

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 REPLY BRIEF

James M. Mason
Maine Bar No. 4206

HANDELMAN & MASON LLC
Attorneys for Appellant
16 Union Street
Brunswick, ME 04011
(207) 721-9200

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 4

REPLY ARGUMENT5

I. The Sentencing Court’s silence on Mr. Murray’s intellectual limitations is not excusable discretion, but an abuse of one.....5

A. The State attacks an argument Mr. Murray never made5

B. The State conflates competency with culpability.7

C. “Significant leeway” cannot rescue complete silence.....8

II. The State’s own comparable cases support that Mr. Murray’s sentence was disproportionate10

A. The cases offered by the State demonstrate the disproportion.....10

B. The State’s own survey data undermines its position12

III. The Sentencing Court used “grooming” for the same purpose at both steps 14

IV. The Sentencing Court used Mr. Murray’s victimization against him.16

CONCLUSION..... 19

CERTIFICATE OF SERVICE 20

CERTIFICATE OF COMPLIANCE..... 20

TABLE OF AUTHORITIES

| Cases | Page(s) |
|---|----------------|
| <i>Atkins v. Virginia</i> , 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) | 5, 6, 8 |
| <i>State v. Stanislaw</i> , 2013 ME 43,65 A.3d 1242 | 10 |
| <i>State v. Carrillo</i> , 2021 ME 18, 248 A.3d 192 | 7 |
| <i>State v. DeWalt</i> , 684 A.2d 1291 (Me. 1996) | 18 |
| <i>State v. Diana</i> , 2014 ME 45, 89 A.3d 132 | 14 |
| <i>State v. Goncalves</i> , 2025 ME 70, 340 A.3d 639 | 6 |
| <i>State v. Gray</i> , 2006 ME 29, 893 A.2d 611 | 16 |
| <i>State v. Lovejoy</i> , 2024 ME 42, 315 A.3d 744 | 7 |
| <i>State v. MacDonald</i> , 1998 ME 212, 718 A.2d 195 | 9 |
| <i>State v. Michaud</i> , 590 A.2d 538 (Me. 1991) | 18 |
| <i>State v. Pfeil</i> , 1998 ME 245, 720 A.2d 573 | 14 |
| <i>State v. Seamon</i> , 2017 ME 123, 165 A.3d 342 | 18 |
| <i>State v. Shulikov</i> , 1998 ME 111, 712 A.2d 504 | 14 |
| <i>State v. Watson</i> , 2024 ME 24, 319 A.3d 430 | 8 |
| <i>Strater v. Strater</i> , 159 Me. 508, 196 A.2d 94 (1963) | 9 |

Statutes

17-A M.R.S. § 255-A(1)(E-1)12

Rules

M.R.App.P. 7(c)(1)20
M.R.App.P. 7(c)(3)20
M.R.App.P. 7A(f).....20
M.R.App.P. 7A(g)20

ARGUMENT

I. The Sentencing Court's silence on Mr. Murray's intellectual limitations is not excusable discretion, but an abuse of one.

The State does not dispute that the sentencing court said nothing about Mr. Murray's borderline intellectual functioning. Instead, it argues that silence was permissible for three reasons: that Mr. Murray does not have a clinical intellectual disability, that his conduct was too sophisticated for his cognitive limitations to matter, and that sentencing courts have broad discretion not to address every factor a defendant raises. Each of these arguments fails. The first attacks a claim Mr. Murray never made. The second conflates the ability to commit a crime with full moral culpability for it, a distinction *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), expressly rejected in the context of capital cases. And the third mistakes the complete disregard of a material sentencing factor for the permissible exercise of discretion.

A. The State attacks an argument Mr. Murray never made.

The State devotes substantial effort to establishing that Mr. Murray does not have a clinical intellectual disability, noting that the diagnostic threshold is a Full Scale IQ of 70 or below. Red Br. 19. However, Mr. Murray does not claim he has clinical intellectual disability. He argued that his borderline intellectual functioning, a documented and permanent cognitive impairment, diminishes his

culpability and that the sentencing court’s complete failure to acknowledge it constitutes reversible error. The cognitive capacities identified by *Atkins* as relevant to culpability, including “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,” exist on a spectrum. 536 U.S. at 318. They do not appear or disappear at an IQ of 70.

This Court’s decision in *State v. Goncalves*, 2025 ME 70, confirms this understanding. *Goncalves* drew the relevant distinction not between clinical intellectual disability and everything else, but between “the kind of permanent condition, such as cognitive, intellectual or developmental impairment or disability,” that is inherently mitigating and transient emotional states like “blind jealous rage.” *Id.* at ¶ 40 (emphasis added). The court used the broad term “impairment” alongside “disability.” The trial court below 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 borderline intellectual functioning is a permanent, biologically based, developmental cognitive impairment that falls squarely within the category *Goncalves* identified. Maine’s jurisprudence has never imposed a diagnostic

measuring stick but has recognized limited capacity as the proper form of mitigating factor. *See State v. Lovejoy*, 2024 ME 42, ¶ 27, 315 A.3d 744 (traumatic brain injury is a “legitimate mitigating circumstance”); *State v. Carrillo*, 2021 ME 18, ¶ 45 (“limited intellectual capacity and functioning... as a mitigating factor.”)

