

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. SRP-25-288

STATE OF MAINE,
Appellee,

V.

JOSEPH MURRAY,
Appellant,

Appeal from the Unified Criminal Docket for
the County of Cumberland and State of Maine

Brief of the Appellee

Christopher J. Coleman
Attorney for the Appellee
Office of the District Attorney
Cumberland County
142 Federal Street
Portland, ME

Table of Contents

Table of Authorities 3

Statement of Facts5

Statement of Issues9

Argument 10

Did the sentencing court commit error when it did not specifically find that Appellant’s borderline intelligence was a mitigating factor for the second step at the *Hewey* analysis?.....10

Did the sentencing court commit error when it did not articulate that a borderline intelligence is inherently mitigating pursuant to the Eighth Amendment to the Constitution of the United States?17

Did the sentencing court commit error when it did not articulate that a high borderline intelligence is inherently mitigating pursuant to article 1 section 9 of the Maine Constitution?20

Did the sentencing court improperly double count Appellant’s extensive grooming behavior at both the first and second step of the *Hewey* analysis?27

Did the sentencing court wrongfully count Appellant’s allegation that at some point in his own childhood he was sexually assaulted as an aggravating factor at the second step of the *Hewey* analysis?.....31

Conclusion33

Table of Authorities

Maine Law Court Cases

<i>City of Lewiston v. Verrinder</i> , 2022 ME 29, 275 A.3d 327	17
<i>Strater v. Strater</i> , 159 Me. 508, 196 A.2d 94, 100 (1963)	10, 17, 30, 33
<i>State v. Coleman</i> , 2024 ME 35, 315 A.3d 698	18
<i>State v. Commeau</i> , 2004 ME 78, 852 A.2d 70	13
<i>State v. Ellis</i> , 2025 ME 56, 339 A.3d. 794	28
<i>State v. Ilsley</i> , 604 A.2d 17, 18 (Me. 1992)	18
<i>State v. Ketcham</i> , 2024 ME 80, 327 A.3d 1103	10
<i>State v. Pfeil</i> , 1998 ME 245, 720 A.2d 573	28, 29
<i>State v. Plummer</i> , 2020 ME 143, 243 A.3d 1184	27, 32
<i>State v. Reese</i> , 2010 ME 30, 991 A.2d 806.....	10, 27
<i>State v. Stanislaw</i> , 2013 ME 43, 65 A.3d 1242	20, 22, 23, 27, 32
<i>State v. Watson</i> , 2024 ME 24, ¶ 22, 319 A.3d 430.....	11, 12 15, 16, 33

Supreme Court of the United States Cases

<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002)	18, 19
<i>Lockett v. Ohio</i> , 438 U.S. 586, 603 (1978)	19, 20
<i>Penry v. Lynaugh</i> , 492 U.S. 302 (1989)	18, 19

Constitutional Provisions

U.S. Const. amend. VIII	18, 20, 19
Me. Const. art. I, § 9	18, 20, 21

Maine Statutes

Title 15 M.R.S.A. § 2154	30
--------------------------------	----

Title 15 M.R.S.A. § 215527, 31, 33
Title 17-A M.R.S.A. §1501.....10, 11, 12, 13, 14
Title 17-A M.R.S.A. §160210, 14, 15, 16, 18, 20, 33
Title 17-A M.R.S.A. §160421, 22
Title 17-A 17-A M.R.S.A. §255-A(1)(E-1)8, 23, 24, 25, 26
Title 17-A M.R.S.A. §256(1)(B)8, 23
Title 17-A M.R.S.A. §255-A(1)(E)24

Statement of Facts

L.R. was born on [REDACTED] and her sister H.R. was born on [REDACTED]. Appellant was born on [REDACTED]/1971. Sometime prior to 2018, L.R. and H.R.'s parents met Appellant on Facebook. Appellant quickly became a fixture in the family's life. Appellant often shared meals at their table. Appellant often provided childcare for the family. Both L.R. and H.R. formed a strong bond with Appellant whom they came to call "Uncle Joe." S. Tr. 17.

Sometime in 2018 Appellant began to sexualize his relationship with the girls, ultimately committing many acts of visual sexual aggression against L.R. and H.R.. The sentencing court found that: "Mr. Murray would expose himself to the girls. And while exposed, he would ask the girls to either urinate over him into a diaper that he was holding or he would urinate on them. And in either instance, it involved masturbation." S. Tr. 30. In a forensic interview conducted at the Cumberland County Children's Advocacy Center, L.R. described the exact mechanics of some the acts forming the basis of the visual sexual aggression against a child charges. L.R. relayed that Appellant would get on his knees and pull open his pants and an adult diaper in the front. Then he would have one of the children squat over his open pants/diaper and urinate inside the diaper. Typically she would face forward and sometimes Appellant would give her the phone to use while she was peeing. L.R. disclosed that doing the thing made her feel "guilty"

and that it caused her to do “bad things” in the home. L.R. said that eventually she realized she had to tell her parents. L.R. said she reported because she feared Appellant would do it to someone else. Children’s Advocacy Center Recording of L.R., 11 July 2023, 27:30.

