

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. SRP-25-288

STATE OF MAINE,

Appellee

v.

JOSEPH MURRAY,

Appellant

ON APPEAL from the Cumberland County
Unified Criminal Docket

APPELLANT'S BRIEF

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INTRODUCTION

Joseph Murray is a man in his fifties with borderline intellectual functioning and an IQ of 77. He has the cognitive capacity of a teenager and has required family care his entire life. Despite being presented with information about these profound limitations during sentencing, the Sentencing Court's findings contain not a single word acknowledging Mr. Murray's intellectual disabilities or analyzing how they affect his culpability. The Sentencing Court disregarded a material mitigating factor that constitutional principles and this Court's precedent recognize as inherently relevant to culpability.

Furthermore, it double-counted "grooming behavior" at both steps of its *Hewey* analysis. It also converted Mr. Murray's own childhood sexual victimization from a mitigating factor into an aggravating one, reasoning that he should have known better because he experienced the same trauma.

These errors, individually and cumulatively, resulted in a sentence that violates every measure of proportionality and fundamental fairness that Maine law requires. This Court should vacate the sentence and remand for resentencing.

PROCEDURAL HISTORY

Joseph Murray was charged by a complaint filed on July 27, 2023, with Unlawful Sexual Contact, under 17-A M.R.S. § 255-A(1)(E-1) (Count 1), and two counts of Visual Sexual Aggression Against a Child, under 17-A M.R.S. § 256(1)(B) (Counts 2 and 3). App. 1. He was indicted on those charges on December 8, 2023. App. 4, 23-24.

On October 28, 2024, Mr. Murray entered a plea on all three counts. App. 5. At a sentencing hearing held on May 7, 2025, Mr. Murray was sentenced to the statutory maximum sentence for a Class C felony, five years on Counts 2 and 3, with the two counts concurrent with each other. App. 7-8; 21-23. He was then sentenced to a consecutive eight years, with all but two years suspended, with twelve years of probation on Count 1. Id.

A timely notice of appeal and an application for a sentencing appeal were filed on May 21, 2025. App. 9. The direct appeal was voluntarily dismissed on July 24, 2025. On August 8, 2025, this Court granted leave to appeal the trial court's sentence.

STATEMENT OF FACTS

Joseph Murray, known as Joey to his parents, is a man in his fifties who, due to his cognitive delays and mental limitations, has a functional age in his teens. *See*

Def.'s Sent. Memo. p. 5. With an IQ calculated to be 77, he is in a stage of borderline intellectual functioning. *Id.* He grew up a target of scorn by those his age and abuse by those older. *Id.* He has never been able to be fully employed and has been cared for by his family his entire life. *Id.* Before the events that led to this case, Mr. Murray had no criminal record. App. 16.

The facts of the case were not in dispute; Mr. Murray never denied the allegations once they came to light. App. 16-17. Mr. Murray was a close family friend of the victims, L.R. and H.R., and their family. App. 13. They called him “Uncle Joe.” *Id.* Even after reporting the abuse, the two girls were worried that Mr. Murray would get in trouble. *Id.* The indictment alleged conduct during the years 2019 through 2023, so the two girls were, at times, between the ages of three and nine during the period of abuse. App. 11.

Mr. Murray admitted to exposing himself to the girls. App. 12. While doing that, he would ask the girls to urinate over him into a diaper, or he would urinate on them. *Id.* He would masturbate at some point during either type of act. *Id.* He would also, at times, touch the girls’ genitals. *Id.* Mr. Murray admitted to law enforcement that L.R. had touched his genitals. *Id.*

The abuse was disclosed when, in July 2023, the girl’s mother found them engaging with each other in similar acts of urination. App. 13. The girls were

interviewed by law enforcement and by a forensic interviewer with the Child Advocacy Center, and detailed this abuse. App. 12-13. L.R. said that Murray would ask them continually to engage in the abuse, but said they would not get in trouble if they said no. App. 13.

Mr. Murray entered a plea of guilty to all three counts without a plea deal. App. 16. At the sentencing hearing, after hearing arguments from both sides, the Sentencing Court conducted the three-step *Hewey* analysis, and set the basic sentence of Count 1 at “between seven and eight years.” App. 13-14. It set the basic sentence of Counts 2 and 3 at the maximum sentence of five years. App. 14. In setting these basic sentences, the Sentencing Court outlined the various factors it used in determining those sentences, such as the ages of the victims, who were three and nine years old when the conduct was likely to have begun, App. 12-13, and how Mr. Murray appeared to be engaging in grooming behaviors, App. 13. The Sentencing Court also examined the nature of the acts that fulfill the elements of each type of charge. App. 12-13. In setting the basic sentence for all three charges, the Sentencing Court noted Mr. Murray was a person of trust with the victim’s family, who had a close relationship with the victims. App. 13. The Sentence Court took note of its estimation that Mr. Murray engaged in grooming behavior, including getting them to engage in secrecy about the acts. App. 14.

Finally, in trying to define the continuum of sentences for each charge, the Sentencing Court found that there were essentially no comparable sentences for the Visual Sexual Aggression charges. App. 16. Further, it noted there was very little information on *basic* sentences in the comparable cases offered by either side when it came to the unlawful sexual contact charge. App. 15-16.

In determining the second step, the Sentencing Court noted the mitigating factors, including Mr. Murray's lack of a criminal record. App. 16. He also accepted responsibility for his actions, from admitting it when first confronted with the allegation to entering a guilty plea when there was no plea deal. App. 16-17. He had also entered counseling in the six months before the sentencing, though not before the plea. App. 17. The Sentencing Court also noted Mr. Murray was a victim of abuse himself, but said that could be either a mitigating factor or an aggravating one. *Id.*

The Sentencing Court then noted what it viewed as aggravating factors. The Sentencing Court noted these were repeated acts that had a significant impact on the victims. App. 16-17. Both girls have had behavioral issues in the aftermath of the abuse, both acting out, App. 18, and demonstrating the same acts of abuse on their own, App. 19. Further, the girls' families have had impacts of their own, given Mr. Murray's position of trust. App. 18. Finally, the Sentencing Court once

again noted what it described as grooming behavior by Mr. Murray as an aggravating factor in step two of the analysis. The Sentencing Court determined the “aggrava[ting] outweigh the mitigating factors, but only slightly.” App. 19. Having already set Counts 2 and 3’s basic sentence at the statutory maximum, the Sentencing Court unsurprisingly kept the maximum sentence at five years. *Id.* Similarly, the Sentencing Court set the maximum sentence of Count 1 at eight years. *Id.*

In trying to determine how much of the sentence should be suspended in step 3 of the *Hewey* analysis, the Sentencing Court noted that it viewed the conduct of the Class C felonies to be “more pervasive” than that of the Class B unlawful sexual contact. *Id.* While finding the behavior did not amount to a “crime spree,”

It certainly is a criminal episode because of the duration of time that it happened and also the seriousness of the criminal conduct involving either a single criminal episode or multiple criminal episodes and where the seriousness of that conduct requires imprisonment in excess of the maximum available for the most serious offense.