B. The State conflates competency with culpability.

By arguing Mr. Murray’s cognitive limitations were irrelevant because his conduct was “predatory and premeditated” and he “successfully concealed his crimes for years,” Red Br. 16, the State confuses competency with culpability. It did the same when it noted Mr. Murray obtained a driver’s license and graduated from trade school. *Id.* at 7-8. These achievements speak to routine adaptive functioning, not to the higher-order cognitive processes *Atkins* suggests bear on moral culpability.¹

This is the competency-culpability conflation *Atkins* rejected. The Court recognized that intellectually limited individuals “frequently know the difference between right and wrong and are competent to stand trial,” yet still have

¹ As part of its argument to support longer incarceration, the State touts the special programs available to Mr. Murray if he were incarcerated at the Maine Correctional Center in Windham. Red. Br. at 16-17. It is too bad, then, that his brief period in Windham was for classification only, and that the sentence imposed by the Sentencing Court of greater than five years requires him to be incarcerated in the general population at Maine State Prison in Warren.

“diminished capacities.” 536 U.S. at 318. *Atkins* itself involved a defendant who planned and carried out a robbery and murder. *Id.* at 307.

The State’s reasoning, taken to its logical conclusion, would eliminate cognitive limitations as a mitigating factor in every case where a defendant successfully committed an offense. This would fly in the face of decisions like *Carrillo* and *Lovejoy*, which expressly found diminished capacity a mitigating factor in completed crimes. The question is not whether Mr. Murray could plan; it is whether his documented cognitive impairments diminished his moral blameworthiness for both the plan and his actions around it. The State’s Brief and the Sentencing Court never asked that question.

C. “Significant leeway” cannot rescue complete silence.

Still, the State’s approach of saying anything above the bright line of an IQ of 70 can be disregarded in sentencing is at least more consideration than the Sentencing Court’s silence. The State, on two occasions, reminds this Court that it said that sentencing courts have “significant leeway in determining which factors are considered and the weight a factor is assigned.” Red Br. 11-12, 15 (*citing State v. Watson*, 2024 ME 24, ¶ 22, 319 A.3d 430). But *Watson* also requires that courts “not disregard significant and relevant sentencing factors.” *Watson* at ¶ 22. An

abuse of discretion occurs when “a material factor deserving significant weight is ignored.” *State v. MacDonald*, 1998 ME 212, ¶ 17, 718 A.2d 195.

There is a critical distinction between considering a factor and assigning it little weight, which is permissible, and failing to mention a factor at all. The sentencing court addressed other mitigating factors: Mr. Murray’s lack of a criminal record, his acceptance of responsibility, his entry into counseling. App. 16–17. Its silence on a formally documented cognitive impairment is conspicuous. Compare the trial court in *Goncalves*, which explicitly addressed why it was not using the defendant’s abnormal mental condition as a mitigating factor. *Goncalves* at ¶ 24. That is the exercise of informed discretion. Here, there is nothing to review.

The State does not engage with *MacDonald*; it only curiously cites, on four occasions, a past discussion by this Court on judicial discretion in *Strater v. Strater*, 159 Me. 508, 519, 196 A.2d 94 (1963). Red. Br. 10, 17, 30, and 33. We should go just a little farther in the *Strater* decision than just the lyrical passage quoted by the State, though.

‘Discretion’ denotes an absence of a hard and fast rule, and when invoked as guide to judicial action, it means a sound discretion which is not exercised arbitrarily but is exercised with regard to what is right and equitable under the circumstances and the law, and directed by the reasoning conscience of the judge to a just result.

MacDonald has created a “hard and fast rule” in sentencing – ignoring a material factor is an abuse of discretion. That is what the Sentencing Court did here, and the result was unjust.

II. The State’s own comparable cases support that Mr. Murray’s sentence was disproportionate.

The Sentencing Court acknowledged the difficulties the parties face in providing meaningful, comparable sentences. App. 16-17. The State has attempted to rectify this by offering more cases to this Court. Red. Br. 23-27. It provides a helpful discourse, but it might not mean what the State thinks it means.