The indictment places Appellant’s conduct in the time between January 1, 2018 and July 3, 2023. The sentencing court specifically found that 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... the conduct took place in the family home, and the defendant took care to ensure that no one else knew, even when other people were present in the home... It also involved the girls being together as well as separate.” S. Tr. 32-33. H.R.

Specifically H.R. was “anywhere between three years and ten months and nine years and four months” old and L.R. was between “three years and three months” and “eight years and nine months” old at the time of the abuse. S. Tr. 29.

Appellant also committed at least two acts of Unlawful Sexual Contact against the children. The sentencing court found that, Appellant touched H.R.’s clitoris, which he described as her “ticklish spot” and had one or both of the children touch his penis. S. Tr. 30. The sentencing court noted that the “conduct – unlawful sexual contact can be... can occur both over or under the clothing. And in this case, it did involve under the clothing.” S. Tr. 37.

On July 6, 2023 the children were discovered by their mother *replicating the behavior with each other*. The sentencing court specifically found that they were “mimicking some of the behavior that the defendant had groomed them to perform.” S. Tr. 7.

Appellant does not have an intellectual disability. Appellant provided credible information to the sentencing court that he had “a full-scale IQ of 77” which “places him in the borderline intellectual functioning range.” Def. Sent. Memo. 5.¹ According to the Wechsler Adult Intelligence Scale (WAIS-IV) Appellant’s IQ is actually on the high end of the borderline intelligence quotient which includes scores ranging between 70 and 79. Wechsler, D. (2008). Wechsler, D. (2008b). Wechsler adult intelligence scale—fourth edition: Technical and interpretive manual. San Antonio, TX: NCS Pearson, Inc., Table 6.3.

During the relevant period of time Appellant lived alone without any family or professional support in his home. S. Tr. 22-23.² Appellant obtained a driver’s “license as soon as he was eligible and on the first attempt.” Statement of Maurice

¹ A “a commonly used cut-off for a diagnosis of Intellectual Disability is a Full Scale IQ (FSIQ) score of 70 or below.” Raiford, S. E., et al. (2016), page 447. "Comparison of American and Canadian WAIS–IV Full Scale IQ Scores." *Frontiers in Psychology*.

² At the sentencing hearing Defense counsel maintained that Appellant “was not living with his father, with his family. They lived in a different location.” S. Tr. 22-23. Appellant did provide credible information that his family supported him but the evidence showed that he resided independently.

Murray Attached to Defendant's Sentencing Memorandum, 1. Furthermore, Appellant "graduated from trade school with a certificate in culinary arts." Id.

On May 7, 2025 Appellant pled guilty to Count 1 pursuant to Title 17-A 17-A M.R.S.A. §255-A(1)(E-1) and counts 2 and 3 pursuant to Title 17-A M.R.S.A. §256(1)(B) as charged in the indictment without any sentencing agreement with the State. After hearing Appellant was sentenced to 5 years to the Department of Corrections on Counts 2 and 3, both class C crimes, with the sentences imposed concurrently with each other. App. 7-8; 21-23. Next Appellant was sentenced to 8 years consecutive to Counts 2 and 3, with all but 2 years suspended, followed by 12 of probation on Count 1. Id. In sum, the sentencing court suspended 46.15% of the total 13 year sentencing and 75% of the 8 year sentence on Count 1.

Statement of Issues

- 1. Did the sentencing court commit error when it did not specifically find that Appellant's borderline intelligence was a mitigating factor for the second step at the *Hewey* analysis?**

- 2. Did the sentencing court commit error when it did not articulate that a borderline intelligence is inherently mitigating pursuant to U.S. Const. amend. VIII?**

- 3. Did the sentencing court commit error when it did not articulate that a borderline intelligence is inherently mitigating pursuant to Me. Const. art. I, § 9?**

- 4. Did the sentencing court improperly double count Appellant's extensive grooming behavior at both the first and second step of the *Hewey* analysis?**

- 5. Did the sentencing court wrongfully count Appellant's allegation that at some point in his own childhood he was sexually assaulted as an aggravating factor at the second step of the *Hewey* analysis?**

Argument

1. Did the sentencing court commit error when it did not specifically find that Appellant’s borderline intelligence was a mitigating factor for the second step of the *Hewey* analysis?

A. Standard of Review

A sentencing court’s failure to consider “significant and relevant sentencing factors” when determining the maximum sentence pursuant to Title 17-A M.R.S.A. §1602(1)(B) is reviewed for an abuse of discretion. *State v. Ketcham*, 2024 ME 80, ¶ 35, 327 A.3d 1103. Sentencing courts must also always ground their discretion in the statutory sentencing goals codified in Title 17-A M.R.S.A. §1501.³ This Court has clarified that “term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations.” *Strater v. Strater*, 159 Me. 508, 519, 196 A.2d 94, 100 (1963). For a sentencing court to abuse its discretion, the sentence must “be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.” *Id.*

This Court has observed that in exercising such discretion “it can be challenging in a given case to reconcile potentially disparate sentencing goals” and

³ Sentencing courts must consider the sentencing goals at each of the steps of the sentencing process and “articulate which sentencing goals are served by the sentence.” *State v. Reese*, 2010 ME 30, ¶¶ 17, 34, 991 A.2d 806.

therefore it gives sentencing courts “significant leeway in determining which factors are considered and the weight a factor is assigned.” *State v. Watson*, 2024 ME 24, ¶ 22, 319 A.3d 430.

