STATE OF MAINE
PISCATAQUIS, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. Pis-25-93

STATE OF MAINE

v.

RYAN REARDON

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE,

STATE OF MAINE

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STATEMENT OF FACTS & PROCEDURAL HISTORY

The following evidence is taken from the record, the deferred disposition agreement (A. at 30-31), and the trial court's Order Regarding Court's Permissible Actions Upon Finding of Excusable Failure to Comply with Requirements of Deferred Disposition Agreement (Order). (A. at 17-27.)

On June 24, 2021, the Piscataquis County Grand Jury returned an Indictment against the Defendant that contained three counts: Domestic Violence Aggravated Assault (Class B), 17-A M.R.S. § 208(1)(C) (2025); Domestic Violence Assault (Class D), 17-A M.R.S. § 207-A(1)(A) (2025); and Domestic Violence Criminal Threatening with a Dangerous Weapon (Class C), 17-A M.R.S. §§ 209(1), 1604(5)(A) (2025). (A. at 28-29.) The Defendant pled not guilty to those charges. (A. at 6.)

On July 7, 2022, the Defendant and the State entered into a deferred disposition agreement, which the court approved. (A. at 30-31.) As part of the agreement, the State dismissed Counts 1 and 3—the felony counts—in exchange for a guilty plea to the misdemeanor Count 2 Domestic Violence Assault. (A. at 7-8, 30.) The special conditions of the deferred disposition agreement were signed and agreed to by both parties:

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

> 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 and test.
>
> 5. Have no contact direct or indirect with [A. M.] Not to enter any place of residence, employment, or education.
>
> If the defendant successfully completes the terms of this deferred disposition, the defendant will: Be permitted to withdraw his plea on Count 2 and be sentenced to Count 4 by Information to a Domestic Violence Reckless Conduct for a $500 fine.
>
> If the defendant is non-compliant, then: open plea[.]

(A. at 31.)[1]

At no time during the two-year period did the Defendant file a motion to modify the terms of the deferred disposition agreement to relieve him of any of the special conditions. 17-A M.R.S. § 1902(2), (3) (2025).

The parties returned to court for sentencing on September 23, 2024. (A. at 9-10.) At that time, the Defendant conceded he had "failed to comply with

[1] There is no contention that the deferred disposition agreement requirements of "[c]omplete the Certified Domestic Violence Intervention Program" or "[u]ndergo a substance abuse evaluation and engage in treatment as recommended by the evaluator [and m]ust provide the police report to the evaluator" are ambiguous. (A. at 31.)

the deferred disposition agreement by not completing (or even beginning) a Certified Domestic Violence Intervention Program and by not undergoing a substance abuse evaluation." (A. at 18, Order at 2.) At that hearing, however, and—for the first time since entering into the deferred disposition agreement over two years earlier—the Defendant "presented evidence that due to injuring his knee on two (2) occasions in the late summer and early autumn of 2022 and suffering a significant head injury in the fall of 2022, he was unable to fulfill those two (2) requirements." (A. at 18-19, Order at 2-3.)

The court also made the following findings by a preponderance of the evidence after hearing "credible testimony of the Defendant's mother . . . and his physician," who the Defendant began seeing in September of 2023, over a year *after* the deferred disposition agreement was entered. (A. 19, Order at 3.) The court found that

> (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 Intervention 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 continues to impact his cognitive abilities and has left him with practically no executive functioning. Therefore, pursuant to 17-A M.R.S. § 1[903](1), the Court found by a preponderance of the evidence that the Defendant failed to comply with the conditions of the deferred disposition. However, the Court further

> found the Defendant's failure to comply was excusable. *See* 17-A M.R.S. § [1903](1) (establishing a court's mandatory action at a hearing on final disposition upon finding that a person complied with the requirements of a deferred disposition agreement or upon finding that a person 'inexcusably failed to comply' with those requirements).

(A. at 19, Order at 3.) These findings were based solely on testimony from the Defendant's mother, Linda French, and Dr. Niamh Holohan, the Defendant's psychiatrist. (*See generally* 9-23-24 Sentencing Tr.) The Defendant did not admit any medical records.

As a result of the court's findings, the court grappled with the issue of whether it could impose the agreed-to successful result where that result required the State to file a new charging instrument. (A. at 31.) Following memoranda submitted by the parties, the court addressed the three legal theories raised by the parties.

First, the court addressed the statutory language of sections 1902 and 1903. The court noted that section 1903(1) "does not contemplate the outcome of a hearing on final disposition if the court finds that the person failed to comply with the agreement's requirements, but that their noncompliance was excusable." (A. at 21, Order at 5.)

The parties urged the court to apply two statutory provisions, each of which the court declined to apply. The Defendant argued that section 1903(3)

applied to allow the court to otherwise impose the successful result as "any other action" following a hearing on the State's motion to terminate the deferred disposition agreement. *Id.* The court concluded that it could not apply that provision. *Id.*

In addition to the plain language of section 1903(1), the State argued that a plain, unambiguous reading of section 1902(2) applied and because the Defendant never filed such a modification to the deferred, the only remedy available to the court was the imposition of sentence on the crime to which the Defendant pled guilty—Class D Domestic Violence Assault. (State's Memorandum on the Remedy for a Finding of Excusable Failure to Comply with the Deferred Disposition Agreement at 3-4.) The court also "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 the final disposition." (A. at 22, Order at 6.)

The court next examined contract principles. (A. at 23-25, Order at 7-9.) The court concluded that although the Defendant's breach was excusable, the failure to comply was "justifiable and therefore not a breach of the agreement." (A. at 23, Order at 7.) Properly continuing its analysis, the court turned to whether the Defendant's "material failure to perform that does not constitute a breach may also excuse the injured party's performance." (A. at 24, Order at 8.) The trial court determined that the Defendant's excused failure to comply was

nevertheless material and the State was excused from final performance of the successful result of the deferred disposition agreement. (A. at 25. Order at 9.)