A. The cases offered by the State demonstrate the disproportion.

The metric that matters for proportionality review is unsuspended time. As this Court explained in *Stanislaw II*, just comparing complete sentences “is not a reasonable comparison to make; a prison term is simply not the equivalent of a suspended prison term and probation. Logic recognizes this, and both the third step of the *Hewey* analysis and our jurisprudence reflect this.” *State v. Stanislaw*, 2013 ME 43, ¶¶ 47–48. Mr. Murray received seven years unsuspended. The State’s own cases show what that number means in context.

In *Camire*, the defendant penetrated the genitals of his step-granddaughter (ages 4 to 10) and groped the breasts and genitals of his stepdaughter (ages 8 to 13)

over a period of years. Red Br. at 24. He had a criminal record. *Id.* at 24 n.8. He received nine years unsuspended. That is two years more than Mr. Murray for similar, but objectively more serious conduct by a defendant with a worse record.

In *Hunt*, the defendant digitally penetrated a child's genitals at least twelve times. Red Br. at 25. He had dismissed GSA charges alleging oral contact with the child. *Id.* He received four years unsuspended. Mr. Murray got nearly twice that for two acts of unlawful sexual contact with no allegations approaching gross sexual assault.

In *White*, the defendant touched the anus and genitals of a five-year-old boy. Red Br. at 26. He received just two years unsuspended for the same type of direct genital contact at issue in Count 1.

The State offered these cases to defend the sentence. They do the opposite. Every defendant the State highlighted committed more serious sexual contact than Mr. Murray, and only Camine received less unsuspended time. *Hunt* is the most damaging comparison for the State's position: six times as many acts of sexual contact, dismissed charges suggesting conduct far more serious, and barely half the unsuspended sentence.

B. The State’s own survey data undermines its position.

The State surveyed all Cumberland County convictions for Unlawful Sexual Contact under 17-A M.R.S. § 255-A(1)(E-1) over the last ten years, finding 27 cases with a mean sentence of 7.45 years, a median of 7 years, and a mean suspended portion of 52.12%. Red Br. at 23. The State argues these figures support the proportionality of the sentence. They do not.

First, these figures represent *total* sentences, not unsuspended time. A mean suspended portion of 52.12% means the average defendant in this dataset serves roughly half of the total sentence. Mr. Murray’s overall suspension rate is only 46.15%, meaning he is serving a larger proportion of his sentence than the average defendant convicted of the same offense. While the State attempts to point in the direction of the 75% suspended portion of Count 1, Red Br. 13, 22, this is a red herring, because of the Sentencing Court’s interrupting, concurrent-sentencing structure. It does not reflect his overall unsuspended time.

The State notes Murray “was charged with a class A offense for which he faced a potential penalty of up to 30 years.” Red Br. at 21. He wasn’t. Mr. Murray was convicted of visual sexual aggression (Class C) and unlawful sexual contact (Class B). He was not convicted of gross sexual assault. The sentence should reflect the crimes of which he was actually convicted. And Mr. Murray had no

criminal record, documented cognitive limitations, and accepted responsibility from the outset, factors that would ordinarily place him below the mean, not above it.

Second, these figures cover only Count 1. Mr. Murray's total sentence includes five additional years of unsuspended incarceration on the Class C visual sexual aggression counts, for which the State found zero comparables in its ten-year survey. Red Br. at 23. The sentencing court set those basic sentences at the statutory maximum without any comparable case to justify doing so. The State's survey, far from vindicating the sentence, highlights the absence of support for the most unusual component of it.

Viewed against the State's own comparable cases, Mr. Murray's seven years of unsuspended incarceration are grossly disproportionate. *See Stanislav* at ¶ 48. The sentence should be vacated and remanded for resentencing that properly places these offenses on a continuum supported by comparable cases and independently justifies any consecutive structure.

III. The Sentencing Court used “grooming” for the same purpose at both steps.

The State relies on *State v. Pfeil*, 1998 ME 245, 720 A.2d 573, to support the proposition that grooming can occur at both steps of the *Hewey* analysis. Red Br. at 28–30. It can. But *Pfeil* matters here for what the Sentencing Court actually did at each step, because the sentencing court in Mr. Murray’s case did something different.

In *Pfeil*, the sentencing court used grooming at step one to describe “the particular nature and seriousness of the offenses,” how the defendant gained access and carried out the abuse. *Pfeil* at ¶ 15. At step two, it considered the “subjective effect” of that grooming on the child victims. *Id.* at ¶ 18. The objective nature of the offense at step one. Subjective impact on the victims at step two. Two steps, two purposes. That is the framework this Court approved. *See State v. Diana*, 2014 ME 45, ¶¶ 37–41, 89 A.3d 132; *State v. Shulikov*, 1998 ME 111, ¶ 23, 712 A.2d 504.

The sentencing court here scrambled it, and the transcript makes this plain.

At step one, the sentencing court stated:

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.

App. 14. At step two, the court stated:

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.