How does a sentencing court strike a balance between minimizing a defendant’s correctional experience and recognizing the gravity of a serious offense pursuant to both 17-A M.R.S.A. §1501(3) and (8)? How does a sentencing court craft a sentence that serves as an example for others, while also being tailored to a specific defendant, simultaneously honoring the legislative intent behind both 17-A M.R.S.A. §1501(4) and (6)? It does so by exercising its discretion and ultimately prioritizing one value over another. So long as a sentencing court does this for a principled reason and does not completely extinguish the other value, it does not err.

Further, sentencing courts are “not required to consider or discuss every argument or factor the defendant raises” so long as they “articulate which sentencing goals are served by the sentence and must not disregard significant and relevant sentencing factors.” *State v. Watson*, 2024 ME 24, ¶ 22, 319 A.3d 430. (Internal quotations omitted). If a final sentence accounts for all of the relevant and significant sentencing factors, this Court will not overturn a sentence for want of consideration of any particular fact. This is true even if the individual jurists of this Court would have personally given that fact *significantly* more weight utilizing the

“*significant* leeway” that Maine law permits a sentencing court. *Id.* (Emphasis added).

In the instant case, the sentencing court honored the statutory sentencing goals by crafting a sentence to accomplish “the prevention of crime through a deterrent effect of sentencing, while balancing that with the rehabilitation of convicted persons with an eye towards minimizing correctional experiences, which serve to promote further criminality. But at the same time give fair warning of the nature of the sentences that may be imposed on the person convicted of the particular nature of the crime. And overall, not to diminish the gravity if the offenses.” S. Tr. 38.

B. Appellant’s Borderline Intelligence and 17-A §1501’s Sentencing Purposes

Appellant’s sentence serves all of the relevant sentencing factors codified in 17-A M.R.S.A. §1501 and falls well within the bounds of the sentencing court’s discretion. It prevents crime through deterrence and encourages rehabilitation. 17-A M.R.S.A. §1501(1). A seven year sentence to serve offers a significant deterrent effect, both specific to Appellant who has much work to do before he can safely be in the community, and in general by serving as an example for similarly situated would-be offenders.

Further, by providing Appellant with the opportunity to participate in specialized sex offender treatment through the Department of Corrections it promotes the “rehabilitation of [a] person... in the interest of public safety.” 17-A M.R.S.A. §1501(1). Appellant will hopefully learn to live safely in the community before he is released and with a significant incentive to continue with his treatment and not offend in the future.

The sentence also minimizes correctional experiences likely to promote further criminality and elicits cooperation through correctional programs. 17-A M.R.S.A. §1501(3),(7). Minimize is not synonymous with eliminate. The sentencing court suspended a significant portion of Appellant’s sentence; 46.15% of the total 13 year sentencing and 75% of the 8 year sentence on Count 1, the sole class A crime. Finally, the time to serve is necessary not just to punish Appellant but to protect the children of Maine. The sentencing court found that Appellant’s conduct was “planful and carefully executed conduct that occurred multiple times over multiple years without others in the household being aware.” Ap. 37.⁴ Appellant’s treatment prospects are reasonable but at this point remain entirely an educated guess. Even Appellant’s own sentencing materials acknowledge the

⁴ This Court will “view the evidence in the light most favorable to the trial court's factual determinations.” *State v. Commeau*, 2004 ME 78, ¶ 15, 852 A.2d 70.

ultimate need to supervise Appellant should he be released into the community under the terms of their recommendation to the sentencing court.⁵

The sentencing court ensured the “just individuation” of Appellant’s sentence per §1501(6). It is true that Appellant’s aggravating factors outweighed his mitigating factors at step two, but had they not been on the scale, the imbalance would have been worse for Appellant. Further, in order for Appellant’s sentence to be *truly* “just” it must *also* account for the unique *aggravating* factors in Appellant’s case. 17-A M.R.S.A. §1501(6). Additionally, at step three the sentencing court suspended 75% of that sentence at least partially in light of the “mitigating factors that [the sentencing court] discussed.” Ap. 19. Those factors appropriately included Appellant’s fledgling efforts at treatment, his acceptance of responsibility, his family support, his age and his lack of a criminal record. See Ap. 16 – 18. Ergo, by its terms the sentencing court’s ruling indicates that it *did* individualize Appellant’s sentence at both the second and the third step of the *Hewey* analysis pursuant to Title 17-A M.R.S.A. §1602(1)(C).

Finally, the sentence does not “diminish the gravity of the offense.” 17-A M.R.S.A. §1501(7). Appellant chose targets “of a young age” with “a reduced ability to self-protect” and whom “suffers more significant harm due to age.” *Id.*

⁵ The sentencing court, after reviewing a letter from Mike McEnaney, LCPC-cc which was submitted by Appellant in conjunction with his sentencing memorandum, observed that “even in the words of his own treatment provider, supervision will help warrant... make sure this conduct does not happen again.” S. Tr. 39.