Finally, the court turned to the application of the separation of powers doctrine to determine whether it could "compel[] the State to perform its contractual obligations required to bring about the 'good outcome.'" *Id.* the court concluded that "it cannot order the State to perform its obligations under the contract that would result in the imposition of the 'good outcome.'" (A. at 26, Order at 10.) The court noted that "if the Defendant *had* complied with the requirements of the agreement and yet the State refused to dismiss the Domestic Violence Assault charge and fine an information charging Domestic Violence Reckless Conduct, the analysis may be different." *Id.* (emphasis in original). The court opined that the "form of the deferred disposition agreement at issue in this case," which required the State to dismiss a crime and bring another charging instrument, was "not the same form contemplated by the statutory scheme governing deferred disposition agreements" because the sentencing to be imposed pursuant to section 1903(1) was a sentence "for the crime to which the person pled guilty." *Id.* (at n.7.)

Ultimately, the court ordered the imposition of "a sentencing alternative authorized for the crime of Domestic Violence Assault (Class D)." (A. at 27, Order at 11.) On February 24, 2025, the Defendant was sentenced on Count 2

Domestic Violence Assault to 90 days all but 4 days suspended with 1 year of probation. (A. at 10-16.) The sentence went into effect immediately as a stay of execution was not filed by the Defendant.[2] *Id.* Following sentencing, the Defendant timely filed a notice of appeal. (A. at 11.)

[2] By the State's calculation, the Defendant has been on probation for approximately seven months at the time of the filing of the State's Brief.

STATEMENT OF THE ISSUES

I. This Court lacks jurisdiction to hear this appeal because the trial court found the Defendant excusably failed to comply with the terms of the deferred disposition agreement.

II. Whether the trial court erred by determining that the State was not compelled nor required to enforce the successful result of the deferred disposition agreement where the plain language of 17-A M.R.S. § 1903 requires sentencing on the crime to which the Defendant pled guilty, and principles of contract law and the Separation of Powers doctrine support that result.

SUMMARY OF THE ARGUMENT

As a preliminary matter, 17-A M.R.S. § 1904 (2025) expressly limited this Court's jurisdiction to hear appeals from a trial court's determination that a defendant inexcusably failed to comply with the terms of a deferred disposition agreement. Because the trial court found that the Defendant "excusably" failed to comply with the terms of the deferred, this Court does not have jurisdiction to hear this direct appeal. (A. at 19, Order at 3.) This Court should, therefore, dismiss the Defendant's appeal.

Were this Court to disagree and determine it has jurisdiction, the trial court did not err as a matter of law by determining that—although the Defendant excusably failed to comply with the terms of the deferred by never engaging in DVIP or obtaining a substance abuse evaluation—the Defendant materially breached the contract (*i.e.*, the deferred disposition agreement) thereby excusing the State from performance of the successful result. Nor did the trial court err in determining that the Maine Constitution's separation of power provisions preclude the Court from forcing the State to file a new criminal charge where the Defendant failed to comply with the terms of the deferred disposition agreement. Finally, when reviewed de novo, the plain and unambiguous statutory language governing deferred disposition agreements

support this result because the Defendant failed to file a motion to modify the terms of the deferred.

In sum, the trial court did not err and could not impose the "successful" result of the deferred, which required the State to bring a new Count 4 by Information of Domestic Violence Reckless Conduct. To do so would run contrary to the plain language of 17-A M.R.S. § 1903, would violate the Maine and United States Constitutions' separation of powers provisions, and would contravene contract law.

This Court should, therefore, affirm the trial court's order.

ARGUMENT

I. This Court lacks jurisdiction to hear this appeal because the trial court found the Defendant excusably failed to comply with the terms of the deferred disposition agreement.

This Court permitted the Defendant to appeal as of right but ordered that the parties to address whether the Legislature has authorized appeals from judgments of convictions entered after determinations that the defendant "*excusably* failed to comply with deferment requirements." (April 17, 2025, Order Governing Course of Appeal) (emphasis in original).

"In the Law Court, in criminal as in civil appeals, questions raising jurisdiction of subject matter will be examined by the Court to determine the court's own jurisdiction[.]" *State v. Michaud*, 473 A.2d 399, 402 (Me. 1984). "'Appellate review in Maine is strictly statutory as the common law provided no appeal. The right of review by the Law Court is not a constitutional one and must, as a matter of jurisdictional concern, rest upon enabling legislation empowering the Court to act.'" *State v. Collins*, 681 A.2d 1168, 1169 (Me. 1996) (quoting *Dow v. State*, 275 A.2d 815, 818 (Me. 1971)).

"Statutory interpretation is a question of law that [this Court] review[s] de novo." *State v. Santerre*, 2023 ME 63, ¶ 8, 301 A.3d 1244. This Court looks to the plain statutory language to determine its meaning if it can be done "'while avoiding absurd, illogical, or inconsistent results.'" *State v. Marquis*, 2023 ME 16,

¶ 14, 290 A.3d 96 (quoting *State v. Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011). When a court interprets a statute, the "single goal is to give effect to the Legislature's intent in enacting the statute." *Santerre*, 2023 ME at ¶ 8, 301 A.3d 1244 (quotation marks omitted). "The first step in statutory interpretation requires an examination of the plain meaning of the statutory language in context of the whole statutory scheme. If the statutory language is silent or ambiguous, we then consider other indicia of legislative intent." *Id.* (quotation marks and citations omitted).

Generally in criminal cases, Title 15 M.R.S. §§ 2111(1) and 2115 (2025) govern this Court's jurisdiction to hear appeals by defendants in criminal proceedings.[3] Section 2111(1) provides, "Except as otherwise specifically provided, in any criminal proceeding in the District Court, a defendant aggrieved by a judgment of conviction, ruling or order may appeal to the Supreme Judicial Court sitting as the Law Court." Section 2115 provides, "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."