App. 20. Therefore, “to maximize both the gravity of the offense and the conduct — appropriately matching the conduct while at the same time providing for services and supervision of Mr. Murray,” the Sentencing Court ordered some of the sentence suspended. App. 21. It imposed the statutory maximum sentence for a

Class C felony: five years on Counts 2 and 3, concurrent, with a consecutive eight years, all but two years suspended, and twelve years of probation on Count 1. Id.

That is the Court's analysis as to what an appropriate period of incarceration is for this conduct, while, at the same time, maximizing the available probation resources to supervise Mr. Murray, both for himself and his rehabilitation, as well as the community at large, and the supervision of him in the future.

Id.

This appeal timely ensued.

ISSUES ON APPEAL

- I. Whether the Sentencing Court committed reversible error by failing to consider Mr. Murray's documented intellectual disabilities as a mitigating factor.
- II. Whether the Sentencing Court imposed a disproportionate sentence by setting basic sentences at statutory maximums without justification and imposing consecutive sentences without adequate explanation.
- III. Whether the Sentencing Court improperly double-counted grooming behavior and misused Mr. Murray's victimization history in calculating the sentence.

SUMMARY OF THE ARGUMENT

The Sentencing Court committed multiple reversible errors that resulted in a constitutionally disproportionate sentence. Most fundamentally, the Court completely ignored Mr. Murray's documented intellectual disabilities, a permanent

cognitive impairment with an IQ of 77 that Maine law and constitutional principles recognize as inherently mitigating. The Court's sentencing findings contain no mention of these disabilities and no analysis of how they diminish culpability. This complete silence regarding a material sentencing factor constitutes both an abuse of discretion and an obvious error requiring remand.

The Sentencing Court compounded this error by imposing a thirteen-year sentence through an outcome-driven process that set basic sentences at statutory maximums without adequate justification. The Court did not explain how the charges warranted maximum sentences despite acknowledging the difficulty of placing these offenses on a continuum, and it imposed consecutive sentences without explaining why such severity was necessary. When compared with similar cases in which defendants with multiple charges and victims received unsuspended sentences ranging from six months to eighteen months, Mr. Murray's seven-year unsuspended sentence is grossly disproportionate.

Finally, the Sentencing Court improperly double-counted what it characterized as "grooming behavior" at both step one and step two of the Hewey analysis. Grooming is inherently subjective, and Maine cases uniformly treat it as a step-two aggravating factor. The Court further abused its discretion by treating Mr. Murray's childhood sexual victimization as both a mitigating and aggravating

factor, reasoning that he should, in essence, know better because he experienced abuse himself. This wrongly converts a recognized mitigating factor into an aggravating one.

These errors, individually and cumulatively, require this Court to vacate the sentence and remand for resentencing that properly considers all relevant factors and applies constitutional and statutory sentencing principles correctly.

ARGUMENT

I. The Sentencing Court failed to account for Mr. Murray's intellectual disabilities as a mitigating factor.

The Sentencing Court committed reversible error by failing to consider Mr. Murray's documented intellectual disabilities as a mitigating factor. Despite formal competency evaluations, a functional IQ of 77, professional counseling reports documenting cognitive and psychosocial impairments, and an explicit argument by defense counsel, the Court's sentencing findings make no mention of these disabilities and articulate no weight, if any, they received. This complete silence disregards a material sentencing factor that this Court has repeatedly recognized as legitimate and significant to culpability determinations.

A. Standard of review

Failure to consider Mr. Murray’s intellectual disabilities impacts both the propriety and legality of the sentence imposed.¹ Sentencing errors of constitutional proportion are viewed by this Court *de novo*. See *Murray-Burns* at ¶ 18; *State v. Dobbins*, 2019 ME 116, ¶ 51, 215 A.3d 769.

Failure to consider a material fact when determining the maximum sentence is reviewed for an abuse of discretion. *State v. Ketcham*, 2024 ME 80, ¶ 35, 327 A.3d 1103, 1113. The setting of the final sentence is reviewed for “a disregard of sentencing factors or an abuse of the court’s sentencing power.” *Id.* The Court reviews whether, at each step of the sentencing process, the sentencing court articulated which sentencing goals the sentence serves. *Id.*

However, if this Court believes the issue was not sufficiently raised below, then the obvious error standard of review applies. See *State v. Watson*, 2024 ME 24, ¶ 18, 319 A.3d 430.²

¹ “The discretionary appeal...is broad enough to include claims of facial illegality.” *State v. Murray-Burns*, 2023 ME 21, ¶ 16, 290 A.3d 542, 548 (citing *State v. Tellier*, 580 A.2d 1333, 1333 n.1 (Me. 1990)).

² Mr. Murray believes this was sufficiently raised to the Sentencing Court. He asked the Court to consider his intellectual disabilities in mitigation when it argued for sentencing. See Sentencing Transcript (“Tr.”) at 22, Defendant’s Sentencing Memorandum, pp. 5-6 and attached exhibits. He did not raise them in the context of a constitutional argument, but in mitigation in the Sentencing Court’s *Hewey* analysis. Mr. Murray takes the position that this is sufficient to preserve the argument for an abuse-of-discretion review. “An issue is raised and preserved if there was a sufficient basis in the record to alert the court and any opposing party to

B. Constitutional principles require consideration of intellectual disabilities as inherently mitigating.

Both the Eighth Amendment and Article 1, Section 9 require a court to consider the intellectual deficiencies of a defendant before it. There is a fundamental sentencing principle that “punishment should be directly related to the personal culpability of the criminal defendant.” *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (mitigating factors of mental limitations must be considered in death penalty cases), *abrogated by Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242 (2002) (by finding the execution of “[intellectually disabled³]” criminals as “cruel and unusual punishment). “[Intellectual disability] has long been regarded as a factor that may diminish an individual’s culpability for a criminal act.” *Penry at 319* (citing ABA Standards for Criminal Justice 7–9.3, commentary, at 463).

