State of Maine v. Jason Servil

Sentence Appeal from Unified Criminal Docket in Somerset County

Supreme Judicial Court sitting as the Law Court
Law Court Docket number SRP-24-198

Brief for Appellant

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Introduction

The Somerset County Unified Court's independent research, use of an independently obtained obituary during its sentencing analysis, and biblical references made during the sentencing process were an abuse of the court's discretion and a violation of Mr. Servil's due process rights. The use of the religious rhetoric was also a violation of the First Amendment's Establishment Clause and infused religion into the sentencing scheme, giving the impression that Mr. Servil was being judged by something other than the statutory sentencing scheme used by the courts in imposing sentences. Additionally, the Somerset County Unified Court erred in asserting that it was not to able to impose consecutive sentences under the structure of Title 17-A M.R.S. § 1608.

Procedural History

Jason Servil, the appellant, was charged with Murder (Class M) under Title 17-A M.R.S. § 201(1)(A)[1] and Aggravated Assault (Class B) under Title 17-A M.R.S. § 208(1)(B)[2] on July18, 2022 by criminal complaint and had an initial appearance on the alleged charges on the same date. (App. at 1). Mr. Servil was indicted on the aforementioned charges on August 25, 2022 and arraigned on the charges, entering not guilty pleas, on August 31, 2022. (App. at 3).

A Rule 11 hearing was held on January 17, 2024, at which time Mr. Servil entered guilty pleas to both Count 1 and Count 2 of the indictment. (App. at 8-9). A sentencing hearing was held on April 12, 2024. (App. at 10). Mr. Servil was sentenced to a forty-five year term of incarceration with the Department of Corrections on the charge of Murder, restitution of $2,320, and ordered to pay fees in the amount of $45. (App. at 10). A concurrent ten year term of incarceration with the Department of Corrections was also imposed, with an order to pay $45 in fees, on the charge of Aggravated Assault. (App. at 10).

An application to allow an appeal of sentence was filed by Mr. Servil on April 24, 2024. (App. at 11). Mr. Servil's application to appeal his sentence was granted by this Court on July 31, 2024. (App. at 11).

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[1] Title 17-A M.R.S. § 201(1)(A) provides that "[a] person is guilty of murder if the person. . . intentionally or knowingly causes the death of another human being".

[2] Title 17-A M.R.S. § 208(1)(B): "[a] person is guilty of aggravated assault if that person intentionally, knowingly or recklessly causes. . . [b]odily injury to another with use of a dangerous weapon. . ."

Statement of Facts

Mr. Servil's sentencing hearing occurred on April 12, 2024 before the Somerset County Unified Court. (Sent. T. at 1). At the hearing, Mr. Servil raised a number of issues with the Sentencing Court's imposition of sentences on the Murder and Aggravated Assault charges. (Sent. T. at 51-53, 65, 70-71).

At the sentencing hearing the Sentencing Court discussed its decision not to impose consecutive sentences and stated:

> I also want to mention there was a -- and I mentioned briefly to counsel off the record, that I had not had an argument of concurrent versus consecutive sentences in the context of a murder case before, and I simply don't -- I don't think it is appropriate in this case for a consecutive sentence. If I did, it would probably --or at least there would be a real chance that there would be a longer period of time. I don't think I would necessarily suspend the amount of time that the defense was proposing, but I welcome that, and I also echo the defense's position insofar as probation is not an option in a murder case, when I say probation, obviously I don't mean a suspended sentence on probation, but some type of a split sentence with a probationary term at the end because the Legislature has deemed fit that probation is not an option, and it always makes me wonder how a person who has been sentenced to a minimum of 25-years is going to do when they come out of an institution, and with basically no followup, no supervision, nothing, but that's a decision and maybe a debate for another day, but even if I thought that it was appropriate, I don't think that Title 17-A of our Maine Revised Statutes Section 1608-1 would allow me to make a consecutive sentence because I think it is a really difficult argument for me that the convictions here are for offenses based on different conduct or arising from different criminal episodes. I don't find that this is different conduct or different criminal episodes that have been found in the past certain cases, such as State versus Treadway, 2020 Maine 127, State versus Perry, 2017 Maine 74, State versus Brown, 1998 Maine 129, all those cases, I just don't find that I could fit this under

> Subsection A of that Statute and the rest of them, in my mind anyway, clearly don't apply, so even if I thought that that was appropriate, I don't find the authority to do so.
> (Sent. T. at 51-53).

Additionally, during the sentencing, when discussing the aggravating factors in Mr. Servil's case, the Sentencing Court made the following comments:

> Aggravating factors to be considered include the subjective effect on the victim. I think that part of the sentencing process should involve some knowledge on my part of the victim in addition to everything I have been provided, certainly the statements mailed into the Court via the State from people, coupled with those made here today helped address that goal.
>
> I also obtained a copy of the deceased obituary, which was very moving to me, and with the parent's permission I would like to read that into the record, if that's all right?
>
> THE FAMILY: Yes, sir.
>
> THE COURT: Alice "Allie" E. Abbott, beloved daughter, granddaughter, sister, auntie, niece, cousin and friend, passed away on July 16th, 2022, at the age of 20.
>
> Allie was beautiful, spontaneous and had laugh and smile that could light up the room. She was a fiercely strong woman with a kind gentle soul. In her childhood years, Allie loved being part of the Brownies, GirlScouts and bowling team. In her teens, Allie loved spending time with her friends and family. She had a special place in her heart for mentoring 4 the autistic youth in the area.
>
> When Allie wasn't hanging out with her 6 friends and family, you could find her at home 4x4ing out back in her truck, fishing, baking, reading, listening to music, doing arts and crafts and gaming. She had a special passion for watching hummingbirds, starry night skies and collecting special rocks. Every year, Allie looked forward to helping her brother get ready for the demolition derby. She loved painting the cars and hanging out in the pit with the family. She was especially looking

forward to the birth of her first nephew in September.

