Santobello v. New York,* 404 U.S. 257 (1971)).

In this case, the trial court discounted step three of the analysis set forth in *Palmer* and the statutory language of Section 1903. The trial court found that Reardon had not met his burden of demonstrating that he complied with the Deferred Disposition Agreement, but that he excusably did not comply with two components of the Agreement. However, the trial court's Order held that it was required to impose the bad outcome notwithstanding the clear statutory language and this Court's case law which supports the opposite. Yet, it is black letter law that contracts cannot change statutory law—especially contracts in the context of a criminal case where "greater scrutiny" is applied and held against the State and strictly construed

in favor of the defendant, *see Newbert,* 2007 ME 110, ¶ 19, 928 A.2d 769; *Shorette,* 402 A.2d at 459-460. Here, the trial court was so hyper-focused on the intricacies of contract law articulated in civil case law and the Restatement (Second) of Contracts that it missed the clear legislative and Law Court directive that it was not required to impose the bad outcome in this case because Reardon's non-compliance was not "inexcusable." *See* 17-A M.R.S. § 1903(1); *Palmer,* 2016 ME 120, ¶ 12, 145 A.3d 561; *Telford,* 2010 ME 33, ¶ 14, 993 A.2d 8 (*Jabar*, concurring); *Rusoo,* 2008 ME 31, ¶¶ 11-19, 942 A.2d 694.

Furthermore, aside from the controlling statutory and case law, the Restatement (Second) of Contracts actually provides some guidance that is consistent with Maine's statutory law and this Court's precedent. Section 185 of the Restatement provides:

> *To the extent that a term requiring the occurrence of a condition is unenforceable under the rule stated in § 178, a court may excuse the non-occurrence of the condition* unless its occurrence was an essential part of the agreed exchange.

Restatement (Second) of Contracts § 261 (2018) (emphasis added). Similar to Section 1903, this provision of the Restatement also uses the term "excuse" in reference to the condition of the contract at issue. Of course, this is a finding that the trial court had no difficulty making (that Reardon's non-performance was excusable). However, unlike the last portion of this Restatement section, the statutory law does not determine it relevant whether the occurrence of a condition of

a deferred disposition was essential or not. The issues related to materiality/essentiality and performance are besides the point: 17-A M.R.S. § 1903(1) and *State v. Palmer* are controlling.

Deferred disposition agreements are contracts under Maine law, and a trial court can compel a prosecutor to effectuate the terms of the bargained-for agreement, even when there is an excusable failure to perform some aspect of the agreement, because Section 1903 and this Court's jurisprudence become part of every deferred disposition agreement. *See Landry,* 372 A.2d at 575. The trial court's decision failed to implement this statute and enforce the agreement reached by the parties under the Deferred Disposition Agreement, which resulted in an erroneous imposition of the bad outcome and an undermining of the integrity of the plea-bargaining process. *See Telford,* 2010 ME 33, ¶ 11, 993 A.2d 8 ("Almost from the time of statehood, we have said that a party to a contract is bound by the terms of the law that govern the subject matter of the contract, regardless of whether the contract expressly refers to them."). For this reason, this Court should vacate the trial court's decision.

2) Reardon was discharged from the two relevant conditions of the Agreement by virtue of Section 261 of the Restatement, providing for discharge of the performance of a condition by supervening impracticability.

The trial court's Order focused on Reardon's non-performance under the Agreement, thus making the State an "injured party" which excused them from

performing under the Agreement, holding that "the State's performance of the 'good outcome' under the agreement—moving to allow the Defendant to withdraw his plea, dismissing the Domestic Violence Assault charge, and filing an information charging Domestic Violence Reckless Conduct—is excused." (A. 23-25.) However, the trial court never considered the more pertinent (and statutorily relevant) issue of Reardon's excuse for not performing the two relevant conditions of the Agreement.

The Restatement (Second) of Contracts has explained that an obligor's duty to perform under a contract may be discharged under certain circumstances.