The victim impact was clearly an important factor at Appellant’s sentencing. Appellant indoctrinated his victims, young children, into his unique perversions during a developmentally significant time for them. The impact of that will likely haunt L.R. and H.R. for the rest of their lives.

C. Appellant’s Borderline Intelligence and the *Hewey* Analysis

17-A M.R.S.A. §1602 codifies the sentencing procedure Maine courts must follow. Appellant complains of the sentencing court’s 17-A M.R.S.A. §1602(1)(B) analysis because it makes no reference to his high borderline intelligence as a mitigating factor in determining Appellant’s maximum term of imprisonment. Appellee notes that 17-A M.R.S.A. §1602(1)(B) suggests consideration of a defendant’s “character” is appropriate, but the statute contains no explicit mandate that a sentencing court consider a defendant’s intelligence specifically. Where the legislature’s articulation is non-specific, as it is here, the discretion of the sentencing jurist is all the more important. Facts about a person’s intelligence are *potentially* relevant to but one of the “disparate sentencing goals” that sentencing courts have “significant leeway” to either consider significant, or not. *State v. Watson*, 2024 ME 24, ¶ 22, 319 A.3d 430. *If* a factor is considered significant, sentencing courts are given similar leeway in deciding upon the “weight a factor is assigned.” *Id.*

Appellant's conduct was predatory and premeditated. It included extensive grooming and the regular abuse of two very young children. Appellant implored his child victims not to disclose their shared relationship revolving around masturbation, sexual contact, and urine. Appellant maintained his own residence and was regularly entrusted with their care, often alone, by the children's parents. In that way, he successfully concealed his crimes for *years*. Under those circumstances it is unclear that Appellant's intelligence was significantly relevant and "appropriate to the case." 17-A M.R.S.A. §1602(1)(B). Appellant was not a gullible co-defendant coaxed into criminality by a more sophisticated criminal. He was the prime mover in this extensive and pre-meditated criminal conduct which he diligently concealed for years.

The only specific argument regarding Appellant's intelligence appears in Appellant's sentencing memorandum wherein Appellant urged the sentencing court to consider that "[i]ncarcerated individuals with cognitive limitations are particularly vulnerable to exploitation, victimization, and deterioration of mental health in correctional settings." Appellant's 4/23/25 Sentencing Memorandum, Page 6. However, the Maine Correctional Center in Windham, where Appellant has begun his sentence, offers specialized housing for sex offenders so they are not integrated with the general population who might take advantage of them in the way Appellant's sentencing brief implies. Additionally, Appellant will have access

to mental health treatment programs that are specifically designed for sex offenders through the Department of Corrections. Nor is there evidence on the record that persons in the high borderline intelligence quotient are particularly criminogenic or non-criminogenic *per se*.

At the sentencing hearing Appellant established he possesses a high borderline intelligence. However, he did not establish a nexus of compelling relevance between that fact and a reduced period of incarceration in the eyes of the sentencing court. It may have seemed particularly irrelevant given the existence of strong countervailing arguments and the presence of more compelling sentencing facts which eclipsed what little relevance it may have had. In other words, there is nothing to suggest that the sentencing court's decision was "not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Strater v. Strater*, 159 Me. 508, 519, 196 A.2d 94, 100 (1963).

2. Did the sentencing court commit error when it did not articulate that a borderline intelligence is inherently mitigating pursuant to U.S. Const. amend. VIII?

A. Standard of Review

When preserved, an argument under the Eighth Amendment presents a legal issue that we review *de novo*. See *City of Lewiston v. Verrinder*, 2022 ME 29, ¶ 15, 275 A.3d 327. Conversely, when "the actions of a presiding judge are objected to

for the first time on appeal, review is an exception to the general rule and is available only for obvious errors or defects affecting substantial rights.” *State v. Ilsley*, 604 A.2d 17, 18 (Me. 1992). That means this Court should “vacate his sentence only if the alleged impropriety is obvious and worked a manifest injustice on the defendant.” *State v. Coleman*, 2024 ME 35, ¶ 24, 315 A.3d 698. (Internal citations omitted).

Appellant made no reference to either the Eighth Amendment to the United States Constitution or Article 1, Section 9 of the Maine Constitution at Appellant’s sentencing hearing. Instead his arguments were explicitly couched in terms of the *Hewey* analysis pursuant to Title 17-A M.R.S.A. §1602. Neither the State nor the sentencing court were put on notice of any constitutional objections to the sentence. Therefore, this Court ought not to overturn Appellant’s sentence absent obvious error or the existence of a clearly manifest injustice.

B. U.S. Const. amend. VIII

The Appellant’s brief cites two cases from the Supreme Court of the United States for the proposition that Appellant’s intelligence is inherently relevant to his sentencing due to the proportionality requirement of the 8th Amendment. See: *Penry v. Lynaugh*, 492 U.S. 302 (1989) and *Atkins v. Virginia*, 536 U.S. 304 (2002).