> Allie is survived by her parents, Perley and Alice M. Russell Abbott, grandfather, Joseph Russell, brother, Clifford "C" and his wife Kristin Warren, uncles Harry "Joe" and wife June Abbott, Alfred Abbott and fiance Tammy, Louis Bernard and Donny Bush, aunts Nancy Bloss and Laura Russell. Allie also had many cousins and friends that meant the world to her.
> Allie was predeceased by grandparents Perley and Elmira Abbott, grandmother Alice K. 2 Russell, uncle Jason "Porky" Abbott, aunt Jennifer Russell, and cousins Joseph and Nathaniel Watson. Those who knew Allie, even just a little, lost a shining light in their lives. She had so much goodness, so much capacity to bring happiness to others and such a bright future. She will be deeply missed by all who knew and loved her.
> (Sent. T. at 62-64).

The Sentencing Court, after reading the victim's obituary, went on to list additional aggravating factors. (Sent T. at 64-65). The Court then, "taking the aggravating and mitigating factors into account[,]" did not find a "significant difference in weight." (Sent. T. at 65).

When imposing a final sentence of forty-five years on Mr. Servil, the Sentencing Court made the following statement: "I am not a particularly religious man, but I do believe that we are all eventually and ultimately judged for the conduct that we commit during our lives by a Power much greater than our judicial system and, Mr. Servil, I believe you will be no different." (Sent. T. at 65, 66).

Finally, the Sentencing Court concluded the sentencing hearing by stating:

> In closing, I want the family and friends of the victim to know that I became aware of a Psalm and it is probably futile for me to think this,

> but I think it still might provide you with some small level of solace concerning your unimaginable loss, and I also again would like to read this into the record with the permission of the family.
>
> It is Psalm 97, verse 10, that reads, and there are different variations but this gets the message across.
>
> Let those who love the Lord hate evil, for he guards the lives of his faithful ones and delivers them from the hand of the wicked.
>
> And this Psalm has been interpreted as reassuring those who hate evil that God has their back and God loves, guards and rescues them.
>
> Folks, I sincerely believe that your daughter, and friend, and sister is undoubtedly in a better place. You have my deepest sympathies. (Sent. T. at 67-68).

After the Sentencing Court's closing remarks, Mr. Servil requested a sidebar to raise objections to portions of the Court's sentencing analysis. (Sent. T. at 68, 69-70). The sidebar in open court never took place because "a brawl broke out in the courtroom when the victim's brother jumped over the railing and into the well." (Sent. T. at 68). The sidebar issues were then discussed in chambers and the following exchange took place:

> So, the reason I asked for a sidebar is in open Court I was attempting not to antagonize anyone. I would like to put on the record I object to two things during your sentencing; the first is the reference of reading the obituary you said you obtained. I believe looking over the records that that was not something provided by the State.
>
> THE COURT: I take full responsibility for that. It is something I got. I have, right or wrong, I have done it at least once or twice in the past, and 1always ask with the permission of the family. So, if that's wrong, it is all on me.

> MR. PRATT: Then the second thing is I would also object to the reading of the Psalm during the sentencing at the end of the sentencing due to the, in our opinion, separation that should exist between the Courts and religion, the State and religion, and so I just want to put that on the record. I didn't want to interrupt you during your -- out of courtesy to Your Honor, during the sentencing. Also, we wanted to double check our records before we objected to the obituary to make sure.
>
> THE COURT: Both of those were on me. I am tempted to say, of the record, but I won't say of the record. Obviously it did not have the intent that I had to calm things down, but I don't think anything I could have done could have calmed things down other than give a life sentence plus. Anyway. But your objections are noted, and if I am told by others that that's not appropriate, then that won't happen again. (Sent. Tr. 70-71).

Following the court's imposition of sentence, Mr. Servil timely filed his application to allow an appeal of his sentence on April 24, 2024. (App. at 11). This Court granted that application, allowing this appeal to proceed. (App. at 11).

Issues Presented for Review

I. Whether the sentencing court engaged in impermissible independent research in relation to the victim that resulted in the court reading the victim's obituary into the record and based part of its rationale for imposing its sentence on that independent research.

II. Whether the sentencing court impermissibly read a psalm from the Bible and made religious references during the sentencing hearing, giving the appearance that it used a religious basis as part of its rationale in imposing Mr. Servil's sentence.

III. Whether Title 17-A M.R.S. § 1608 authorized the sentencing court to impose consecutive sentences on the charges of intentional or knowing murder and aggravated assault.

Statement of Issues Presented for Review

Mr. Servil asserts that he was denied an impartial sentencing and due process during his sentencing hearing. The Somerset County Unified Court did independent research into Mr. Servil's case and obtained a copy of Alice Abbot's obituary, which the court read into the record and used as part of its analysis in setting Mr. Servil's maximum sentence in the second step of the Hewey analysis. In doing so the court has abused its sentencing powers, violated the Maine Code of Judicial Conduct, and also violated state and federal constitutional notions of due process.