Individualized sentencing is essential because “the definition of crimes generally has not been thought automatically to dictate what should be the proper penalty.” *Lockett v. Ohio*, 438 U.S. 586, 602 (1978). When there is sentencing discretion, meaning no mandatory minimum penalties are set, the judge’s

the existence of that issue.” *Verizon New England, Inc. v. Pub. Utils. Comm’n*, 2005 ME 16, ¶ 15, 866 A.2d 844 (internal quotation omitted)

³ The term “intellectual disability” is now used in place of the term “mentally retarded,” the phrase used by the *Penry* and *Atkins* courts. See *Hall v. Florida*, 572 US 701, 704-05, 134 S.Ct. 1986, 1990 (2014).

“possession of the fullest information possible concerning the defendant’s life and characteristics is highly relevant – *if not essential* – to the selection of an appropriate sentence.” *Id.* at 602-03 (cleaned up and emphasis in original).

In *Atkins*, the Supreme Court explained why intellectual disabilities reduce culpability and should be considered in sentencing:

[Intellectually disabled] persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition, they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders. Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.

Atkins at 318 (internal footnotes omitted). More recently, in *Tennard v.*

Dretke, 542 U.S. 274, 287 (2004), the Supreme Court held, in the context of capital cases, that evidence of developmental and cognitive deficits must be considered as mitigating factors because impairments in intellectual function are “inherently mitigating,” regardless of whether such characteristics affected the commission of the crime. Mitigating evidence presented at sentencing “is relevant because of the belief, long held by this society, that

defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse.” *Penry at 319 (citing California v. Brown, 479 U.S. 538, 545 (1987) (O’Connor, J, concurring))*.

There is no legitimate reason to limit this requirement solely to capital cases. Scholars have been making the case that there is no intellectual reason to create two separate lines of cases when dealing with the sentencing of defendants with mental disabilities. *See e.g. Miriam S. Gohara, Grace Notes: A Case for Making Mitigation the Heart of Noncapital Sentencing, 41 Am. J. Crim. L. 41, 42 (2013)* (“[A]s it has in capital cases, familiarity with the mitigating force of social history may serve as a powerful basis for empathy and amelioration of overly punitive noncapital punishment.”); Paul Marcus, *Does Atkins Make A Difference in Non-Capital Cases? Should It?*, 23 Wm. & Mary Bill Rts. J. 431, 456 (2014) (“*Atkins* was all about sentencing-albeit in the death penalty context-and the Court was quite explicit in finding that mentally retarded defendants were less culpable than others.)

To comport with constitutional principles, this Court should make it clear that a sentencing court must consider whether a defendant’s mental disabilities are mitigating factors.

C. *Goncalves* supports the requirement to consider non-transient mental impairments in mitigation.

This Court’s recent decision in *State v. Goncalves*, 2025 ME 70, seemingly rejected this argument, at least when it came to transient, emotional conditions. However, *Goncalves* is not only distinguishable but supports the need to consider Mr. Murray’s intellectual limitations in sentencing.

In *Goncalves*, this Court was asked to decide the question of whether the evidence of a “blind jealous rage” must be considered as an abnormal condition of the mind in mitigation for sentencing. ¶ 39. In declining to do so, the court explicitly stated that it “need not decide whether the Eighth Amendment ever requires the consideration of an abnormal condition of mind as a mitigating factor when a court sentences an adult to a term of years.” *Id.* at ¶ 40. The Court assumed without deciding that such conditions might be constitutionally required as mitigating factors, but concluded that “blind jealous rage” was not such a condition. *Id.*

The Court carefully distinguished the transient emotional state in that case from “the kind of permanent condition—such as cognitive, intellectual or developmental impairment or disability—that the Supreme Court has held is inherently mitigating, at least in capital cases.” *Id.* at ¶ 40 (emphasis added) (citing *Tennard*, 542 U.S. at 287). *Goncalves* noted that the trial court had

explicitly stated it would have considered an abnormal condition as mitigating “had it been a biologically based mental illness” or “a developmental disability.” *Id.* at ¶ 24.

Mr. Murray’s case, on the other hand, presents exactly what *Goncalves* identified, *see id.* at ¶ 39-40, as potentially requiring mitigation, because:

- He suffers from a permanent condition, not a transient one,
- There are cognitive and intellectual impairments, rather than emotional rage,
- It is developmental in nature, not situational, and
- His limitations have a biological/neurological basis (documented through formal evaluation)

Maine’s sentencing statutes give trial courts broad discretion to consider mitigating factors. 17-A M.R.S. § 1602(1)(B) (requiring courts to consider “all other relevant sentencing factors, both aggravating and mitigating”). The question is not whether the Constitution compels consideration, but whether the trial court committed a reversible error when it gave no consideration whatsoever to documented intellectual disabilities. In Mr. Murray’s case, it did.

D. Mr. Murray’s intellectual disability must be considered in light of the fundamental fairness principles.

Mr. Murray suffered from cognitive and psychosocial impairments that influenced his actions and his understanding of the wrongness of those actions. His intellectual disabilities were extensively documented and presented to the Sentencing Court. Competency evaluations under Title 15 M.R.S. § 101-D for competency and other issues were filed in this case, establishing Mr. Murray's cognitive limitations. *See* App. 5. Defense counsel specifically raised the issue during sentencing. Tr. 22. Further, he presented evidence of:

- Mr. Murray’s functional IQ of 77⁴ (*see Defendant’s Sentencing Memorandum* at 5-6);
- His cognitive and psychosocial impairments that influenced both his actions and his understanding of the wrongness of those actions (*Id.*);
- A counseling letter from Mr. Murray's counselor documenting these limitations (*Id.* at 12-13).