[3] The Legislature has not updated the appellate statutory provisions to apply to the Unified Criminal Docket, so the State includes both for completeness understanding that they are substantively identical but for the distinction between District and Superior Courts. M.R.U. Crim. P. 1; *see also e.g.*, 15 M.R.S. § 1003(11) (2025) (defining "Unified Criminal Docket" in the bail code to mean "the unified criminal docket established by the Supreme Judicial Court").

The Legislature, however, has specifically and expressly authorized appeals from deferred disposition agreements in a narrow set of circumstances. Title 17-A M.R.S. § 1904 (2025) provides for "[l]imited review by appeal,"

> A person *may not attack the legality of a deferred disposition*, *including final disposition*, except that a person who has been determined by a court to have *inexcusably* failed to comply with a court-imposed deferment requirement and thereafter has been sentenced to an alternative authorized for the crime may appeal to the Law Court, but not as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

Id. (emphasis added.)

Because the Legislature enacted section 1904 to specifically create appellate jurisdiction for this Court to narrowly hear appeals from inexcusable failure to comply orders in deferred disposition agreements, Title 15's appellate statutory provisions do not apply. This is consistent with a canon of statutory interpretation: generalia specialibus non derogant, "the specific governs the general." *Nitro-Lift Tech., L.L.C. v. Howard*, 568 U.S. 17, 21-22 (2012) ("But the ancient interpretive principle that the specific governs the general (*generalia specialibus non derogant*) applies only to conflict between laws of equivalent dignity."); *see also Chockstone Group, LLC v. Martin*, Mem-24-109 (Oct. 29, 2024) (although not established precedent for this Court pursuant to M.R. App. 12(c),

citing to the canon of construction *generalia specialibus non derogant*).

Furthermore, the rule of lenity should not apply here because section 1904 is plainly unambiguous. *State v. Stevens*, 2007 ME 5, ¶ 16, 912 A.2d 1229 ("The rule of lenity requires a court to resolve an ambiguity in favor of a defendant when there is no clear indication as to the legislative intent.") (citing to *Muscarello v. U.S.*, 524 U.S. 125, 138 (1998) ("The rule of lenity applies only if, after seizing everything from which aid can be derived, ... [a court] can make no more than a guess as to what Congress intended.")).

Additionally, the Defendant attempts to distinguish the instant appeal from this Court's rationale in *State v. Huntley*, 676 A.2d 501 (Me. 1996) and apply section 2115. (Blue Br. at 14-15.) He suggests that this 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 guilty and subsequent sentencing/criminal conviction." (Blue Br. at 15.) As a result, therefore, he argues that "the final disposition hearing on a deferred disposition agreement is a 'criminal proceeding' that preceded any finding of guilt and sentence, and because [he] was aggrieved by the trial court's Order, he has a statutory right to appeal that decision. *See* 15 M.R.S. § 2115[.]" (Blue Br. at 15.)

The Defendant, however, misses the mark of *Huntley*'s holding and interplay with section 1904. Title 15 M.R.S. § 2115 would otherwise apply to the Defendant's appeal had the Legislature not enacted 17-A M.R.S. § 1904 authorizing limited discretionary appellate jurisdiction.

The issue in *Huntley* was whether section 2115 gave jurisdiction to this Court to hear a direct appeal, as a matter of right, following the entry of a guilty plea. 676 A.2d 501, 502-03 (Me. 1996). As this Court held, 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 criminal guilt." *Id.* at 503. Unlike *Huntley*, the State agrees with the Defendant that this *is* a situation where there is an appeal raising "decisional error by the court;" however, section 1904 establishes this Court's jurisdiction for appeals from deferred disposition agreements only if the trial court determined a defendant *inexcusably* failed to comply. (Blue Br. at 15.)

Moreover, like *Huntley*, the Defendant entered into a deferred disposition agreement with a guaranteed finding of guilt based on his performance of the contract—either a finding of guilt and conviction of the Domestic Violence Assault count to which he pled at the time sentencing was deferred, or a finding of guilt and conviction of a new-to-be-filed count of Domestic Violence Reckless Conduct. (A. at 31.) Were this Court to determine that section 2115 authorized

jurisdiction in this circumstance, it would create an absurd, illogical, and inconsistent result of granting jurisdiction where the Legislature had expressly otherwise limited this Court by 17-A M.R.S. § 1904. *See State v. Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011 ("We first look to the plain language of the statute to determine its meaning if we can do so while avoiding absurd, illogical, or inconsistent results.").

In the alternative, the Defendant finally contends that this Court could view this appeal as a discretionary appeal, M.R. App. P. 19(a)(2)(D),[4] and "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." (Blue Br. at 18.) This result, however, is exactly what is contemplated by the deferred statute when the Legislature created a limited appeal mechanism "but not as of right" and only where there has been a finding of "inexcusable failure to comply with a court-imposed deferment requirement," 17-A M.R.S. § 1904.[5]

Here, the trial court found that the Defendant "excusably failed to comply" with the terms of the deferred disposition. (A. at 19, Order at 3.) The Defendant

[4] Confusingly, the Defendant also argues that M.R. App. P. 19(a)(D) does not apply. (Blue Br. at 17.) However, that Rule specifically states that an appeal from a determination of "inexcusable failure" compliance with a deferred disposition agreement is discretionary and must be "authorized pursuant to" 17-A M.R.S. 1904 (2025).

[5] This is presumably why this Court, in its April 17, 2025, Order Governing Course of Appeal, ordered, in part, that "Reardon need not file a memorandum in support of a request for a certificate of probable cause."

has appealed from the court's order finding *excusable* failure and imposing sentence on the Domestic Violence Assault count to which he pled guilty—*i.e.*, the final disposition. (A. at 10-12, 13-16, 27.) As such, the Defendant is directly attacking the "legality of a deferred disposition agreement, including final disposition"—the very thing that the Legislature has expressed is *not* appealable. 17-A M.R.S. § 1904. This Court, therefore, should determine that it does not have subject matter jurisdiction and dismiss the Defendant's appeal.