Secondly, Mr. Servil's sentencing lacked impartially, due process, and violated the First Amendment's Establishment Clause when the Somerset County Unified Court made biblical references during its imposition of sentence. The Court's comments infused religion into the sentencing scheme and gave the impression that Mr. Servil was being judged by something other than the statutory sentencing criteria set out for use by the courts in imposing sentences.

Lastly, the Somerset County Unified Court erred in asserting that it was not able to impose consecutive sentences under the structure of Title 17-A M.R.S. § 1608. Mr. Servil's conduct involved two distinct victims and two different courses of action, allowing for the imposition of consecutive sentences under Title 17-A M.R.S. § 1608.

Wherefore, for the reasons enumerated above, Mr. Servil requests that this Court vacate his sentence and remand his case to the Somerset County Courts for further proceedings.

Argument

I. The sentencing court engaged in impermissible independent research in relation to the victim that resulted in the court reading the victim's obituary into the record and basing part of its rationale for imposing its sentence on that independent research.

This Court reviews "the maximum sentence and the final sentence for an abuse of discretion." State v. Stanislaw, 2013 ME 43, ¶ 17, 65 A.3d 1242, 1248 (Me. 2013). See also State v. Cookson, 2003 ME 136, ¶ 38, 837 A.2d 101, 112 (Me. 2003). Additionally, ". . . [this Court] review[s] all three statutory steps for whether the sentencing court disregarded the relevant sentencing factors or abused its sentencing power. Id." State v. Stanislaw, 2013 ME 43, ¶ 17, 65 A.3d 1242, 1248 (Me. 2013).

This Court has further noted that it will "review issues of due process de novo. See State v. Williamson, 2017 ME 108, ¶ 21, 163 A.3d 127. . . [and] review the court's sentencing to determine whether the procedures employed 'struck a balance between competing concerns that was fundamentally fair.' State v. Mullen, 2020 ME 56, ¶ 21, 231 A.3d 429 (quotation marks omitted)." State v. Gordon, 2021 ME 9, ¶ 12, 246 A.3d 170, 175 (Me. 2021).

During Mr. Servil's sentencing hearing on April 12, 2024, the Somerset County Unified Court did independent research into his case which resulted in the court reading Alice Abbot's obituary into the record and using that information in setting Mr. Servil's maximum sentence in the second step of the Hewey analysis.

(Sent. T. at 62-64); supra at 4-5. In doing so the court has abused its sentencing powers and also violated the state and federal constitutional notions of due process.

The Preamble to the Maine Code of Judicial Conduct states that "[a]n independent, fair, competent, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, fair, competent, and impartial judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society." Maine Code of Judicial Conduct Rule 2.9(C) states that ". . . a judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed." And Maine Code of Judicial Conduct 1.2 provides that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary; shall avoid impropriety; and should avoid the appearance of impropriety."

Additionally, "[I]t is a cardinal rule of American jurisprudence that the trial process, including the conduct of the trial judge, should be 'wholly free, disinterested, impartial and independent . . .' Hughes v. Black, 156 Me. 69, 73, 160 A.2d 113 (1960); State v. Bachelder, 403 A.2d 754, 758 (Me. 1979)." MacCormick v. MacCormick, 513 A.2d 266, 267 (Me. 1986).

"The United States and Maine Constitutions prohibit Maine's government from depriving a person of life, liberty, or property without due process of law.

U.S. Const. amend. XIV, § 1; Me. Const. art. I, § 6-A. . . ." State v. Gordon, 2021 ME 9, ¶ 12, 246 A.3d 170, 175 (Me. 2021).

This Court has stated that in a sentence review it "'look[s] to whether the sentencing court disregarded the statutory sentencing factors, abused its sentencing power, permitted a manifest and unwarranted inequality among sentences of comparable offenders, or acted irrationally or ***unjustly***.' Id.; see 15 M.R.S. § 2154 (2020)." State v. Gordon, 2021 ME 9, ¶ 13, 246 A.3d 170, 175 (Me. 2021). (emphasis added). It has further been noted by this Court that "[f]ederal cases have interpreted the due process clause as requiring a defendant 'not to be sentenced on false information . . . ***[and] requir[ing] that the defendant be given an adequate opportunity to refute information relied on at sentencing***.' United States v. Wilfred Am. Edu. Corp., 953 F.2d 717, 722 (1st Cir. 1992)(citation omitted)." State v. Bennett, 2015 ME 46, ¶ 23, 114 A.3d 994, 1001 (Me. 2015)(emphasis added).

Other jurisdictions have found an abuse of a sentencing court's discretion and due process violations when a judge has conducted independent research that resulted in the court using information, in making its determinations, that was not introduced into the record by the involved parties.