⁴ This level puts him on a borderline intellectual function level. “A person with mild intellectual disability generally has an IQ between 50 and 69, limitations in adaptive functioning, and experiences onset during the developmental period.” Katie Kronick, *Intellectual Disability, Mitigation and Punishment*, 65 B.C.L. Rev. 1561, 1623 (2024). One with “an IQ of 72, when considering the five-point potential standard error measurement” and “could either be in the range of mild intellectual disability or at the low end of normal intelligence.” *Id.* (*quoting Hall v. Florida*, 572 U.S. 701, 712-14 (2014) (describing the standard error of measurement for IQ tests and noting that for an IQ of 71, a person's IQ could be between 66 (mild intellectual disability) and 76 (the low end of normal intelligence))).

Despite this evidence, the sentencing analysis was entirely silent as to whether Mr. Murray's intellectual disabilities constituted a mitigating factor.

Critically, this is not a matter of whether competency was implicated. Mr. Murray was found to be competent to stand trial. Instead, the issue is how society and the criminal justice system should consider intellectual limitations when determining appropriate punishment for wrongful conduct. The Supreme Court has made clear that competency to stand trial and reduced culpability due to intellectual disability are distinct concepts. *See Atkins*, 536 U.S. at 318-21. A defendant may understand right from wrong and be competent to stand trial, yet still have diminished culpability due to reduced capacity to understand and process information, learn from experience, engage in logical reasoning, and control impulses. *Id.* at 318. It was the Sentencing Court's obligation to determine whether Mr. Murray's documented limitations diminished his personal culpability when weighing mitigating factors.

The Sentencing Court had an obligation to consider how Mr. Murray's intellectual disabilities affected his culpability, not whether they rendered him incompetent. The Court's silence on this issue demonstrates a conflation of these distinct concepts. By failing to address whether Mr. Murray's documented cognitive limitations diminished his culpability, the Court essentially treated him

as having the same level of moral blameworthiness as an offender with average intellectual capacity. This approach is fundamentally inconsistent with the principle that “punishment should be directly related to the personal culpability of the criminal defendant.” *Penry*, 492 U.S. at 319.

The Sentencing Court’s failure to engage in this critical analysis amounted to reversible error.

E. The sentence imposed by the Sentencing Court was improper because it ignored a material sentencing factor.

Even if there was no constitutional requirement to consider Mr. Murray’s intellectual disabilities in sentencing, the purposes of 15 M.R.S. § 2155 must still be followed. The Sentencing Court gave zero indication that it considered Mr. Murray’s intellectual disabilities. A sentencing court may abuse its discretion when “a material factor deserving significant weight is ignored.” *State v. MacDonald*, 1998 ME 212, ¶ 17, 718 A.2d 195, 200 (internal quotation omitted). The Sentencing Court failure to consider a material factor, Mr. Murray’s intellectual limitations, amounted to an abuse of discretion.

This Court has consistently recognized that intellectual and cognitive limitations are appropriate mitigating factors in sentencing:

- *State v. Lovejoy*, 2024 ME 42, ¶ 27, 315 A.3d 744, 755 (traumatic brain injury is a “legitimate mitigating circumstance”);

- *State v. Carrillo*, 2021 ME 18, ¶ 45, 248 A.3d 193, 208 (“limited intellectual capacity and functioning...as a mitigating factor”);
- *State v. DeWalt*, 684 A.2d 1291, 1293 (Me. 1996) (fact that defendant suffered from long history of mental illness and emotional problems is a mitigating factor).
- *State v. Michaud*, 590 A.2d 538, 544 (1991) (that defendant suffered from a long history of mental illness and emotional problems is a mitigating factor, even when failure to take medication to control that illness is an aggravating factor)

The Sentencing Court’s failure to consider Mr. Murray’s intellectual disabilities as a mitigating factor was an abuse of discretion. Unlike the transient emotional state in *Goncalves*, Mr. Murray's intellectual limitations represent precisely the type of permanent cognitive impairment that the U.S. Supreme Court has recognized as inherently mitigating and that this Court's own jurisprudence treats as a legitimate mitigating circumstance. The complete absence of any analysis of this documented impairment in the Court's sentencing decision constitutes a disregard of relevant and material sentencing factors.

F. The Sentencing Court’s failure to consider Mr. Murray’s intellectual disabilities constitutes obvious error.

If this Court concludes the issue was not adequately preserved, the Sentencing Court’s complete failure to address Mr. Murray’s intellectual disabilities nonetheless constitutes obvious error requiring vacatur and remand. *See*

Watson at ¶34 (vacating a sentence and remanding for resentencing due to obvious error given “the importance of the liberty interest at stake . . . and the need to ensure that due consideration is given to all relevant and proper sentencing factors—and no improper factors—when determining a sentence”). “Error is obvious when there is (1) an error, (2) that is plain, and (3) that affects substantial rights. If these conditions are met, we must also conclude that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings before we vacate a judgment on the basis of the error.” *Watson* at ¶ 18 (quotation marks omitted).

1. The error is plain.

The error here is the Sentencing Court's complete failure to acknowledge or address Mr. Murray's intellectual disabilities despite substantial evidence and explicit argument. The Court's written findings contain no mention of this factor—no acknowledgment, no analysis, no explanation of weight given or withheld. See App. 14-15. Compare with the trial court in *Goncalves*, which specifically addressed why it was not using it as a mitigating factor. ¶ 24. The Sentencing Court did address *other* mitigating and aggravating factors. It was silent on this issue, an indication that it did not consider it.

2. The error affected substantial rights.

To determine whether a sentencing error affects substantial rights, we consider whether there is “a reasonable probability that, but for the error, the [sentencing] court would have imposed a different, more favorable sentence.” *State v. Goncalves*, 2025 ME 70, ¶ 46, 340 A.3d 639, 651 (quoting *United States v. González-Castillo*, 562 F.3d 80, 83 (1st Cir. 2009)).

First, intellectual disabilities are exceptionally material to sentencing. Maine’s jurisprudence has clearly established cognitive limitations as significant, not marginal. *See Carrillo* at ¶ 45; *Lovejoy* at ¶ 27. Moreover, research demonstrates the significance courts appropriately give to such factors. A 2010 survey of federal judges found that 80% stated that diminished capacity is relevant to a downward departure, and 66% stated it is relevant to sentencing determinations within the Guidelines. Kronick, K., *Intellectual Disability, Mitigation, and Punishment*, 65 B.C. L. Rev. 1561, 1580-81 (2024). Mental and physical health factors were “around three times more likely than any other mitigating factor to correlate with a decreased sentence.” *Id.* at 1581.