App. 18-19. Look at what ended up where. At step one, the objective step, the court discussed the girls' behavioral mirroring, their mother discovering them "acting it out." That is victim impact. It belongs at step two. *See Pfeil* at ¶ 18; *Shulikov* at ¶ 23 (step one "focus[es] on the objective nature of the offender's conduct").

At step two, where victim impact belongs, the court went the other direction. It said the words "subjective impact," then discussed Mr. Murray's conduct: he kept things private, he was planful, and he acted over multiple years without detection. That is an objective characterization of the offense and is a restatement of step one.

The court put victim-impact evidence at the objective step and objective evidence at the subjective step. That is not the disciplined separation of purposes *Pfeil*, *Ellis*, and *Diana* require. The State's answer is that the court said "subjective

impact,” and that should be enough. It is not. Labeling a consideration as subjective does not make it so when everything that follows describes the defendant's conduct.²

This was not harmless. *See State v. Gray*, 2006 ME 29, ¶ 17 (“if 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.”) The court had already set the Class C basic sentences at the statutory maximum before it reached step two. Counting the same grooming conduct again at step two served to lock in those maximums and push the Count 1 sentence higher. That is exactly why there is a prohibition on double-counting.

IV. The Sentencing Court used Mr. Murray’s victimization against him.

The State argues the sentencing court did not actually find that Mr. Murray was sexually abused as a child, relying on the court’s use of the word “could.” Red Br. 32. Read the full passage:

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

² The State acknowledges that *Pfeil*’s sentencing court considered grooming at step two for its “subjective effect on his child victims.” Red Br. at 28–29. That is the proper framework. The sentencing court here did not follow it.

of behavior and exposure at a young age can have a significant impact on a young person.

App. 17 (emphasis added). The State, in its brief, found the wrong point of emphasis; the operative word is “finds.” The phrase “could be considered” describes the weight the court might assign, not whether the court was engaging with the fact. And the reasoning only works if the court accepted the abuse happened. You cannot understand something “firsthand” that did not happen to you.³

The State’s reading has another problem. The court used “could be considered” in both directions: “could be considered mitigating” and “could be considered in aggravation.” If “could” means the court did not actually consider the fact in aggravation, then it did not consider it in mitigation either. Under the State's reading, the court treated Mr. Murray’s childhood abuse as entirely irrelevant. That makes no sense of a passage in which the court discussed the fact at length and reasoned about what Mr. Murray should have learned from it.

³ The State also argues the sentencing court did not “find” that Mr. Murray was abused because it excluded uncharged conduct the State proffered on similar grounds. Red Br. 32–33. But the court excluded that evidence because “it is unclear from the available information what exactly happened.” App. 16. With Mr. Murray’s victimization, the court engaged substantively with the content, reasoning about what Mr. Murray should have learned from it. That is active use of the fact, not exclusion.

The more natural reading is the obvious one. The court acknowledged Mr. Murray's abuse and held it against him, reasoning that because he experienced sexual abuse as a child, he should have known better than to do it to someone else. That is not the exercise of discretion. That is the conversion of a mitigating factor into an aggravating one.

This Court's cases treat childhood trauma as a mitigating factor. *See State v. DeWalt*, 684 A.2d 1291, 1293 (Me. 1996); *State v. Michaud*, 590 A.2d 538, 544 (Me. 1991). The sentencing court had discretion over how much weight to give it. *See State v. Seamon*, 2017 ME 123, ¶ 23 n.3, 165 A.3d 342. It could have given it very little. But reversing its direction is a different thing entirely. The "should have known better" reasoning punishes Mr. Murray for having been victimized. It contradicts the research on cycles of abuse, which documents that childhood sexual trauma produces lasting effects, including poor impulse control and blurred boundaries that can increase, not decrease, harmful behavior. See Blue Br. at 45–46. And it sends a message to every defendant considering whether to disclose an abuse history: be careful, because the court may use it to add time to your sentence.

CONCLUSION

The sentencing court said nothing about Mr. Murray's documented cognitive limitations. It imposed seven years of unsuspended incarceration without comparable cases to support it, even though the State's own comparables show that defendants who committed more serious offenses received less time. It counted the same grooming conduct at both steps of its analysis while misplacing victim-impact evidence at the objective step and objective evidence at the subjective step. And it took Mr. Murray's own childhood sexual abuse and turned it into a reason to punish him more. Any one of these errors would warrant remand. Together, they produced a sentence that does not reflect the individualized, proportionate analysis Maine law requires. This Court should vacate Mr. Murray's sentence and remand for resentencing.

Dated: February 24, 2026 /s/ James Mason

James Mason, Bar #4206
HANDELMAN & MASON LLC
Attorney for Appellant
16 Union Street
Brunswick, ME 04011
(207) 721-9200
james@handelmanmason.com

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: February 24, 2026

/s/ James Mason

James Mason, Bar # 4206