Florida has noted that it is error when a judge gives an appearance of impartiality by conducting independent research, which it relies on in making its ruling:

> ‘Whether intentional or not, the trial judge gave the appearance of partiality by taking sua sponte actions which benefitted’ one party over the other—in this case, Deutsche Bank. Lyles v. State, 742 So. 2d 842, 843 (Fla. 2d DCA 1999). ‘A judge must not independently investigate facts in a case and must consider only the evidence presented.’ Fla. Code of Jud. Conduct, Canon 3B(7), cmt. ‘[W]hen a judge becomes a participant in judicial proceedings, 'a shadow is cast upon judicial neutrality,'' particularly when the judge actively seeks the production of evidence that the parties themselves never sought to present. J.F. v. State, 718 So. 2d 251, 252 (Fla. 4th DCA 1998)(quoting Chastine v. Broome, 629 So. 2d 293, 295 (Fla. 4th DCA 1993)). Digiovanni v. Deutsche Bank Nat'l Tr. Co., 226 So. 3d 984, 988 (Fla. Dist. Ct. App. 2017).[3]

The courts in Massachusetts have similarly noted error when a judge conducted independent research that was relied upon in making a ruling:

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[3] The Florida Court further noted the problems with taking judicial notice of such independent research: “‘judicial notice applies to self-evident truths that no reasonable person could question, truisms that approach platitudes or banalities.’ Maradie v. Maradie, 680 So. 2d 538, 541 (Fla. 1st DCA 1996)(quoting Hardy v. Johns-Manville Sales Corp., 681 F.2d 334, 347-48 (5th Cir. 1982)). Judicial notice may only be taken pursuant to the procedures set forth in section 90.204. Id. at 540 (reversing in part because the trial court failed to follow the statutory procedure required for judicial notice under section 90.204). And ‘the practice of taking judicial notice of adjudicative facts should be exercised with great caution’ because ‘the taking of evidence, subject to established safeguards, is the best way to resolve disputes concerning adjudicative facts’ and judicially noticed matters are taken as true without being offered by the party who will ultimately benefit. Id. at 541.

Moreover, judicially noticed documents must be otherwise admissible. See Dufour v. State, 69 So. 3d 235, 253 (Fla. 2011)(‘[T]he fact that a record may be judicially noticed does not render all that is in the record admissible.’); Stoll v. State, 762 So. 2d 870, 877 (Fla. 2000)(‘[W]e find that documents contained in a court file, even if that entire court file is judicially noticed, are still subject to the same rules of evidence to which all evidence must adhere.’). Here, the document was simply printed from the internet. It was never authenticated or shown to fall within an exception to the rule against hearsay. ‘Web-sites are not self-authenticating.’ Nationwide Mut. Fire Ins. Co. v. Darragh, 95 So. 3d 897, 900 (Fla. 5th DCA 2012)(quoting St. Luke's Cataract & Laser Inst., P.A. v. Sanderson, No. 8:06-CV-223-T-MSS, 2006 U.S. Dist. LEXIS 28873, 2006 WL 1320242 (M.D. Fla. May 12, 2006)).”

Digiovanni v. Deutsche Bank Nat'l Tr. Co., 226 So. 3d 984, 989 (Fla. Dist. Ct. App. 2017).

> We take this opportunity to stress that judges should use great caution before conducting independent research into factual matters, particularly on the Internet. See S.J.C. Rule 3:09, Canon 2.9(C) (2016)("A judge shall consider only the evidence presented and any adjudicative facts that may properly be judicially noticed, and shall not undertake any independent investigation of the facts in a matter). See also American Bar Association Formal Opinion 478, Independent Factual Research by Judges Via the Internet (Dec. 8, 2017). Commonwealth v. Hilaire, 92 Mass. App. Ct. 784, 95 N.E.3d 278, fn. 7 (Mass. 2018).

In Alaska the courts have also found error when a "judge investigated facts outside the record on his own initiative, and the parties had no opportunity to challenge the accuracy or relevance of the judge's findings based on that investigation." Vent v. State, 288 P.3d 752, 758 (Alaska Ct. App. 2012). The Alaska Court further noted

> A reasonable person would conclude that the judge's violation of Canon 3B(12) created an appearance of partiality. Vent argues that a reasonable person would conclude that the judge's violation of Canon 3(B)(12) created the appearance that the judge was biased in favor of the State and that the judge should therefore be disqualified from this case. Both AS 22.20.020(a)(9) and the Code of Judicial Conduct have been interpreted to require a judge to be disqualified from a proceeding when the judge's conduct creates an appearance of partiality. To decide this issue, we ask whether the totality of the circumstances 'would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.' We review this issue de novo.
>
> . . .
>
> This violation also requires us to vacate the judgment. Vent also argues that he is entitled to relief from the judgment because the judge's

> conduct deprived him of his due process right to an impartial decision maker.[4]
> Vent v. State, 288 P.3d 752, 756-757 (Alaska Ct. App. 2012).

Arizona has also noted the importance of a defendant receiving fair judicial proceedings, stating that

> the right to a fair trial is the 'foundation stone upon which our present judicial system rests,' and that there is an indispensable right to trial presided over by a judge who is 'impartial and free of bias or prejudice.' State v. Neil, 102 Ariz. 110, 112, 425 P.2d 842, 844 (1967). It is the intent of our rules and statutes in the administration of justice that cases be tried by judges who are not biased or prejudiced. State v. Puckett, 92 Ariz. 407, 377 P.2d 779 (1963).
> State v. Emanuel, 159 Ariz. 464, 467, 768 P.2d 196, 199 (Ct. App. 1989).

The Sentencing Court's independent research and use of the victim's obituary when determining the maximum sentence that it would impose on Mr.