However, there are stark factual and procedural differences between those cases and the instant one. Appellant’s intelligence quotient is *significantly* higher than either Mr. Penry or Mr. Atkins such that he does not suffer from an intellectual disability.⁶ Furthermore, assuming *arguendo* that Appellant *did* have an intellectual disability as Mr. Atkins and Mr. Penry did, the Supreme Court has been clear that, if the case does not involve the potential for the death sentence or a sentence of life without parole, then “legislatures remain free to decide how much discretion in sentencing should be reposed in the judge or jury in noncapital cases.” *Lockett v. Ohio*, 438 U.S. 586, 603 (1978).

States are therefore free to enact statutes that grant their sentencing judges *significant* discretion, as Maine has done with 17-A M.R.S.A. §1602. “That declaration rested on the predicate that the penalty of death is qualitatively different from any other sentence.” *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). This is because, as *Lockett* makes clear, in non-capital cases “the established practice of individualized sentences rests not on constitutional commands, but on public policy enacted into statutes.” *Id.*, 604-605. Ergo, there is no support in either

⁶ Daryl Atkins “had a full scale IQ of 59”. *Atkins v. Virginia*, 536 U.S. 304, 308 (2002). That score is well into the intellectual disability range and a full 19 points lower than Appellant’s IQ. John Paul Penry “was tested over the years as having an IQ between 50 and 63.” *Penry v. Lynaugh*, 492 U.S. 302, 307 (1989). Again that score falls into the intellectual disability range and is somewhere between 27 and 14 points lower than Appellant’s full scale IQ. Neither Mr. Atkins nor Mr. Penry had high borderline IQs like Appellant.

Federal caselaw or the language of the Eight Amendment itself for Appellant’s proposition that his borderline intelligence is *inherently* mitigating pursuant to the Constitution of the United States.

3. Did the sentencing court commit error when it did not articulate that a borderline intelligence is inherently mitigating pursuant to Me. Const. art. I, § 9?

A. The *Stanislaw* Test

The Maine Constitution requires that “all penalties and punishments shall be proportioned to the offense.” Me. Const. art. I, § 9. Interpreting that language, the “United States Supreme Court has recognized that the Maine Constitution anticipates a broader proportionality review than the Eighth Amendment” which contains no express language prohibiting disproportionate sentences. *State v. Stanislaw*, 2013 ME 43, ¶ 26, 65 A.3d 1242.

In practice, that means that this Court will review the proportionality of a sentence under Me. Const. art. I, § 9 of the Maine Constitution by utilizing a two-part test. “First, we compare the gravity of the offense [with] the severity of the sentence. Second, if this comparison results in an inference of gross disproportionality [we] then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction.” *State v. Stanislaw*, 2013 ME 43, ¶ 29, 65 A.3d 1242, 1251. (internal citations and quotations omitted).

The gravity of these offenses cannot be understated. Appellant committed felonious conduct targeting and grooming children as young as 3 years old. In the eyes of the sentencing court Appellant's crimes constituted "planful and carefully executed conduct that occurred multiple times over multiple years without others in the household being aware." Ap. 19. The sexual abuse involved the fetishization of urine and a prolonged and deliberate attempt to indoctrinate two *very* young into that fetish. Appellant was charged with a class A offense for which he faced a potential penalty of up to 30 years.

Given that backdrop the sentencing court's sentence cannot be said to be disproportionate. The sentencing court in Appellant's case set the basic sentence for Count 1 at "between 7 and 8 years". Ap. 14. That period of incarceration is significantly less than the 10 year maximum period of incarceration available for Class B crimes pursuant to 17-A M.R.S.A. §1604(1)(B). That basic term reflects that some factors which could have supported a higher sentence were not present here.

At the second step of the *Hewey* analysis the aggravating factors were significant, but they only resulted in a modest 6 month upward deviation from basic sentence of between 7 and 8 years to maximum sentence of 8 years.

Furthermore, at the third step of the *Hewey* analysis the sentencing court suspended 75% of that sentence in favor of an approach which explicitly prioritizes rehabilitation and the safety of the community. In sentencing Appellant on Counts 2 and 3, the sentencing court set Appellant’s maximum period of incarceration at the maximum 5 years allowed by 17–A M.R.S.A § 1604(1)(C). It correctly determined that his conduct, which was uniquely egregious, belonged at the top of the allowable punishment, and that when properly weighed, the aggravating factors slightly outweighed the mitigating factors. At the final step the value in detention was tantamount. Appellant was only engaged in nascent treatment and given his proven aptitude for concealing his conduct, a significant period of detention had to be imposed.⁷

Importantly, the final sentence does not preclude “any opportunity for the legislatively established goal of rehabilitation.” *State v. Stanislaw*, 2013 ME 43, ¶ 33, 65 A.3d 1242. While it does require a significant period of incarceration it also suspends 46.15% of the total sentence and properly incentivized Appellant to continue his sex offender treatment and to abstain from contact with children.

⁷The only treatment discussed by Appellant at his sentencing hearing was counseling. When prompted by defense counsel Appellant described it thusly: “Been going to see him. At first, started off going every week, and then I went seeing him every other week. And I think talking about the issues that I’ve had have really helped to get it... to help me get better.” S. Tr. 26.