Second, Mr. Murray’s IQ of 77 represents significant cognitive impairment. Cognitive limitations that make intellectual disability mitigating—reduced capacity to understand, reason, learn from experience, and control impulses, *see Atkins*, 536

U.S. at 318, exist on a continuum in a way that impacts culpability. Mr. Murray necessarily shares these limitations.

Third, the sentencing context demonstrates the probability of a different outcome. At step two, the Court weighed mitigating against aggravating factors and increased the basic sentence. The mitigating factors actually considered—no record, partial acceptance of responsibility, family relationships, work ethic—are relatively common and, as explained above, less directly related to culpability than intellectual disabilities. Had it properly considered Mr. Murray’s intellectual disabilities as a material mitigating factor, a factor this Court has held legitimate and that goes to the heart of capacity and culpability, there is more than a reasonable probability the balance would have shifted. The Court found that the aggravating factors outweighed the mitigating factors it identified. Adding a significant mitigating factor affecting culpability itself could well have changed that calculus.

3. The error seriously affects the fairness, integrity, and public reputation of judicial proceedings.

Failure to consider Mr. Murray’s intellectual disabilities undermines core principles of Maine sentencing law and creates arbitrary results inconsistent with this Court's precedent. It defeats individualized sentencing. Maine’s sentencing

scheme requires consideration of “all other relevant sentencing factors” and articulation of reasoning at each step. *See* 17-A M.R.S. § 1602(1)(B); *Ketcham* at ¶ 35. When a court fails to consider intellectual disabilities, which directly affect the capacity to understand, reason, and control behavior, the defendant is effectively sentenced as if he had average cognitive capacity despite documented evidence that he does not. This is not individualized sentencing; it is treating unlike cases alike.

Two defendants with similar offenses but different cognitive capacities could receive identical sentences – one whose intellectual limitations were considered correctly and another whose were ignored. Whether a defendant receives consideration of documented cognitive impairments should not depend on whether a particular judge remembered to address what appellate precedent establishes as relevant. This arbitrariness is precisely what the “all relevant factors” requirement seeks to prevent. *See State v. MacDonald*, 1998 ME 212, ¶ 19, 718 A.2d 195, 200 (vacating a sentence when the court failed to consider steps the defendant took to mitigate the impact of an arson).

The Sentencing Court’s complete failure to consider Mr. Murray’s intellectual disabilities constitutes obvious error.

II. The Sentencing Court imposed a disproportionately harsh sentence.

The Sentencing Court's overall sentence was imposed through a complex amalgam of concurrent and consecutive sentences. It reflects an outcome-driven reasoning rather than sound sentencing analysis. The Court set basic sentences at statutory maximums without adequate justification, failed to explain why consecutive sentences were appropriate, and provided no comparative analysis to similar cases. This approach resulted in a sentence that is greatly disproportionate to Mr. Murray's convictions and violates article I, section 9 of the Maine Constitution.

A. Standard of Review

This Court's standard of review in a sentencing appeal varies based on the part of the analysis at issue. The Court:

reviews de novo for misapplication of principle, the basic sentence imposed at the first step of the analysis, and the maximum sentence and the final sentence determined at steps two and three for an abuse of discretion. [It] reviews the sentencing court's analysis at each step to determine whether it disregarded the relevant sentencing factors or abused its sentencing power.

State v. Hansen, 2020 ME 43, ¶ 27, 228 A.3d 1082 (cleaned up).

The legality and propriety of a sentence is a question of law reviewed de novo. *See State v. Murray-Burns*, 2023 ME 21, ¶ 18, 290 A.3d 542, 549 (*quoting State v. Brockelbank*, 2011 ME 118, ¶ 15, 33 A.3d 925); *see also State v. Lopez*,

2018 ME 59, ¶ 13, 184 A.3d 880, 885. Further, the court reviews the Sentencing Court’s decision to impose consecutive sentences for an abuse of discretion. *See State v. Downs*, 2009 ME 3, ¶ 29, 962 A.2d 950. In its sentence-review capacity, this Court is obligated to consider the statutory factors detailed in 15 M.R.S. §§ 2154 and 2155. These factors must be applied to the review of the sentence “for misapplication of principle without deferring to the sentencing court.” *State v. Lewis*, 590 A.2d 149, 150 (Me. 1991) *overruled on other grounds by Alexandre v. State*, 2007 ME 106, ¶ 40, 927 A.2d 1155.

B. Sentencing statutory framework

Maine’s sentencing framework requires courts to consider all relevant factors and explain their reasoning at each step of the analysis. In reviewing multiple sentences, this Court applies the proportionality requirement of Article I, Section 9, and examines whether consecutive sentences were imposed correctly under 17-A M.R.S. § 1608(1). Consecutive sentences are permissible only when specific statutory criteria are met, including when “the seriousness of the criminal conduct involved in either a single criminal episode or in multiple criminal episodes...require[s] a sentence of imprisonment in excess of the maximum available for the most serious offense.” 17-A M.R.S. § 1608(1)(D).

Basic sentences must be placed on a continuum reflecting the severity of all possible ways to commit the offense. *State v. Hewey*, 622 A.2d 1151 (Me. 1993); 17-A M.R.S. § 1602. This Court has recognized that basic sentences at or near statutory maximums are rare and require substantial justification. *State v. Stanislaw I*, 2011 ME 67, ¶ 13, 21 A.3d 91. In reviewing a sentence, this Court’s analysis must start with the general objectives of sentence review set out by statute. *See* 15 M.R.S. § 2154. It does this by considering the propriety of the sentence and the manner of its imposition. *See* 15 M.R.S. § 2155.

C. Disproportional sentences violate article 1, section 9 of the Maine Constitution.

Article 1, section 9 of the Maine Constitution explicitly provides that “all penalties and punishments shall be proportioned to the offense.” Me. Const. art. I, § 9; *see State v. Bennett*, 2015 ME 46, ¶ 15, 114 A.3d 994, 1000.⁵ Furthermore, “all penalties and punishments shall be proportioned to the offense.” Me. Const. art. I, § 9, cl. 2.