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[4] The Alaska Court went on to state that:
"Several courts have held that automatic reversal of a judgment is required when a judge independently investigates the facts of a case in a manner that creates the appearance that the judge is biased. But other courts have acknowledged the possibility that this type of error may be harmless. In the main, these courts have applied the test articulated by the United States Supreme Court in Liljeberg v. Health Services Acquisition Corporation to assess whether an appearance of partiality requires a judgment to be overturned.
. . .

The Liljeberg Court outlined three factors relevant to this inquiry: (1) the risk of injustice to the parties in the particular case; (2) the risk that the denial of relief will produce injustice in other cases; and (3) the risk of undermining the public's confidence in the judicial process.

We need not decide whether to require automatic reversal or to adopt the Liljeberg test as a matter of Alaska law. Even if we apply the Liljeberg test, we conclude that the superior court's conduct in this case was not harmless error."
Vent v. State, 288 P.3d 752, 757 (Alaska Ct. App. 2012).

Servil was an abuse of its discretion. As noted, both the Maine Code of Judicial Conduct and this Court's prior case law highlight that a judge should be independent, disinterested, and impartial in the court proceedings before it. See State v. Gordon, 2021 ME 9, ¶ 13, 246 A.3d 170, 175 (Me. 2021); MacCormick v. MacCormick, 513 A.2d 266, 267 (Me. 1986); State v. Bachelder, 403 A.2d 754, 758 (Me. 1979); Hughes v. Black, 156 Me. 69, 73, 160 A.2d 113 (1960). This disinterest and impartiality was not maintained in setting Mr. Servil's sentence.

As noted previously, "'[w]hen a judge becomes a participant in judicial proceedings, 'a shadow is cast upon judicial neutrality,' " particularly when the judge actively seeks the production of evidence that the parties themselves never sought to present." Digiovanni v. Deutsche Bank Nat'l Tr. Co., 226 So. 3d 984, 988 (Fla. Dist. Ct. App. 2017). The court's independent research and use of the obituary in its sentencing analysis casts a "shadow" over its neutrality and creates an appearance of impartiality.

The record also clearly illustrates that the Sentencing Court used the obituary as part of its analysis, using it as an aggravating factor. When sentencing Mr. Servil, the Sentencing Court stated that

> Aggravating factors to be considered include the subjective effect on the victim. I think that part of the sentencing process should involve some knowledge on my part of the victim in addition to everything I have been provided, certainly the statements mailed into the Court via the State from people, coupled with those made here today helped address that goal.

> ***I also obtained a copy of the deceased obituary, which was very moving to me, and with the parent's permission I would like to read that into the record, if that's all right?***
> (Sent. T. at 62)(emphasis added).

As just seen in the Court's words, the victim's obituary was a key focus of the Court's sentencing analysis. The obituary had a significant impact on the court, which is evident by its decision to use it as an aggravating factor in sentencing Mr. Servil. The use of the obituary by the Court was not a small, tangential issue. It was a central element in the Court's decision making process.

Moreover, in issuing its sentence, the Court was limited to the record created by the parties, not one of its own making. See e.g. D.M. v. Dep't of Children & Family Servs., 979 So. 2d 1007, 1010 (Fla. Dist. Ct. App. 2008). The Sentencing Court's inclusion of additional, independently obtained information presented extraneous information that neither party had put forth as part of the record before the court.

As such, the use of the obituary as a basis for imposing its sentence was a clear abuse of the court's discretion.

On additional grounds, the court's use of the obituary was a violation of Mr. Servil's due process rights. "A defendant's right to due process of law continues through his or her sentencing hearing, Gardner v. Florida, 430 U.S. 349, 358, 97 S. Ct. 1197, 51 L. Ed. 2d 393 (1977). . .". State v. Butsitsi, 2015 ME 74, ¶ 25, 118 A.3d 222, 229 (Me. 2015).

The obituary was, presumably, drafted by members of the victim's family. The court acknowledged that the obituary was something it obtained of its own accord.[5] (Sent. T. at 70). The State did not provide the obituary to Mr. Servil in advance of the sentencing.[6] To that point, Mr. Servil was not able to review or investigate the information contained in the obituary prior to the court's use of the information as an aggravating factor in Mr. Servil's case. To that point, he was denied the opportunity to challenge the accuracy or relevance of the judge's findings based on the judge's outside research.

Such actions made the sentencing proceedings impartial. The proceedings were not free from bias or prejudice, and, as such, Mr. Servil was denied due process before the court. The playing field was not level and the Sentencing Court's independent research and use of the victim's obituary deprived him of the rights he is afforded by the United States and Maine Constitutions.

Given these shortcomings, Mr. Servil is requesting that this Court find that his sentence, as imposed, was an abuse of the court's discretion and a violation of his due process rights and that his case be remanded to the lower court for resentencing.

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[5] The Sentencing Court stated that "It is something that I got." (Sent. T. at 70).

[6] Mr. Servil noted in his objection to the court that "looking over the records that that was not something provided by the State." (Sent. T. at 70).

II. The sentencing court impermissibly read a psalm from the Bible and made religious references during the sentencing hearing, giving the appearance that it used a religious basis as part of its rationale in imposing Mr. Servil's sentence.

As noted in Section I, this Court reviews "the maximum sentence and the final sentence for an abuse of discretion." State v. Stanislaw, 2013 ME 43, ¶ 17, 65 A.3d 1242, 1248 (Me. 2013). See also State v. Cookson, 2003 ME 136, ¶ 38, 837 A.2d 101, 112 (Me. 2003). Additionally, ". . . [this Court] review[s] all three statutory steps for whether the sentencing court disregarded the relevant sentencing factors or abused its sentencing power. Id." State v. Stanislaw, 2013 ME 43, ¶ 17, 65 A.3d 1242, 1248 (Me. 2013).