Assuming arguendo that this Court does find that Appellant's sentence generates "an inference of gross disproportionality" then it must "compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction." *State v. Stanislaw*, 2013 ME 43, ¶ 29, 65 A.3d 1242, 1251. Appellee has surveyed all of the convictions obtained by the Cumberland County District Attorney's Office for Unlawful Sexual Contact pursuant to 17-A M.R.S.A. §255-A(1)(E-1) and Visual Sexual Aggression against a child pursuant to 17-A M.R.S.A. §256(1)(B) over the last 10 years. Excluding Appellant's convictions Appellee was able to find 27 convictions for the former and 0 convictions for the latter.

The sentences ranged from 18 months to 10 years with varying levels of suspension. The most common were 10 year sentences (8) followed closely by 7 year sentences (6). The mean sentence was 7.45 years and the median was 7 years. The mean suspended portion of the sentences was 52.12% although many were imposed as part of larger sentencing schemes.

The sentences for Unlawful Sexual Contact pursuant to 17-A M.R.S. §255-A(1)(E-1) range from the statutory maximum of 10 years straight to various smaller fully suspended sentences imposed consecutively to a more substantial straight sentences. Some of the sentences are split sentences imposed consecutively

to straight sentences on class C sex crimes similar to the sentence imposed in Appellant's case.

Appellee points to *State v. Camire* (CUMCD-CR-2022-02981) in which Camire was found guilty of Unlawful Sexual Contact with a child under 12 per 17-A M.R.S.A. §255-A(1)(E-1) and one count of Unlawful Sexual Contact with a child under 14 per 17-A M.R.S.A. §255-A(1)(E). Between the years of 2008 and 2013 Camire groped the breasts and genitals of his stepdaughter (age 8-13) and then between the years of 2015 and 2021 Camire touched the genitals (with penetration) of his step-granddaughter (age 4-10) and made her touch his penis. Camire was sentenced to 5 years straight on the latter and a consecutive probated split of 10 years with all but 4 years suspended followed by 8 years of probation on the former.

While there are significant factual differences between Appellant's conduct and Camire's, there are also some broad similarities.⁸ Both men abused two young victims for years generating class B and class C offenses. Camire received slightly more time, both suspended and unsuspended, and slightly less probation, but otherwise their sentences were structured identically. They both involved straight 5

⁸ Appellant had no criminal record at the time of his sentencing. Camire had a criminal record populated by misdemeanor assaults, criminal mischiefs and a theft and forgery combination. Camire longest previous incarcerative experience was a 5 county jail day sentence imposed approximately 20 years prior to his offenses.

year sentences on attendant class C crimes and both received similar consecutive probated splits.

Appellee also points to *State v. Hunt* (CUMCD-CR-13-6687) wherein Hunt was found guilty of Unlawful Sexual Contact with a child under 12 per 17-A M.R.S. §255-A(1)(E-1) by plea on June 19, 2017. Hunt had sexual contact with a child he was babysitting for a six month period while she was 7 to 8 years old. Hunt used his fingers to have sexual contact with the child's genitals approximately 12 times or more.⁹ Hunt was sentenced to 10 years at the Department of Corrections with all but 4 years suspended, followed by 4 years of probation. That sentence is broadly similar to the one Appellant received on Count 1 even though the child was older and Hunt committed his crimes over a shorter period of time.

Both Hunt and Appellant were trusted non-familial caregivers in the lives of their young victims. Both Hunt and Appellant took advantage of that trust and had Unlawful Sexual Contact with a child multiple times. Hunt committed approximately 12 violations of 17-A M.R.S. §255-A(1)(E-1) while Appellant only committed 2. However, Appellant also targeted a younger child and his violations

⁹ Several other counts were dismissed at the time of the plea including allegations that Hunt committed Gross Sexual Assault in violation of 17-A M.R.S.A. §253(1)(C) for having contact with the child's genitals using his tongue during, or immediately attendant to, the above described violations of 17-A M.R.S. §255-A(1)(E-1) to which Hunt and Appellant were found guilty.

of 17-A M.R.S. §255-A(1)(E-1) were accompanied by grooming two children to carry on the conduct even in his absence.

Appellee also highlights *State v. White* (CUMCD-CR-15-6494) wherein White was found guilty of a single count of Unlawful Sexual Contact with a child under the age of 12 per 17-A M.R.S. §255-A(1)(E). That case had no other attendant charges and it resulted from a single incident in which White touched the anus and genitals of a 5 year old boy who was a houseguest in his residence. Again major factual differences exist between Appellant and White but they share some relevant commonalities and the same crime. Appellant both touched his victims genitals and had her touch his while White only touched the genital of his victim. White received a sentence of 7 years with all but 2 years suspended followed by 3 years of probation. White's sentence is strikingly similar to the sentence Appellant received on Count 1 except that radically less probation was imposed. However, Appellant's unique predilections and history of grooming more than justify the difference.