⁵ The Eighth Amendment to the United States Constitution also provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. Maine’s constitutional protections are broader, however, *see State v. Weddle*, 2024 ME 26, 314 A.3d 234, 239, FN 7 (citing *State v. Stanislaw*, 2013 ME 43, ¶ 26, 65 A.3d 1242; and *Harmelin v. Michigan*, 501 U.S. 957, 982, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991)), and so given the Court’s primacy approach, *see State v. Norris*, 2023 ME 60, ¶ 13, 302 A.3d 1, only disproportionate arguments under article 1, section 9 are made here.

Under the Maine Constitution, whether a punishment is unconstitutionally disproportionate to the offense committed or is otherwise cruel or unusual are closely related, but not identical, questions. Unlike the Eighth Amendment, article 1, section 9 of the Maine Constitution explicitly separates the two protections into an affirmative command and a prohibition: ‘All penalties and punishments shall be proportioned to the offense’; ‘nor shall cruel nor unusual punishments be inflicted.’ (*quoting* Me. Const. art. I, § 9, cls. 2, 5). Thus, under the Maine Constitution, “a punishment can violate article 1, section 9 if it is disproportionate to the offense for which it is being imposed, even if it is not cruel or unusual in the sense that it is inherently barbaric.

State v. Lopez, 2018 ME 59, ¶ 14, 184 A.3d 880, 885 (cleaned up). Due process requires “that criminal adjudications are not conducted in an arbitrary manner and that terms of imprisonment are not imposed ‘on an ad hoc and subjective basis.’” *Beckles v. United States*, 580, U.S. 256, 266, 137 S. Ct. 886, 892 (2017) (*internal quotation omitted*).

This Court uses a two-part test to decide if a sentence is disproportionate under article 1, section 9.

First, we look to see whether a particular sentence is greatly disproportionate to the offense for which it is imposed. Second, if it is not greatly disproportionate, we examine whether it offends prevailing notions of decency. A sentence that fails either part of the test is unconstitutional.

State v. Lopez, 2018 ME 59, ¶ 15, 184 A.3d 880, 885 (cleaned up); *see also State v. Stanislaw*, 2013 ME 43, ¶29, 65 A.3d 1242, 1251. This Court has noted “only the

most extreme punishment decided upon by the Legislature as appropriate for an offense could so offend or shock the collective conscience of the people of Maine as to be unconstitutionally disproportionate, or cruel and unusual.” *Lopez* at ¶ 15.

The Sentencing Court imposed a total sentence of thirteen years in prison, but did so through a complicated mix of concurrent and consecutive sentences, including suspending six years of the consecutive sentence on the Unlawful Sexual Contact (“USC”) charge. The overlapping analysis of the individual counts and the decision whether to run sentences concurrently reinforced this impression and created a sentence that was greatly disproportionate to the acts for which Mr. Murray was convicted.

D. The Sentencing Court did not adequately justify the basic sentences it calculated or the maximum sentences it imposed.

The Sentencing Court’s outcome-driven analysis gave the impression that the Court had determined the final sentence first and then adjusted the calculations to fit that. The maximum sentence imposed on the visual sexual aggression counts illustrates the problematic nature of the sentences. As this court has noted, it is rare for a basic sentence to be set at or near the statutory maximum. *State v. Stanislaw I*, 2011 ME 67, ¶ 13, 21 A.3d 91; *see also State v. Bolduc*, 638 A.2d 725 (Me. 1994) (rejecting a statutory maximum sentence as basic sentence in manslaughter case);

State v. Corbett, 618 A.2d 222 (Me. 1992) (rejecting maximum as basic sentence in drug trafficking case).

In evaluating the nature and seriousness of the criminal conduct to determine the basic period of incarceration, consideration should be given to the basic period of incarceration that has been imposed for similar conduct of other offenders convicted of offenses within the same classification “to determine which act justifies the imposition of the most extreme punishment.”

Bolduc, 638 A.2d at 727.

Neither party offered any comparable sentences for the visual sexual aggression charges. The State did not offer any comparable sentences for any of the counts, either in its sentencing memorandum or at sentencing. Mr. Murray, on the other hand, offered six cases from the trial courts: overall sentences ranging from five to seven years, and unsuspended sentences ranging from six months to eighteen months to serve. *See Defendant’s Sentencing Memorandum* p.8-9. The cases offered by Mr. Murray had multiple charges, and some had multiple victims.

Id.

The Sentencing Court did not use them in its analysis. It attempted to outline the analysis by first stating the basic sentence for each charge.

Now, in determining the basic sentence, the Court must attempt to place the crime on the continuum of all manners in which the crimes of unlawful sexual contact and visual sexual aggression against a child may be committed. And for count I, the Court looks to all possible

sentences, taking into consideration those factors, the manners in which this crime can be committed. And in doing that, I've also referenced and looked at the comparable sentences, which were provided on this charge, and I put the basic sentence between seven and eight years.

Now, with respect to counts II and III, the Court makes that same analysis and does that same work to look at all the possible ways that the crime of visual sexual aggression can be committed. And I agree the conduct alleged in this really warrants a sentence in the upper end of the zero to five-year range. And I set the basic sentence on this at five years.

App. 13-14. The Sentencing Court then detailed some of the reasons why it set the sentence where it did. *See supra* Statement of Facts.

Furthermore, the Court did not justify how it established the seven-to-eight-year basic sentence range for the USC charge. Unlike the visual aggression charges, the Court did not even attempt to place it on a continuum, or in a quartile, or even compare it to other cases.

The Court recognizes that this is very difficult. It's a difficult task to do, and frankly, the way and manner in which our sentences are reported and what information is available to attorneys and to the Court, it's very difficult to look at comparable basic sentences. I also note that there are no comparables for the visual sexual aggression charges, which is not a surprise to the Court. And that is a crime, I think, that is less available for comparables, particularly for the reasons I just stated. So those are my basic sentences.

App. 16-17. In setting its basic sentence, the Sentencing Court did not provide a justification for setting the class C sentences at the statutory maximum; no insight

into how a sentence at the “upper end” of the continuum became a maximum sentence. The Sentencing Court’s analysis provides no insight into how it arrived at this maximum basic sentence, or, given the lack of comparable cases, how it even would have been on the “upper end” as the Court suggested.