This Court has noted that it reviews "the legality and constitutionality of a sentence de novo. State v. Harrell, 2012 ME 82, P 4, 45 A.3d 732; see State v. Brockelbank, 2011 ME 118, P 15, 33 A.3d 925; State v. Cain, 2006 ME 1, P 7, 888 A.2d 276." State v. Bennett, 2015 ME 46, ¶ 14, 114 A.3d 994, 999 (Me. 2015). "[I]ssues of due process [are reviewed] de novo. See State v. Williamson, 2017 ME 108, ¶ 21, 163 A.3d 127. . . [and] review [of] the court's sentencing [is] to determine whether the procedures employed 'struck a balance between competing concerns that [it] was fundamentally fair.' State v. Mullen, 2020 ME 56, ¶ 21, 231 A.3d 429 (quotation marks omitted)." State v. Gordon, 2021 ME 9, ¶ 12, 246 A.3d 170, 175 (Me. 2021).

The Somerset County Unified Court made biblical references when imposing its sentence on Mr. Servil. Such references reflect an impartiality on the part of the Sentencing Court and constitute violations of constitutional provisions.

When imposing a final sentence of forty-five years on Mr. Servil, the Sentencing Court made the following statement: "I am not a particularly religious man, but ***I do believe that we are all eventually and ultimately judged for the conduct that we commit during our lives by a Power much greater than our judicial system and, Mr. Servil, I believe you will be no different.***" (Sent. T. at 65, 66)(emphasis added).

Additionally, the Sentencing Court concluded the sentencing hearing by stating:

> In closing, I want the family and friends of the victim to know that I became aware of a Psalm and it is probably futile for me to think this, but I think it still might provide you with some small level of solace concerning your unimaginable loss, and I also again would like to read this into the record with the permission of the family.
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> It is Psalm 97, verse 10, that reads, and there are different variations but this gets the message across.
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> Let those who love the Lord hate evil, for he guards the lives of his faithful ones and delivers them from the hand of the wicked.
>
> And this Psalm has been interpreted as reassuring those who hate evil that God has their back and God loves, guards and rescues them.
>
> Folks, I sincerely believe that your daughter, and friend, and sister is undoubtedly in a better place. You have my deepest sympathies. (Sent. T. at 67-68).

Both of these comments by the Sentencing Court infused religion into the hearing, giving the impression of impartiality and personal judgement by the Court upon Mr. Servil. Additionally, the comments failed to ensure that the Court satisfied the constitutional provisions found in the First and Fourteenth Amendments to the United States Constitution and the relevant provisions of the Maine Constitution.

A court is intended to be an impartial body. As noted previously, the Preamble to the Maine Code of Judicial Conduct states that "[a]n independent, fair, competent, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, fair, competent, and impartial judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society." And Maine Code of Judicial Conduct 1.2 provides that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary; shall avoid impropriety; and should avoid the appearance of impropriety."

Additionally, "[I]t is a cardinal rule of American jurisprudence that the trial process, including the conduct of the trial judge, should be 'wholly free, disinterested, impartial and independent . . .' Hughes v. Black, 156 Me. 69, 73, 160 A.2d 113 (1960); State v. Bachelder, 403 A.2d 754, 758 (Me. 1979)." MacCormick v. MacCormick, 513 A.2d 266, 267 (Me. 1986). Moreover, this

Court has stated that in a sentence review it "'look[s] to whether the sentencing court disregarded the statutory sentencing factors, abused its sentencing power, permitted a manifest and unwarranted inequality among sentences of comparable offenders, or acted irrationally or ***unjustly***.' Id.; see 15 M.R.S. § 2154 (2020)." State v. Gordon, 2021 ME 9, ¶ 13, 246 A.3d 170, 175 (Me. 2021)(emphasis added).

In terms of constitutional principles, "the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process Clause." Gardner v. Florida, 430 U.S. 349, 358, 97 S. Ct. 1197, 1204 (1977).

Furthermore, the First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." This Court has found that, "[d]istilled to its essence, the Establishment Clause prohibits the government from supporting or advancing religion and from forcing religion, even in subtle ways, on those who choose not to accept it." Bagley v. Raymond Sch. Dep't, 1999 ME 60, ¶ 21,728 A.2d 127, 135 (Me. 1999). See also Art. I, § 3 of the Maine Constitution.

In United States v. Bakker, 925 F.2d 728, 730 (4th Cir. 1991), the Fourth Circuit noted that "remarks made by the trial court compromised the sentencing proceeding and thus deprived Bakker of due process." The Fourth Circuit went on to note that

> Courts have held that sentences imposed on the basis of impermissible considerations, such as a defendant's race or national origin, violate due process. See, e.g., United States v.

> Borrero-Isaza, 887 F.2d 1349, 1352-57 (9th Cir. 1989); United States v. Gomez, 797 F.2d 417, 419 (7th Cir. 1986)(sentencing more harshly based on nationality or alienage 'obviously would be unconstitutional.') While these cases focused on a defendant's characteristics, ***we believe that similar principles apply when a judge impermissibly takes his own religious characteristics into account in sentencing.***
> United States v. Bakker, 925 F.2d 728, 740 (4th Cir. 1991)(emphasis added).