II. Whether the trial court erred by determining that the State was not compelled nor required to enforce the successful result of the deferred disposition agreement where the plain language of 17-A M.R.S. § 1903 requires sentencing on the crime to which the Defendant pled guilty, and principles of contract law and the Separation of Powers doctrine support that result.

Were this Court to disagree and determine that it does have jurisdiction to reach the merits of the appeal, this Court should affirm the trial court's order.

The Defendant contends that the trial court erred by not forcing the State to "uphold its end of the plea bargain" and impose the successful result of the terms of the deferred when the court found that the Defendant was excused from engaging in DVIP or completing a substance abuse evaluation. (Blue Br. at 12.) The Defendant is *not* challenging a factual finding adverse to himself (*i.e.*, the party with the burden of proof), but the ultimate legal conclusion made by the trial court as a result of the findings. *But see Palmer*, 2016 ME at ¶ 11, 145

A.3d 561 ("When the trier of fact makes a factual finding adverse to the party with the burden of proof, [this Court] will overturn the trial court's *finding* only if the record compels a contrary conclusion." (emphasis added and quotation marks omitted)); (Blue Br. at 23-25).[6]

Moreover, and contrary to the Defendant's argument that the trial court's order implied that it lacked the "authority to enforce plea agreements, including deferred dispositions, pursuant to statutory law and contract law, and the separation of powers doctrine," (Blue Br. at 12), the trial court concluded two things—contractual principles warranted excusing the State from compliance with the plea agreement and the terms of the deferred, and that the Separation of Powers doctrine barred the trial court from mandating that the State file a new charging instrument. (A. at 23-27, Order at 7-11.) The trial court's order and rationale in support of its order is different in kind and far more nuanced than the supposition the Defendant presents to this Court.

To begin, the State is not "reneging" on its agreement. (Blue Br. at 12.) The only one in the best position to remedy the deferment conditions that the Defendant could not comply with was the Defendant himself. *See* 17-A M.R.S.

[6] Taking the Defendant's psychiatrist at her word, assuming arguendo that this Court vacates the trial court's order to "effectuate the good outcome of the Agreement" as the Defendant requests (Blue Br. at 12), how would the Defendant be able to enter a knowing, voluntary, and intelligent plea to a new criminal charge of Domestic Violence Reckless Conduct if his "executive functioning is almost nill" as his psychiatrist believes? M.R.U. Crim. P. 11(c), (d), (e); (9-23-24 Sentencing Transcript at 58).

§ 1902(2). For two years, he took no steps to address his purported inability to comply with the DVIP and substance abuse evaluation requirements. The plain statutory language does not permit him to receive the "successful result" regardless of his excused failed compliance. This is also so as a matter of contract law.

The State respects and recognizes courts' well-established authority to interpret contracts and adjudicate disputes. *See e.g.*, *Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule."). This is a core principle of Article III powers imbued to the Judicial Branch by United States Constitution and Article VI to the Maine Constitution. The issue before this Court is properly framed as whether statutory principles and canons of construction, contract law, and constitutional law *require* that the State be compelled to honor the deferred agreement. In toto, the answer is no.

A. The Plain and Unambiguous Statutory Language of Section 1903(1) Required the Trial Court to Impose Sentence on the "Crime to Which" the Defendant Pled Guilty.

On appeal, the Defendant only challenges the trial court's contract interpretation and separation of powers analyses. (Blue Br. at 22-23 ("This brief

addresses the two theories that were relied upon by the trial court in imposing the bad outcome of the Deferred Disposition Agreement.")). As such, the Defendant has waived his argument on the application and statutory interpretation of the deferred disposition provisions. *State v. Whitney*, 2024 ME 29, ¶ 18, 319 A.3d 1072 ("[This Court] ha[s] long adhered to the principle of party presentation, that issues neither briefed nor pressed in argument are deemed waived and abandoned on appeal.") (quotation marks omitted).

"Statutory interpretation is a question of law that [this Court] review[s] de novo." *State v. Beaulieu*, 2025 ME 4, ¶ 14, 331 A.3d 280 (quotation marks omitted). When a court interprets a statute, the "single goal is to give effect to the Legislature's intent in enacting the statute." *Santerre*, 2023 ME at ¶ 8, 301 A.3d 1244 (quotation marks omitted). "The first step in statutory interpretation requires an examination of the plain meaning of the statutory language in context of the whole statutory scheme. If the statutory language is silent or ambiguous, we then consider other indicia of legislative intent." *Id.* (quotation marks and citations omitted). Courts are "guided by a host of principles when interpreting the plain meaning of a statute." *Id.* at ¶ 9. "In construing the plain meaning of the language, [courts] seek to give effect to the legislative intent and construe the language to avoid absurd, illogical, or inconsistent results. All words in a statute are to be given meaning, and none are to be treated as

surplusage if they can be reasonably construed. [Courts] also consider the subject matter, design, and structure of the statute, as well as the consequences of specific interpretations." *Id.* (quotation marks and citations omitted). "Only if the meaning of a statute is not clear will we look beyond the words of the statute to examine other potential indicia of the Legislative's intent, such as the legislative history." *Conroy*, 2020 ME at ¶ 19, 225 A.3d 1011 (citing *State v. Legassie*, 2017 ME 202, ¶ 13, 171 A.3d 589).

In the criminal context, "[t]he rules of lenity and of strict construction also guide [a court's] interpretation of criminal statutes." *Marquis*, 2023 ME at ¶ 14, 290 A.3d 96. "'Pursuant to each of these rules, any ambiguity left unresolved by a strict construction of the statute must be resolved in the defendant's favor.'" *Id.* (quoting *Legassie*, 2017 ME at ¶ 13, 171 A.3d 589). "The rule of lenity requires [a court] to resolve any ambiguity in the defendant's favor if the Legislature's intent remains indecipherable after using the tools of construction available to [a court]." *Marquis*, 2023 ME at ¶ 14 n.3, 290 A.3d 96 (quotation marks and alterations omitted).