> First, the obligor may claim that some circumstance has made his own performance impracticable. The general rule governing impracticability of performance is stated in § 261, and three common specific instances of impracticability are dealt with in §§ 262, 263 and 264. Second, the obligor may claim that some circumstance has so destroyed the value to him of the other party's performance as to frustrate his own purpose in making the contract. The rule governing frustration of purpose is stated in § 265. Third, the obligor may claim that he will not receive the agreed exchange for his own performance because some circumstance has discharged the obligee's duty to render that agreed exchange, on the ground of either impracticability or frustration. The general rules on the effect of failure of performance on the other party's duties are stated in Chapter 10 and particularly in §§ 237 and 238. A special rule for cases in which non-performance is justified by impracticability or frustration is stated in § 267.

Restatement (Second) of Contracts, ch. 11 Intro. Note. The purpose behind the doctrines of impracticability and frustration "is sometimes said to be that there is an

'implied term' of the contract that such extraordinary circumstances will not occur. *See id*.

Section 261 of the Restatement is particularly relevant in this case. Under that section of the Restatement:

> Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary.

Restatement (Second) of Contracts § 261. In other words, a trial court has the authority to relieve any obligor of a contract from a duty to perform when "performance has unexpectedly become impractical as a result of a supervening event." Restatement (Second) of Contracts § 216, comment a; *see also United States v. Ellis,* 470 F.3d 275, 282 (6th Cir. 2006) ("Impossibility may discharge a contract when an unanticipated or unforeseeable event renders performance impossible or impracticable."); *United States v. Gaither,* 826 F.Supp. 50, 51-52 (D. Penn., May 20, 1996). This Court has held that, "[a]lthough performance does not have to be 'absolutely impossible' in order for the doctrine to apply, it must be rendered more than difficult or 'impractical.'" *Bouchard v. Blunt,* 579 A.2d 261, 263, n. 3 (Me. 1990).

The State assumes the risk, in every deferred disposition agreement, that a defendant may not be able to comply with the terms of the deferred disposition for

an excusable reason that discharges the duty of performance on the part of the defendant/obligor. 17-A M.R.S. § 1903(1) specifically provides for this risk, as it necessitates a court finding that the defendant "has inexcusably failed to comply with the court-imposed deferment requirements" for the trial court to impose the bad outcome. Further, Section 1902 specifically provides for the ability of defendants who are on deferred dispositions to be relieved of certain requirements upon a showing of an "unreasonable burden." *See* 17-A M.R.S. § 1902(2). This Court should hold that trial courts have the authority under M.R.U. Crim. P. 11A(f),17-A M.R.S. § 1902(2), and *State v. Palmer,* to order specific performance of the good outcome of a deferred disposition in situations where a defendant's non-compliance with certain terms of the deferred disposition was not inexcusable.

D. Trial Courts Maintain the Authority to Require Performance Under the Deferred Disposition Agreement to Award a Defendant the Good Outcome, and the Trial Court Erred in Holding that the Separation of Powers Doctrine Prevent it from Doing so in this Case.

The trial court held that, where a defendant has excusably failed to comply with the requirements of the deferred disposition agreement, "it cannot order the State to perform its obligations under the contract that would result in the imposition of the 'good outcome.'" (A. 25-26.) Relying on *State v. Pelletier* and *State v. Fixaris*, the trial court also reasoned that it was impermissible for it to interfere with

an executive function, like "prosecutorial discretion to dismiss a case" or "charging decisions," which "would implicate the separation of powers doctrine." (A. 25-26.)

Of course, the separation of powers doctrine is implicated when a court interferes with the executive function of investigating criminal charges, initiating criminal charges, or dismissing criminal charges. With that said, it does not constrain the judiciary's authority to compel a prosecutor to abide by the terms of a plea agreement, such as a deferred disposition agreement. The Maine Rules of Criminal Procedure further provide authority for trial courts to enforce a plea agreement:

> If the plea agreement is of the type specified in subdivision (a)(1)[3] or (a)(2) of this Rule and if the attorney for the State fails to comply with the plea agreement, the court shall afford the defendant the opportunity to withdraw the defendant's plea or grant such other relief, including enforcing the plea agreement, as the court deems appropriate.

M.R.U. Crim. P. 11A(f). The trial court's ruling effectively provides that Rule 11A(f) is an unconstitutional violation of the separation of powers doctrine, contrary to the federal and state case law supporting the Rule. *See Lewis v. Maine,* 254 F. Supp.2d 159, 172 (D. Me., Apr. 14, 2003) ("Enforcement of a plea agreement is permissible 'if the attorney for the State fails to comply with the plea agreement.'"