The Fourth Circuit concluded further that "Courts, however, cannot sanction sentencing procedures that create the perception of the bench as a pulpit from which judges announce their personal sense of religiosity and simultaneously punish defendants for offending it." United States v. Bakker, 925 F.2d 728, 741 (4th Cir. 1991).

In Nebraska courts have found issue with biblical references from the bench:

> Also problematic with the trial judge's use of biblical scripture is the fact that from its very inception, this country has recognized the importance of separation of church and state. Allowing a court to recite scripture, and thereby proclaim its interpretation of that scripture, implies that the court is advancing its own religious views from the bench.
>
> Statements of religious expression by a judge or remarks which suggest that the judge dislikes the crimes committed by a defendant do not necessarily evidence improper bias or prejudice. See, Six v. Delo, 885 F. Supp. 1265 (E.D. Mo. 1995), affirmed 94 F.3d 469 (8th Cir. 1996); United States v. Baer, 575 F.2d 1295 (10th Cir. 1978); Poe v. State, 341 Md. 523, 671 A.2d 501 (1996). However, courts are well advised to rely upon the statutory guidelines for imposing sentences. Reliance upon irrelevant material, such as the court's own religious beliefs, could convince a reasonable person that a court was biased or prejudiced.
> State v. Pattno, 254 Neb. 733, 741-742, 579 N.W.2d 503, 508-509

(Neb. 1998).

The Sentencing Court did not maintain the impartiality required of the court when it made biblical references during its imposition of sentence upon Mr. Servil. Such statements were an abuse of the court's discretion. The comments infused religion into the sentencing scheme and gave the impression that Mr. Servil was being judged by something other than the statutory sentencing criteria set out for use by the courts in imposing sentences.

Additionally, as the Nebraska court has noted "from its very inception, this country has recognized the importance of separation of church and state. Allowing a court to recite scripture, and thereby proclaim its interpretation of that scripture, implies that the court is advancing its own religious views from the bench." State v. Pattno, 254 Neb. 733, 741-742, 579 N.W.2d 503, 508-509 (Neb. 1998). The use of religious rhetoric from the bench runs afoul of the First Amendment's Establishment Clause by pulling religion into the sentencing process. Additionally, the Due Process Clause is violated by the use of biblical references. Such comments do not present the court as a fair and impartial governing body, but instead suggest an impartiality by the court in placing judgment on Mr. Servil. A judge needs to remain free of bias or prejudice and the comments contained in the record bring that impartiality into question.

Lastly, particularly when viewing the use of the victim's independently obtained obituary in combination with the court's religious references in sentencing Mr. Servil, the Sentencing Court abused its discretion.

III. Title 17-A M.R.S. § 1608 authorized the sentencing court to impose consecutive sentences on the charges of intentional or knowing murder and aggravated assault.

This Court has stated that it reviews the "the imposition of consecutive sentences for an abuse of discretion. Downs, 2009 ME 3, P 29, 962 A.2d 950." State v. Stanislaw, 2013 ME 43, ¶ 17, 65 A.3d 1242, 1248 (Me. 2013). "[B]ut [this Court] review[s] a 'court's determination as to the presence of [one of the factors listed in 17-A M.R.S. § 1256(2)] for clear error. . .'". State v. Treadway, 2020 ME 127, ¶ 13, 240 A.3d 66, 70 (Me. 2020)(citations omitted). Conversely, it is logical that this Court will review the imposition of concurrent sentences under the same standard.

"[Q]uestions of law [are reviewed] de novo, including statutory interpretation and the legality and constitutionality of a sentence. State v. Brockelbank, 2011 ME 118, P 15, 33 A.3d 925; State v. Cain, 2006 ME 1, P 7, 888 A.2d 276." State v. Harrell, 2012 ME 82, ¶ 4, 45 A.3d 732, 734 (Me. 2012).

Mr. Servil requested that the Sentencing Court impose consecutive sentences in his case so that he could receive a period of probation upon release.[7] (Sent. T. at

[7] The term of probation would be tied to the aggravated assault charge, as the statutory scheme found in Title 17-A M.R.S. § 1602 does not allow for murder charges to receive a period of probation. See Title 17-A M.R.S. § 1602(2).

35, 51-53). The Sentencing Court did not believe that Title 17-A M.R.S. § 1608 allowed for the court to impose consecutive sentences. (Sent. T. at 51-53). Mr. Servil asserts that such a sentencing scheme is permitted under the terms of Title 17-A M.R.S. § 1608.

In making its decision not to impose consecutive sentences, the Sentencing Court made the following remarks:

> I also want to mention there was a -- and I mentioned briefly to counsel off the record, that I had not had an argument of concurrent versus consecutive sentences ***in the context of a murder case before, and I simply don't -- I don't think it is appropriate in this case for a consecutive sentence***. If I did, it would probably --or at least there would be a real chance that there would be a longer period of time. I don't think I would necessarily suspend the amount of time that the defense was proposing, but I welcome that, and I also echo the defense's position insofar as probation is not an option in a murder case, when I say probation, obviously I don't mean a suspended sentence on probation, but some type of a split sentence with a probationary term at the end because the Legislature has deemed fit that probation is not an option, and it always makes me wonder how a person who has been sentenced to a minimum of 25-years is going to do when they come out of an institution, and with basically no followup, no supervision, nothing, but that's a decision and maybe a debate for another day, but even if I thought that it was appropriate, ***I don't think that Title 17-A of our Maine Revised Statutes Section 1608-1 would allow me to make a consecutive sentence because I think it is a really difficult argument for me that the convictions here are for offenses based on different conduct or arising from different criminal episodes. I don't find that this is different conduct or different criminal episodes that have been found in the past certain cases***, such as State versus Treadway, 2020 Maine 127, State versus Perry, 2017 Maine 74, State versus Brown, 1998 Maine 129, all those cases, I just don't find that I could fit this under Subsection A of that Statute and the rest of them, ***in my mind anyway, clearly don't apply, so even if I thought that that was appropriate, I don't***

find the authority to do so.[8]
(Sent. T. at 51-53)(emphasis added).