Title 17-A M.R.S. § 1903 governs a court's "hearing as to [the] final disposition" of a deferred disposition agreement. Where there is no allegation that a defendant violated the deferred requirements or an agreement for the "consensual withdrawal of [the] guilty plea by [the] parties," subsection 1

governs.

Section 1903(1) provides:[7]

> Unless a court hearing is sooner held under subsection 3, and except as provided in subsection 2, at the conclusion of the period of deferment, after notice, a person who was granted deferred disposition pursuant to section 1902 shall return to court for a hearing on final disposition. *If the person demonstrates by a preponderance of the evidence that the person has complied with the court-imposed deferment requirements, the court shall impose a sentencing alternative authorized for the crime to which the person pled guilty and consented to in writing at the time sentencing was deferred* or as amended by agreement of the parties in writing prior to sentencing, *unless the attorney for the State, prior to sentence imposition, moves the court to allow the person to withdraw the plea of guilty.* Except over the objection of the person, the court shall grant the State's motion. If the court grants the State's motion, the attorney for the State shall dismiss the pending charging instrument with prejudice. *If 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.*

(Emphasis added.) This Court has helpfully framed these statutory requirements in a three-part 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

[7] Importantly, 17-A M.R.S. § 1903 (2025) has not been amended since its enactment in 2019.

> determine whether her failure was inexcusable; and (3) if the failure was inexcusable, the court is then required to impose a sentencing alternative.

Palmer, 2016 ME at ¶ 12, 145 A.3d 561.

The plain reading of subsection 1 is unambiguous: where the State does not move to allow the withdrawal of a guilty plea for the crime to which the person pled guilty, the only remedy available to the court is to "impose a sentencing alternative *authorized for the crime to which the person pled guilty*." *Id.* (emphasis added). This means, here, that the trial court could have only imposed a sentencing alternative to Count 2 Domestic Violence Assault (Class D) as that is the crime to which the Defendant pled guilty.[8]

This reading is consistent with other provisions of subchapter 4, which requires a defendant to file a motion when they are unable to comply with a provision of the deferred. Section 1902(2) is also unambiguous,

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[8] The State acknowledges and as the trial court pointed out, that the deferred disposition agreement the parties entered does not take the form of a deferred disposition that that section 1903(1) contemplates, where the successful or inexcusable failure result is the imposition of sentence on the same charge to which the Defendant initially pled guilty. (A. at 26, Order at 10.)

Because the plain statutory language is unambiguous, the Court need not look to statutory history. However, the State's argument is consistent with the prior version of the deferred disposition statute "as to final disposition," 17-A M.R.S. § 1348-B(1) (2004), which provided, "If the court finds that the person has complied with the court-imposed deferment requirements, the court shall impose a sentence of unconditional discharge under section 1346," unless the State moved for withdrawal of the guilty plea prior to sentencing. This language was struck by an amendment in P.L. 2005, ch. 265, § 12 (eff. May 31, 2005), which added, instead, the language that exists in 17-A M.R.S. § 1903(1) today. *Compare* 17-A M.R.S. § 1348-B(1) (2004), *with* 17-A M.R.S. § 1348-B(1) (2005), *and* 17-A M.R.S. § 1903(1) (2025). Notably, the same bill that amended section 1348-B in 2005 also added the requirement that a person "shall bring a motion" if they cannot meet the terms of the deferred disposition agreement. P.L. 2005, ch. 265, § 11 (eff. May 31, 2005).

> During the period of deferment and upon application of the person granted deferred disposition pursuant to subsection 1 [of section 1902] or of the attorney for the State or upon the court's own motion, the court may, after a hearing upon notice to the attorney for the State and the person, modify the requirements imposed by the court, add further requirements or relieve the person of any requirement imposed by the court that, in the court's opinion, imposes an unreasonable burden on the person.

Moreover, the Legislature further imposed such an obligation on a defendant who enters into a deferred disposition but cannot complete the requirements: "During the period of the deferment, if the person cannot meet a deferment requirement imposed by the court, the person *shall* bring a motion pursuant to subsection 2." 17-A M.R.S. § 1902(3) (emphasis added). This modification is mandated. *Murphy v. Smith*, 583 U.S. 220, 223 (2018) ("First, the word 'shall' usually creates a mandate."); *but cf. Doe v. Bd. Osteopathic Med.*, 2020 ME 134, ¶ 11, 242 A.3d 182 ("In the context of agency procedural deadlines, and in the absence of a clear manifestation in a statute to the contrary, statutory language such as 'shall' is directory, not mandatory, and does not wrest from the agency jurisdiction to act if the deadline is not met.").

Nor does the State solely rely on section 1902(3)'s mandate for its rationale supporting the imposition of the contractual "bad result." The State relied—and continues to so rely—on the plain, unambiguous reading of section

1903(1) in conjunction with the rest of the provisions of chapter 67 subchapter 4 pertaining to deferred disposition agreements, including specifically section 1902(2). *Santerre*, 2023 ME at ¶ 8, 301 A.3d 1244 ("The first step in statutory interpretation requires an examination of the plain meaning of the statutory language *in the context of the whole statutory scheme*.") (emphasis added).

As such, the trial court erred as a matter of law by "declin[ing] 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." (A. at 22, Order at 6.) The Defendant's failure to file such a motion is, by its very nature, dispositive of the remedy available to the trial court based on the deferred disposition statutory scheme, particularly when sections 1902 and 1903 are read together.