[3] M.R.U. Crim. P. 11A(a)(1)-(2) provides as follows: "The attorney for the State and the attorney for the defendant or the defendant when unrepresented may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged crime or to a lesser or related crime, any or all of the following will occur: (1) The attorney for the State will dismiss other charges; (2) The attorney for the State will not oppose the defendant's requested disposition."

(quoting M.R.U. Crim. P. 11A(f))); *State v. Dalot,* 615 A.2d 1161, 1161 (Me. 1992) (noting that Rule 11A is designed to protect the State "against unfounded attempts to enforce an alleged agreement pursuant to Rule 11A(f)).

However, despite the trial court's Order, Rule 11A(f) constitutionally permits a trial court to enforce a plea agreement where a prosecutor fails to comply with such an agreement. *See id.* Contrary to the trial court's reasoning, prosecutorial discretion is long gone after a defendant enters into a deferred disposition—from a dispositional aspect, at least. Certainly, the State has the discretion to bring a motion to terminate a deferred disposition or to bring new criminal charges (separate from the charges underlying the deferred disposition agreement) if supported by probable cause. However, once the parties (the State of Maine and the defendant) have entered into a signed deferred disposition agreement - a contract - there is no prosecutorial discretion on already-made charging decisions or dispositional outcomes: there is either the stipulated good outcome or the bad outcome. That determination (whether it is a good or a bad outcome) is not discretionary with the State of Maine through its prosecutorial staff; rather, it is a judicial determination pursuant to 17-A M.R.S. § 1903.

This is further supported by *Santobello v. New York*, where the Supreme Court of the United States held that it was constitutionally impermissible to hold a

defendant to his negotiated plea when the promise that induced such a plea was not performed. *See* 404 U.S. 257 (1971).

> This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

Id. at 499.[4]

CONCLUSION

WHEREFORE, for the foregoing reasons, Appellant, Ryan Reardon, requests this Honorable Court to vacate the underlying conviction and remand this matter

[4] One treatise on prosecutorial misconduct has explained:

> A prosecutor is not required to honor a plea bargain when the defendant fails to perform his obligations. However, a prosecutor may not decide unilaterally that the defendant has broken his part of the plea agreement. Such conduct might violate principles of due process. A prosecutor should be allowed to withdraw the plea deal if the judge wants to impose a lighter sentence than the sentence recommended by the prosecutor. When the prosecution seeks to escape an obligation under a plea agreement on the ground that the defendant has failed to meet some condition, the defendant is entitled to an evidentiary hearing, for it is unfair to permit a prosecutor to avoid his agreement without a judicial determination that the defendant broke his promise. The prosecutor has the burden of proving that the defendant breached the agreement, and that the breach was sufficiently "material" or "substantial" to allow the prosecutor to avoid his commitments. Some courts require the prosecutor to satisfy his burden by a preponderance of evidence, whereas other courts require the prosecutor to present adequate evidence of the defendant's breach. A defendant's technical breach ordinarily is insufficient to nullify the agreement.

Gershman, *Prosecutorial Misconduct,* § 7.34 "Breach of promise to dismiss other charges—Disallowing unilateral decisions of prosecutor (2d ed. Oct. 2024).

with instructions for the trial court and the State to effectuate the good outcome of the Deferred Disposition Agreement.

Date: 08/13/2025

/s/ Walter F. McKee
WALTER F. MCKEE
Attorney for Appellant
Maine Bar No. 7848
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
wmckee@mckeemorgan.com

/s/ Kurt C. Peterson
KURT C. PETERSON
Attorney for Appellant
Maine Bar No. 6235
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
kpeterson@mckeemorgan.com

CERTIFICATE OF SERVICE

I, Kurt C. Peterson, Attorney for the Appellant, Ryan Reardon, hereby certify that this appellate brief was filed and that the service requirements were complied with by copying opposing counsel on the email filing with the Court, and, upon approval of the email filing will be provided the required number of copies of this appellate brief and appendix pursuant to the Maine Rules of Appellate Procedure.

Date: 08/13/2025

/s/ Kurt C. Peterson
KURT C. PETERSON
Attorney for Appellant
Maine Bar No. 6235
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294