Given that landscape of sentences in Cumberland County over the last 10 years Appellant's sentence cannot be said to be disproportionate when compared with other sentences imposed in the same jurisdiction. His 8 year sentence is only slightly higher 7.45 year mean and it is significantly less than the 10 year mode. Furthermore 75% of his sentence on Count 1 was suspended which is above the

men of 52.12%. Nor is it far off from the 46.15% suspension of Appellant’s entire consecutive sentencing scheme looking at Counts 1, 2 and 3.

4. Did the sentencing court improperly double count Appellant’s extensive grooming behavior at both the first and second step of the *Hewey* analysis?

A. Standard of Review

This Court will “review de novo for misapplication of principle the basic sentence imposed at the first step of the analysis, and we review the maximum sentence and the final sentence determined at steps two and three for an abuse of discretion. We review the sentencing court's analysis at each step to determine ‘whether [it] disregarded the relevant sentencing factors or abused its sentencing power.’” *State v. Plummer*, 2020 ME 143, ¶ 10, 243 A.3d 1184. (quoting *State v. Stanislaw*, 2013 ME 43, ¶ 17, 65 A.3d 1242.).

This Court’s “mandate pursuant to 15 M.R.S. § 2154(1), however, is to review any part of the sentence—including the basic term, the maximum term, and the final sentence—for disregard of the relevant sentencing factors.” *State v. Reese*, 2010 ME 30, ¶ 22, 991 A.2d 806. Finally, in reviewing Appellant’s sentence this Court will consider the “propriety of the sentence, having regard to the nature of the offense, the character of the offender and the protection of the public interest.” 15 M.R.S.A. § 2155(1).

B. The sentencing court did not misapply principles of law or abuse its discretion

Appellant complains that the sentencing court erred when it considered Appellant's grooming behavior in setting both the basic sentence and the maximum term of imprisonment. Appellant acknowledges that "the same fact can generate multiple factors." *State v. Ellis*, 2025 ME 56 ¶ 18, 339 A.3d. 794. But Appellant argues that "Grooming behavior is inherently subjective" and is "only appropriate for consideration during the second step" of the *Hewey* analysis. Appellant's Brief, Pg. 44. However, this Court has found no misapplication of principle in the past when a sentencing court considered grooming behavior at the first *and* second steps.

In 1998 this Court considered the sentencing of Erich Pfeil, an acknowledged pedophile who groomed and victimized multiple children. This Court reviewed "the basic period for misapplication of principle." *State v. Pfeil*, 1998 ME 245, ¶ 14, 720 A.2d 573. This Court found no error where the sentencing court specifically found that had "Pfeil carefully selected his child victim, 'groomed' him to be abused, developed a friendship with him over a period of months, and then betrayed that friendship by a series of sexual assaults" and determined that finding was "a consideration of the particular nature and seriousness of the offenses" appropriately weighed at the first step of the *Hewey* analysis. *State v. Pfeil*, 1998 ME 245, ¶ 15, 720 A.2d 573. As Appellant notes in

his brief, Pfeil’s sentencing court *also* considered his grooming behaviors’ subjective effect on his child victims at the second step of the *Hewey* analysis without error.¹⁰

In the instant case, the sentencing court properly recognized Appellant’s grooming behavior’s relevance to both the particular nature and seriousness of the offense as well as its subjective impact upon Appellant’s young victims. In its step one analysis the sentencing court emphasized how the grooming *prolonged* the series of offenses. Appellant’s affectionate relationship with his young victims bought him their silence and allowed him to conceal and continue his abuse for *years*.¹¹

At the second step, the sentencing court specifically said it was considering the “subjective impact” of the grooming on L.R. and H.R.¹² The grooming had the net effect of increasing the subjective impact on L.R. and H.R.. First, because of its insidious psychological nature; Appellant engaged in “trust building” followed by a betrayal which the evidence at sentencing showed continues to significantly

¹⁰ “The sentencing court considered a number of aggravating factors, including Pfeil’s ‘grooming’ behavior by which he recruited his victims... Keeping in mind the sentencing court’s “superior position for evaluating evidence of the circumstances of the offender” this Court found that Pfeil’s sentencing “was not an abuse of discretion.” *State v. Pfeil*, 1998 ME 245, ¶ 18, 720 A.2d 573.

¹¹ “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

¹² “I also look to the fact that this case involved a grooming. And there’s a subjective impact of grooming on these two girls.” Tr. 36.

subjectively impact the children. Second, because it served as a vehicle to prolong Appellant's abuse, it also served to magnify the subjective impact of his crimes through multiplication. Had Appellant not implored his victims to keep his crimes a secret from their parents, and had Appellant not built the trust and affinity to ensure that his request was abided by, his victims would have felt far less subjective harm when they realized the scope of his betrayal. Under those circumstances, the sentencing court cannot be said to have misapplied legal principles because, while the same fact was considered at two steps, it was considered for different reasons.

Furthermore, the record shows that the sentencing court was thoughtful and articulate in its consideration and weighing of Appellant's extensive grooming behavior. It was not an abuse of discretion to consider it as part of the severity of the acts themselves when setting the basic sentence. Nothing about considering Appellant's grooming behavior in that way is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Strater v. Strater*, 159 Me. 508, 519, 196 A.2d 94, 100 (1963).