Here, the trial court found that the Defendant never attempted to start DVIP or engage in a substance abuse evaluation before the September 23, 2024, hearing on sentencing on the deferred disposition agreement or before he suffered his knee or head injuries. (A. at 18, Order at 2.) Additionally, the trial court expressly noted that "he did not file a motion pursuant to § 1902(3) and the issue of his noncompliance was not brought to the attention of the Court or the State until the hearing on September 23, 2024. (A. at 22, Order at 6.) Because such a motion was never filed, the trial court was not permitted to impose any other remedy than the imposition of a sentence on count 2 Domestic Violence

Assault as that is the "crime to which the [Defendant] pled guilty and consented to in writing at the time sentencing was deferred." *Id.* § 1903(1).

Therefore, by proceeding to hearing on whether the Defendant complied with the terms of the deferred, the court's statutory remedy was limited to imposing a sentencing alternative to the crime to which the Defendant pled guilty—Count 2 Domestic Violence Assault, Class D.

B. The Defendant's Failure to Complete DVIP and a Substance Abuse Evaluation are Material Breaches of the Deferred Disposition Agreement and, therefore, of the Contract for which the State was Excused from Further Performance.

First, the Defendant contends that the trial court "discounted step three of the analysis set forth in *Palmer* and the statutory language of [s]ection 1903" where the trial court was "so hyper-focused on the intricacies of contract law . . . 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.'" (Blue Br. at 27-28.) By implication, the Defendant argues that doctrinal jurisprudential decisions and common law contract principles must be ignored in favor of the plain language of section 1903 and *Palmer*'s interpretation of that statute. (*See* Blue Br. at 28-29 ("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[.]")). Second, the Defendant argues—for the first time before a tribunal—that he was "discharged" from the two substantive and meaningful conditions of the deferred by "supervening impracticability." (Blue Br. at 29-32.)

"A deferred disposition agreement is a contract between the defendant and the State and must be interpreted accordingly." *Palmer*, 2016 ME at ¶ 13, 145 A.3d 561. The interpretation of a contract is reviewed de novo as a question of law. *Id.*

"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." *State v. Telford*, 2010 ME 33, ¶ 11, 993 A.2d 8. "Plea agreements are interpreted to give effect to the parties' intentions and are construed with regard for the subject matter, motive, and purpose of the agreement, as well as the object to be accomplished." *State v. Murphy*, 2004 ME 118, ¶ 8, 861 A.2d 657 (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 any responsibility for any lack of clarity." *State v. Newbert*, 2007 ME 110, ¶ 19, 928 A.2d 769.

As the Defendant also quotes, "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; (Blue Br. at 25). Under *Molleur*'s language, the plain terms of the deferred disposition agreement in this case run afoul of section 1903(1) because the agreement authorized a dismissal of the count to which the Defendant pled guilty and consented to in writing at the time sentencing was deferred—as permitted by section 1903(1)—but the agreement then authorized a guilty plea and sentencing on a new criminal count—a result *not* contemplated by the plain language of section 1903(1). *Compare* 17-A M.R.S. § 1903(1), *with* (A. 31, Deferred Disposition Agreement), *and* (A. at 26 n.7, Order at 10 n.7 ("The Court notes that the form of deferred disposition agreement at issue in this case—where the 'good outcome' involves withdrawing a plea to one charge, which is then dismissed by the State, and pleading guilty a to a newly-filed charge for an agreed-upon recommended sentence—is not the same form contemplated by the statutory scheme governing deferred disposition agreements.")).

As such, if this Court applies the *Molleur* rationale, the "successful result" established by the deferred disposition agreement is void and unenforceable on its face. Thus, even if this argument is meritorious, the application of this rationale does not result in the relief requested by the Defendant (Blue Br. at 12,

25, 35-36)—it would result in the vacatur of the trial court's order with the direction to the trial court to permit withdrawal of the Defendant's guilty plea to Count 2 DV Assault (Class D) and reinstate the two felony counts that the State dismissed as part of the agreement made when the Defendant entered into the deferred disposition.

"Whether a material breach has occurred is a question of fact that [this Court] review[s] for clear error." *H&B Realty, LLC v. JJ Cars, LLC*, 2021 ME 14, ¶ 16, 246 A.3d 1176. This Court will "examine the record, and the reasonable inferences that may be drawn from the record, in the light most favorable to the trial court's judgment to determine if the facts are supported by competent evidence." *Cellar Dwellers, Inc. v. D'Alessio*, 2010 ME 32, ¶ 15, 993 A.2d 1.

"A material breach of contract is a nonperformance of a contractual obligation that excuses the injured party from further performance and justifies the injured party in regarding the whole transaction as at an end." *H&B Realty, LLC*, 2021 ME at ¶ 16, 246 A.3d 1176. In other words, a material breach of contract "excuses further performance by the non-breaching party." *Morin Bld. Products Co., Inc. v. Atlantic Design and Const. Co., Inc.*, 615 A.2d 239, 241 (Me. 1992); *see also* Restatement (Second) of Conts. § 241 (discussing the five considerations that are "significant" for determination of whether the failure to perform constitutes a material breach).

There is no dispute that the Defendant materially breached the two substantive terms of the deferred disposition that are core to the parties' agreement: completion of DVIP and, at the very least, completing a substance abuse evaluation. (A. at 19, 31; 9-23-24 Tr. at 61 (And the question is—first of all, he has not completed the CDVIP. So . . . that's been acknlowedged."). The trial court's finding was not clear error: "the Defendant's failure to comply with the two . . . requirements of the agreement, although excusable, is also material;" thus, the State's performance was excused. (A. at 25, Order at 9.)[9]

Here, the Defendant's failure to complete DVIP and the substance abuse evaluation are material breaches of the deferred disposition agreement (*i.e.*, contract with the State) and rendered the contract voidable. *Dahlem v. City of Saco*, 2024 ME 32, ¶ 29, 314 A.3d 280 ("Furthermore, '[t]he distinction between *void* and *voidable* is often of great practical importance. Whenever technical accuracy is required, *void* can be properly applied only to those provisions that are of no effect whatsoever—those that are an absolute nullity.'" (quoting *Void*, Black's Law Dictionary (11th ed. 2019))). Thus, the State was excused from further performance and was not required to file new charges.