The sentence imposed by the Sentencing Court was outcome-oriented and did not adequately consider the factors this Court requires to ensure proportionate sentencing. The lack of a clear explanation for how it arrived at the basic sentences undermines confidence that the sentence was fair and equitable.

E. The Sentencing Court failed to support why consecutive sentences were appropriate.

The Court at length described how it was lawful to run the two visual aggression sentences concurrently, but did not say why the same logic did not apply to the unlawful sexual contact charge. Nor did it explain why it *should* run the two sentences consecutively, only saying that it could. Instead, it conflated the two sentences to get a result it deemed fair.

In this case, I am going to impose some consecutive sentences, but I'm going to do it in a way that's different from what was requested from the State. I am doing it for -- to maximize both the gravity of the offense and the conduct -- appropriately matching the conduct while at the same time providing for services and supervision of Mr. Murray following this event because I do think that, even in the words of his own treatment provider, supervision will help warrant -- make sure that this conduct does not happen again.

...

That is the Court's analysis as to what an appropriate period of incarceration is for this conduct, while, at the same time, maximizing the available probation resources to supervise Mr. Murray, both for himself and his rehabilitation, as well as the community at large, and the supervision of him in the future.

App. 21. The overlapping analysis reinforced this impression, which is problematic because, when imposing consecutive sentences, the Court must conduct a separate sentencing analysis for each count. *See State v. Stanislaw I*, 2011 ME 67, 21 A.3d 91, 95, FN 6.

This Court has occasionally engaged in case comparisons to assess the appropriateness of a sentence relative to other similar cases. In *State v. Stanislaw II*, 2013 ME 43, ¶ 47, 65 A.3d 1242, 1256, to determine if consecutive sentences were proportional, the Court reviewed the unsuspended sentences of the following cases:

- *State v. Severy*, 2010 ME 126, 8 A.3d 715, in which the defendant was sentenced to six years of unsuspended imprisonment for repeatedly allowing and encouraging a seven or eight-year-old girl to rub his penis;
- *State v. Lavoie*, 2010 ME 76, 1 A.3d 408, in which the defendant was sentenced to five years of unsuspended imprisonment for reaching down the pants of a nine-year-old girl;
- *State v. Graham*, 2010 ME 60, 998 A.2d 339, in which the defendant was sentenced to three and a half years of unsuspended imprisonment for exposing himself to and touching the genitals of a nine-year-old girl; and

- *State v. Moores*, 2006 ME 139, 910 A.2d 373, in which the defendant was sentenced to three and a half years of unsuspended imprisonment for twice touching the genitals of a thirteen-year-old girl.

In finding that the trial court imposed a disproportionate sentence, this Court in *Stanislaw II* concluded that while the “total sentence is within the parameters of the sentencing statutes, the unsuspended portion of the period of imprisonment is grossly disproportionate to the crimes he committed when compared to the sentences imposed for the same or similar crimes, and some more serious crimes.” *Stanislaw* at ¶ 48.

This Court must comprehensively review Mr. Murray’s case, examining both the individual sentences and the overall combined sentence. From this viewpoint, the sentence is disproportionate and conflicts with Maine’s sentencing principles.

III. The Sentencing Court improperly double-counted grooming behavior and misused Mr. Murray's victimization history.

The Sentencing Court’s formulation for calculating a proper sentence was structurally flawed because it double-counted what it saw as “grooming behavior” in both the first and second steps of its sentencing calculations. Further, it improperly held Mr. Murray’s past history as a victim of abuse against him.

A. Standard of review

This court reviews claims of double-counting de novo. *State v. Plummer*, 2020 ME 143, ¶ 11, 243 A.3d 1184, 1187 (“By its nature, a double-counting claim relates to multiple steps of the sentencing analysis. More pertinently, the claim poses the question of whether the sentencing court misapplied a legal principle. We therefore review a double-counting claim de novo.”) The Court reviews other step-two determinations for an abuse of discretion. *Ketcham* at ¶ 35.

B. Objective vs. subjective factors

The Sentencing Court improperly considered what it believed to be “grooming” behavior in both the first and second steps of its *Hewey* analysis, resulting in impermissible double-counting. By twice counting a factor that should be counted only once, the court undermined the proportionality requirement of the Maine Constitution. ME. CONST., Art. I, sec. 9; see *State v. Stanislaw*, 2013 ME 43, ¶ 25, 65 A.3d 1242 (Section 9 protects against inequality in sentencing, inter alia); 15 M.R.S. § 2154(3) (sentence review meant to eliminate “unwarranted inequalities among the sentences of comparable offenders”).

A double-counting claim “poses the question of whether the sentencing court misapplied a legal principle” by considering the same factor at both step one and step two of the analysis. *State v. Plummer*, 2020 ME 143, ¶¶ 11-14, 243 A.3d

1184. “[I]f a court considers [specific facts] to set a lengthy basic sentence on the primary crime, it should not use those identical facts as aggravating factors to add additional years to the basic sentencing when arriving at the maximum sentence.” *State v. Gray*, 2006 ME 29, ¶ 17, 893 A.2d 611. Although a factor must be considered only once and at the proper step in the analysis, “the same fact can generate multiple factors.” *State v. Ellis*, 2025 ME 56 ¶ 18, 339 A.3d 794 (quoting *Plummer* ¶ 14). “A sentencing court may consider the same facts at steps one and two of its sentencing analysis, provided that it does so for different purposes.” *Id.*

In considering the nature of the offense in step one, a sentencing court must be “as objective a manner as possible.” *State v. Stanislaw*, 2011 ME 67, ¶ 9, 21 A.3d 91, 95 (citing *State v. Shulikov*, 1998 ME 111, ¶ 23, 712 A.2d 504, 511 (stating that the considerations in the first step “focus[] on the objective nature of the offender's conduct”) and *State v. Pfeil*, 1998 ME 245, ¶ 16, 720 A.2d 573, 577–78 (reciting that, in the first step, a court may consider “objective facts regarding the victim,” but not the subjective effect of the crime on the victim.) This Court has frequently described the distinction between Step One and Step Two as a dichotomy between objective and subjective considerations. *See State v. Diana*, 2014 ME 45, ¶¶ 37-41, 89 A.3d 132 (objective nature of the “son’s proximity to

the crime” and subjective impact on son of knowing “that he was nearby when his mother was murdered”).