Nor is there reason to think the sentencing court disregarded relevant sentencing factors. 15 M.R.S. § 2154(1). The sentencing court explicitly named the sentencing factors it was considering and as discussed above the overall structure

of the sentence demonstrates a careful consideration of such.¹³ The sentence ought to also survive review under 15 M.R.S.A. § 2155(1) because it adequately considers the relevant parts of Appellant’s character such as his willingness to take responsibility via both his confession and his open plea, his willingness to accept treatment and his ability to maintain familial ties. The sentencing court used its considerable discretion and properly weighed those character attributes along with the other considerations mentioned by the statute such as “the nature of the offense” and “the protection of the public interest” and the “effect of the offense on the victim.” 15 M.R.S.A. § 2155(1).

5. Did the sentencing court wrongfully count Appellant’s allegation that at some point in his own childhood he was sexually assaulted as an aggravating factor at the second step of the *Hewey* analysis?

A. Standard of Review

This Court will “review de novo for misapplication of principle the basic sentence imposed at the first step of the analysis, and we review the maximum sentence and the final sentence determined at steps two and three for an abuse of discretion. We review the sentencing court's analysis at each step to determine ‘whether [it] disregarded the relevant sentencing factors or abused its sentencing

¹³ “And those goals include the prevention of crime through a deterrent effect of sentencing, while balancing that with the rehabilitation of convicted persons with an eye towards minimizing correctional experiences, which serve to promote further criminality. But at the same time give fair warning of the nature of the sentences that may be imposed on the person convicted of the particular nature of the crime. And overall, not to diminish the gravity if the offenses.” S. Tr. 38.

power.” *State v. Plummer*, 2020 ME 143, ¶ 10, 243 A.3d 1184. (quoting *State v. Stanislaw*, 2013 ME 43, ¶ 17, 65 A.3d 1242).

B. The sentencing court did not abuse its discretion

The sentencing court did not abuse its discretion because it did not find that Appellant was sexually abused as a child. The syntax of the sentencing court’s statements on that topic make it clear that it was not a fact adopted by the sentencing court. The repeated use of the qualifier *could* followed by a differentiation between Appellant’s uncorroborated allegations and the factors the sentencing court *did* consider aggravating, makes that clear. The sentencing court found that:

“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. There are factors that I *do* consider in aggravation *as well*.” App. 15. (Emphasis added).

This is intellectually consistent with the sentencing court’s approach to the claims of uncharged criminal conduct the State sought (unsuccessfully) to get the court to consider.¹⁴ Those alleged sexual assaults, like the one Appellant claims happened

¹⁴ “Now, I do not contribute or consider the behaviors discussed involving other alleged instances where Mr. Murray may have exposed other people to similar conduct. I think I’m not considering that, not because it wouldn’t be relevant, but rather it is unclear from the available information what exactly happened, and it’s not necessarily appropriately supported. And so for that reason, I’m not considering that.” App. 16.

to him at the age of 10, are “not necessarily appropriately supported” by the record and therefore did not influence the sentencing court’s discretion. App. 16.¹⁵

Assuming *arguendo* that the sentencing court *did* make such a finding, it would not be an abuse of its discretion to weigh that fact as it suggested it would. This is because sentencing courts are given “significant leeway in determining which factors are considered and the weight a factor is assigned.” *State v. Watson*, 2024 ME 24, ¶ 22, 319 A.3d 430. While the sentencing court did not draw the inference Appellant or the Justices of this Court might have drawn from his proffered fact, it did draw that inference based upon rational principles, not “passion or bias.” *Strater v. Strater*, 159 Me. 508, 519, 196 A.2d 94, 100 (1963).

Conclusion

The sentence imposed in this matter offends neither Title 17-A M.R.S.A. §1602 nor any provision of either the Maine or United States constitutions. The sentencing court did not misapply legal principles or abuse its discretion. Instead, it used its significant discretion crafted a sentence that is both effective and merciful; balancing the sentencing goals in a way that served justice. Appellee asks this

¹⁵ In excluding evidence proffered by both parties of separate uncorroborated allegations of distinct prior sexual assaults (one in which Appellant was allegedly the victim and one in which Appellant was allegedly the perpetrator) the sentencing court was likely being mindful of this Court’s statutory duty to review the “manner in which the sentence was imposed” including “the sufficiency and accuracy of the information on which it was based” pursuant to 15 M.R.S.A. § 2155(2).

Court to decline to vacate Appellant's sentence and to recognize that remanding this case for resentencing is unnecessary.

DATED: January 16, 2026

/s/ Christopher Coleman

Christopher. J. Coleman, Esq.
Attorney for the Appellee
Cumberland County DA's Office
142 Federal Street
Portland, ME 04101
Phone: 207-871-8384
ccoleman@cumberlandcounty.org

CERTIFICATE OF SERVICE

I, Christopher Coleman, hereby certify that a true copy of the above Appellee's Brief was sent to Appellant's attorney James Mason, Esq. by virtue of email this January 16, 2026.

1/16/2026

X Christopher Coleman

Christopher J. Coleman

Assistant District Attorney

Signed by: Christopher Coleman