[9] Furthermore, the Legislature has identified that DVIP is a preferred condition of probation for probationary sentences involving convictions for domestic violence, including by requiring the court to make findings on the record for the reasons for not imposing DVIP as a probation condition. 17-A M.R.S. § 1807(4) (2025).

Conveniently, the Defendant argues that Restatement Second of Contracts, which discusses whether an excused non-occurrence of a necessary condition makes the contract unenforceable, is not to be considered by a court when determining whether to enforce the plain, unambiguous terms of a deferred disposition agreement. (Blue Br. at 28-29.) The Defendant pursues this argument despite this Court's directive that a "deferred disposition agreement is a contract between the defendant and the State and *must* be interpreted accordingly." *Palmer*, 2016 ME at ¶ 13, 145 A.3d 561 (emphasis added). In other words, the Defendant argues selective application of law to suit his argument.

Turning to the Defendant's second argument raised for the first time—that 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" due to a supervening impractical event—this Court should decline to address this argument because it was not raised before the trial court and, more importantly, the Defendant failed to avail himself of section 1902(2) and (3) provisions that required him to file a motion to modify the terms of the deferred. (Blue Br. at 30-31.)

"The doctrine of impracticability discharges a party's duty to render performance '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.'" *SMS Financial Recovery Servs., LLC v. Samaritan Senior Village, Inc.*, 142 F.4th 39, 44 (1st Cir. 2025) (quoting Restatement (Second) of Conts. § 261) (alterations omitted). The companion rule to the doctrine of impracticability is "frustration of purpose" that "provides the flip side of the same principle: "Where a party's principal purpose is substantially frustrated 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 remaining duties to render performance are discharged." *SMS Financial Recovery Servs., LLC*, 142 F.4th at 44 (quotation marks and alterations omitted).[10]

The Defendant discusses the requirements of section 1902 that "specifically provide[] for the ability of defendants who are on deferred dispositions to be relieved of certain requirements upon a showing of an 'unreasonable burden.'" (Blue Br. at 32 (quoting 17-A M.R.S. § 1902(2)). This is precisely what the State has argued—and continues to argue—that the Defendant was *obligated* to do before he appeared at sentencing; nevertheless,

[10] By entering into the deferred disposition agreement, the Defendant received a substantial benefit whereby the State dismissed two felony counts of the Indictment in exchange for a guilty plea to the deferred with the conditions as outlined with the substantive conditions being completing DVIP and engaging in a substance abuse evaluation—Domestic Violence Aggravated Assault (Class B) and Domestic Violence Criminal Threatening with a Dangerous Weapon (Class C). (A. at 17, Order at 1; A. at 8, 28-29, 30-31.)

he chose to never file such a motion and, instead, proceed to sentencing pursuant to section 1903(1). (A. at 21-22, Order at 5-6; State's Memorandum on the Remedy for a Finding of Excusable Failure to Comply with the Deferred Disposition Agreement at 4.) In other words, the interplay between sections 1902 and 1903 compliment principles of contract law, including the doctrines of impracticability and frustration of purpose.

Based on the trial court's findings and all reasonable inferences drawn from the record, *Cellar Dwellers, Inc.*, 2010 ME at ¶ 15, 993 A.2d 1, the Defendant took zero steps to engage in DVIP or obtain a substance abuse evaluation *before* he suffered his knee or head injuries sometime in the Fall of 2022 *after* he had entered into the deferred disposition agreement on July 7, 2022. (A. at 19, Order at 3; A. at 30-31.) Moreover, the trial court was not presented with this newly discovered argument that the Defendant raises before this Court. Nevertheless, were this Court to consider the interplay between a material breach and the doctrine of impracticability or frustration of purpose, this Court should conclude that the remedy available to the Defendant for his excused breach of contract, even under the doctrine of impracticability, was to file a motion to modify the terms of the deferred as required by section 1902 to relieve him of that obligation.

C. The United States and Maine Constitutions' Separation of Powers Provisions Do Not Require the State to File a New Charging Instrument Where the Trial Court Found that the State was Excused from Performance of the Deferred Disposition Agreement.

The Defendant contends that the Separation of Powers doctrine "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," and that the trial court's ruling on this issue "effectively provides that [M.R.U. Crim. P.] 11A(f) is an unconstitutional violation of the separation of powers doctrine" because the result of the deferred "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." (Blue Br. at 33, 34.)

This Court reviews constitutional interpretation questions de novo. *State v. Reeves*, 2022 ME 10, ¶ 42, 268 A.3d 281. This Court's "primacy approach requires [it] to analyze claims under the Maine Constitution before analyzing claims under the federal constitution." *State v. McLain*, 2025 ME 87, ¶ 29, --- A.3d ---. "In interpreting the Maine Constitution, we look first at the text and then at Maine precedent to determine whether either provides a definitive answer to the question posed. If they do not, we proceed to examine, without limitation, the general purpose of the provision at issue, its historical context, any related statutes, and the common law, together with sociological and

economic considerations and relevant precedent from other jurisdictions." *Id.* at ¶ 30.

Article III of the Maine Constitution established the separation of powers.

> **Section 1. Powers distributed.** The powers of this government shall be divided into 3 distinct departments, the legislative, executive and judicial.
>
> **Section 2. To be kept separate.** No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

Similarly, the United States Constitution divides the government into three co-equal branches of government: legislative, executive, and judicial. U.S. Const. art. I, II, and III. "When any Branch acts, it is presumptively exercising the power the Constitution has delegated to it." *INS v. Chadha*, 462 U.S. 919, 951 (1983). By "divid[ing] the delegated powers of the new federal government into three defined categories, [the Constitution sought] to assure, as nearly as possible, that each Branch of government would confine itself to its assigned responsibility. The hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objectives, must be resisted." *Id.* At the federal level, the "Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *U.S. v. Nixon*, 418 U.S. 683, 693 (1974).