C. The Sentencing Court improperly double-counted evidence of “grooming” in both the first and second steps.

In stating its rationale for setting the basic sentence and explaining why it saw the charges in the two Visual Sexual Aggression Against a Child counts, the Sentencing Court said:

The conduct took place multiple times over a four-year period. The girls were very young when it began and involved a pattern of grooming and trust-building. The defendant called it their secret, one that was not to be told to their parents or anyone. And then there was the — and this was manifested in the concerns that were stated by the girls when it — their secret came out inadvertently by their mother finding them acting it out.

Tr. 32. However, when the Sentencing Court was discussing why the aggravating factors outweighed the mitigating ones, it used the exact same factors:

I also look to the fact that this case involved a grooming. And there's a subjective impact of grooming on these two girls. Mr. Murray took great steps to keep this conduct private. I do not find this conduct to be an aberration. Rather, it was a planful and carefully executed conduct that occurred multiple times over multiple years without others in the household being aware.

Tr. 36-37. The Sentencing Court did not explain how it was assessing these facts differently. “A sentencing court may consider the same facts at steps one and two of its sentencing analysis, provided that it does so for different purposes.” *Ellis* at ¶

18. Here, the same fact is being used twice against Mr. Murray in both steps for the same purpose.

Grooming behavior is inherently subjective; thus, it is a second-step aggravating factor. While the Sentencing Court did not define the concept of grooming, nor does it appear to be defined in Maine statutes, there is “general agreement that grooming identifies a cluster of behaviors whereby a sexual abuser attempts to facilitate the victim’s abuse.” *United States v. Bindues*, 741 F. Supp. 3d 967, 1008-10 (D.N.M. 2024) (collecting studies on understanding grooming behavior). This focuses on a defendant’s acts that created a situation in which abuse could occur; it is immaterial which specific acts constitute the abuse itself. The Sentencing Court is addressing what Mr. Murray did that led to the victims’ being willing participants in these crimes. This is a subjective factor, not an objective one, so it is only appropriate for consideration during the second step.

Maine cases that have addressed this type of defendant behavior are in agreement and have held that it is an aggravating factor in the second step of the *Hewey* analysis. See *State v. Sweet*, 2000 ME 14, ¶ 18, 745 A.2d 368, 373 (creating “willing and eager sexual partners of children” was the basis of having an “upper tier” maximum sentence); *State v. Pfeil*, 1998 ME 245, ¶ 18, 720 A.2d 573, 578 (grooming behavior was a second-step aggravating behavior)

The Sentencing Court's use of "grooming" as a factor in both steps is impermissible double-counting and amounts to reversible error.

D. It is an abuse of discretion to use Mr. Murray's past as a sexual assault victim as both a mitigating and aggravating factor.

The Sentencing Court compounded its errors by treating Mr. Murray's childhood sexual victimization, presented as a mitigating factor, as an aggravating circumstance. This misuse of a defendant's trauma history represents a fundamental misunderstanding of the psychological effects of childhood abuse and constitutes an abuse of discretion.

Mr. Murray was, himself, a victim of sexual abuse. The defense offered this to the Court as a mitigating factor. Defendant's Sentencing Memorandum, p.4-5. The Sentencing Court used that abuse against him.

The defense notes in their memo that Mr. Murray, himself, experienced sexual abuse at the age of ten. And while there are certainly some factors that could be considered mitigating with respect to that reality, the Court also finds that to be a factor that could be considered in aggravation. Namely, Mr. Murray understands, firsthand, how this type of behavior and exposure at a young age can have a significant impact on a young person.

App. 17. Courts have wide discretion in how they consider sentencing factors.

However, the use of past victimhood as an aggravating factor is troubling in the face of research on the origins of sexually abusive behavior. There is a significant

body of research detailing the cycles of abuse, and that sexual offending is a learned behavior. A large percentage of sex offenders report being sexually abused as children. Faupel, S., Pryzybylski, R, *Etiology of Adult Sexual Offending*, Ch. 2 (collecting studies)⁶.

Claiming that a defendant “should know better” because they were also a victim of the same abuse reflects a fundamental misunderstanding of the psychological effects of childhood sexual trauma. Victims often endure long-term effects such as poor impulse control, blurred boundaries, and unresolved trauma that can increase, rather than decrease, the likelihood of harmful behavior later on. Holding a former victim to a higher moral standard wrongly turns a mitigating factor into an aggravating one and undermines the principle of individualized sentencing. The law generally views a history of abuse as a reason for leniency, not blame. *See generally* U.S. Sentencing Guidelines § 5H1.12 and related case law. Furthermore, this reasoning sustains harmful myths about abuse victims and may discourage others from coming forward out of fear that their trauma will be used against them later. Courts must evaluate culpability based on a defendant’s actual

⁶ Viewed at <https://smart.ojp.gov/somapi/chapter-2-etiology-adult-sexual-offending#0-0> (as of July 20, 2025).

psychological and developmental history, not on assumptions about how trauma “should” influence behavior.

The Sentencing Court would have been acting within its discretion in deciding how much weight in mitigation to give Mr. Murray’s childhood abuse. *See State v. Seamon*, 2017 ME 123, ¶ 23, 165 A.3d 342, 349, FN3. To use it as an aggravating factor, however, is an abuse of discretion.

CONCLUSION

This Court should vacate Mr. Murray’s sentence and remand it for resentencing.

Dated: December 3, 2025

/s/ James Mason

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CERTIFICATE OF SERVICE

As required by the M.R.App.P. 7(c)(1), I sent a native PDF version of this brief to the Clerk of this Court and the parties' counsel at the email addresses provided with entry of appearance. I will, when directed by the Clerk of Court under M.R.App.P. 7(c)(3), deliver ten paper copies of this brief to this Court's Clerk's office via U.S. Mail, and send two copies to opposing counsel at the addresses provided by that same Directory.

CERTIFICATE OF COMPLIANCE

I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

Dated: December 3, 2025

/s/ James Mason

James Mason, Bar # 4206