Consecutive sentences are permitted by Title 17-A M.R.S. § 1608(1), which provides:

> The court shall state in the sentence of imprisonment whether a sentence must be served concurrently with or consecutively to any other sentence previously imposed or to another sentence imposed on the same date. The sentences must be concurrent except that the court may impose the sentences consecutively after considering the following factors:
>
> A. The convictions are for offenses based on different conduct or arising from different criminal episodes;
>
> B. The individual was under a previously imposed suspended or unsuspended sentence and was on probation or administrative release, under incarceration or on a release program or period of supervised release at the time the individual committed a subsequent offense;
>
> C. The individual had been released on bail when that individual committed a subsequent offense, either pending trial of a previously committed offense or pending the appeal of previous conviction; or
>
> D. The seriousness of the criminal conduct involved in either a single criminal episode or in multiple criminal episodes or the seriousness of the criminal record of the individual, or both, require a sentence of imprisonment in excess of the maximum available for the most serious offense.

Title 17-A M.R.S. § 1608(2) further discusses situations where there are crimes that arise from the same course of criminal conduct. The statute only

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[8] A ten year concurrent sentence was imposed on the aggravated assault charge. (Sent. T. at 67).

prohibits imposition of consecutive sentences in certain situations. The statute provides that

> [a]n individual may not be sentenced to consecutive terms for crimes arising out of the same criminal episode if:
>
> A. One crime is an included crime of the other;
>
> B. One crime consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other;
>
> C. The crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of that conduct; or
>
> D. Inconsistent findings of fact are required to establish the commission of the crimes.
> Title 17-A M.R.S. § 1608(2).

This Court has found that

> In cases involving multiple offenses, the sentencing court must determine whether to impose consecutive or concurrent sentences, pursuant to 17-A M.R.S. § 1256(2).[9] Section 1256(2) provides that sentences ordinarily run concurrently, but the statute grants the sentencing court discretion to impose consecutive sentences upon consideration of several factors:
>
> [S]entences shall be concurrent unless, in considering the following factors, the court decides to impose sentences consecutively:
>
> A. That the convictions are for offenses based on different conduct or arising from different criminal episodes;
> State v. Stanislaw, 2013 ME 43, 65 A.3d 1242, 1247-1248 (Me. 2013).
>
> This Court has also stated that when

[9] This provision is now found in Title 17-A M.R.S. § 1608.

> 'interpreting a statute, our single goal is to give effect to the Legislature's intent in enacting the statute.' Dickau v. Vt. Mut. Ins. Co., 2014 ME 158, ¶ 19, 107 A.3d 621. 'The first step in statutory interpretation requires an examination of the plain meaning of the statutory language in the context of the whole statutory scheme.' Sunshine v. Brett, 2014 ME 146, ¶ 13, 106 A.3d 1123 (quotation marks omitted). 'If the statutory language is silent or ambiguous, we then consider other indicia of legislative intent.' Dyer v. Dyer, 2010 ME 105, ¶ 7, 5 A.3d 1049.
> State v. Santerre, 2023 ME 63, ¶ 8, 301 A.3d 1244, 1247 (Me. 2023).

In State v. Ward, 2011 ME 74, ¶ 27, 21 A.3d 1033, 1040 (Me. 2011), this Court noted that the sentencing court in that case had properly imposed consecutive sentences, where "Ward's commission of robbery, followed by his commission of kidnapping and attempted murder, represented 'different conduct' within the meaning of section 1256(2)(A)."

Nothing in Title 17-A M.R.S. § 1608 states that a murder conviction cannot be subject to a consecutive sentence. And, Mr. Servil would argue that Title 17-A M.R.S. § 1608(1)(A) permits consecutive sentences in his case. The aggravated assault and murder were based on different conduct, directed at different victims. One victim was hit with a crow bar and the other was stabbed. (Sent. T. at 21-22). The victims were assaulted one after the other. The conduct directed at the two victims was different. It was permissible under the facts presented to the Sentencing Court for it to consider and impose consecutive sentences. As such, the Sentencing Court made an error in its analysis, as it was possible for the court to impose consecutive sentences under Title 17-A M.R.S. § 1608.

Conclusion

For the above-reasons, the Appellant asks this Court vacate his sentence and remand his case to the Penobscot County Courts for further proceedings.

Dated: November 9, 2024

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Certificate of Service

I, Jeremy Pratt, Esquire, hereby certify that on this date I mailed via the U.S. postal service, first class mail, two copies of the foregoing Brief of Appellant to Katie Sibly, Esq., Office of the Attorney General, 6 State House Station, Augusta, ME 04333.

Dated: November 9, 2024

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