Maine's Separation of Powers clause, however, is interpreted in a more exacting manner than that of the federal Constitution. "In interpreting Article III, [this Court has] stated: 'the separation of governmental powers mandated by the Maine Constitution is much more rigorous than the same principle as applied to the federal government.'" *In re Dunleavy*, 2003 ME 124, ¶ 6, 838 A.2d 338 (quoting *State v. Hunter*, 447 A.2d 797, 799 (Me. 1982)) (alterations omitted). Each of the three branches of government are "severally supreme within their legitimate and appropriate sphere of action. All are limited by the constitution." *Ex parte Davis*, 41 Me. 38, 53 (1856). "If the court impermissibly interferes with an executive function, the doctrine of the separation of powers is implicated." *State v. Pelletier*, 2019 ME 112, ¶ 11, 212 A.3d 325.

"It lies within the province of the executive branch of the State through the offices of its attorneys to expose to a public trial any person charged with a violation of the law." *In re Cox*, 553 A.2d 1255, 1258 (Me. 1989); *State v. Fixaris*, 327 A.2d 850, 853 (Me. 1974) ("The executive department of government is charged with seeing to the faithful execution of the laws."). "A statute which purports to give the judicial branch of government the right to determine on its own motion when prosecution of a criminal case will be had and when it will not, is of doubtful constitutional validity." *Fixaris*, 327 A.2d at 853. "Should the

judicial branch of government be permitted to usurp a function assigned by the Constitution to the executive department, 'it would come to pass that the possession by the Judicial Department of power to permanently refuse to enforce a law would result in the destruction of the conceded powers of the other departments and hence leave no law to be enforced.'" *Id.* (quoting *Ex parte United States*, 242 U.S. 27, 42 (1916)).

The trial court determined, applying the primacy approach, that "it cannot order the State to perform its obligations under the contract that would result in the imposition of the 'good outcome'" because the Separation of Powers doctrine barred the trial court from so ordering. (A. at 26, Order at 10.) The trial court noted, however, that "if the Defendant *had* complied with the requirements of the agreement and yet the State refused to dismiss the Domestic Violence Assault charge and file an information charging Domestic Violence Reckless Conduct, the analysis may be different." *Id.* (emphasis in original) (citing M.R.U. Crim. P. 11A(f)). Were that the case, the trial court would have acted within its power to accept and enforce plea agreements. *E.g.*, M.R.U. Crim. P. 11A(f). This result is consistent with the plain language of section 1903 and the statutory history surrounding the court's authority to only impose sentence as a final result for the deferred disposition agreement. *Supra* at 30 n.8 (briefly discussing the statutory history of the final disposition statute for

deferred disposition agreements); *compare id.* (regardless of whether the person "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"); *with* 17-A M.R.S. § 1348-B(1) (2004) (providing that if a person complied with the deferred conditions, the "court shall impose a sentence of unconditional discharge").

To require the State to bring a new charging instrument and new charge where the trial court determined that the deferred disposition contract was materially breached by the Defendant, albeit excused, would violate separation of powers principles of the Maine and United States Constitutions.

For the first time, the Defendant suggests that the trial court could have permitted him to withdraw his guilty plea pursuant to M.R.U. Crim. P. 11A(f). (Blue Br. at 12, 33; *see also* Oct. 31, 2024, Letter to Justice Larson.) It is not as the Defendant suggested that he "did everything he was able to do; he was not able to do one part of the agreement through no fault of his own." (Oct. 31, 2024, Letter to Justice Larson.) Even before the Defendant suffered injuries to his knee or head, which occurred *after* he entered into the deferred disposition agreement, the trial court found that the Defendant did not complete or even begin to engage in DVIP or a substance abuse evaluation. (A. at 18, Order at 2.)

The State concedes that at the September of 2024 hearing on the deferred disposition, if the trial court had decided that it would permit the Defendant to withdraw his guilty plea to Count 2 Domestic Violence Assault, it could have done so. Also, the trial court could have dismissed Count 2 as a sanction if it believed that the State had, in fact, "reneged" on the plea agreement. The trial court did not so order. These options are all contemplated by M.R.U. Crim. P. 11A(f) and were not considerations that the trial court determined to be appropriate based on the facts as presented by the Defendant and arguments by the parties. (*See* A. at 17-27, Dec. 12, 2024, Order.)

Here, were this Court to require the State to dismiss Count 2 and file a new Count 4 Domestic Violence Reckless Conduct by Information, the Judicial Branch would usurp the Executive Branch function to prosecute the laws by requiring the State to fulfill the successful result of the deferred disposition agreement by filing a new charging instrument where the trial court found that the Defendant, although excusable, materially breached the terms of the deferred disposition agreement. The United States and Maine Constitutions do not so permit.

CONCLUSION

For the foregoing reasons, the State of Maine respectfully requests that this Court dismiss the Defendant's appeal for lack of jurisdiction or, in the

alternative, affirm the trial court's December 12, 2024, Order and subsequent sentencing on Count 2 Domestic Violence Assault (Class D). (A. at 13-16, 17-27.)

Dated: 09/25/2025

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CERTIFICATE OF SERVICE

I, Katherine M. Hudson-MacRae, certify that, with the electronic filing of this Brief, will electronically serve a copy of the "Brief of Appellee" to the Appellant's attorneys of record, Walter F. McKee, Esq., at wmckee@mckeemorgan.com and Kurt C. Peterson, Esq., at kpeterson@mckeemorgan.com. Following acceptance of the electronic filing of this Brief, I further certify that I will mail two copies, postage prepaid, of the "Brief of the Appellee" to the Appellant's attorneys of record at 133 State Street, Augusta, Maine 04330.

Dated: 09/25/2025

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