THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
Sitting as the Law Court

Law Court Docket Number: KEN-24-329

STATE OF MAINE

v.

IRINEU B. GONCALVES

On Appeal from a criminal conviction entered by the Unified Criminal Court sitting in Kennebec County.

Brief for Appellee – The State of Maine

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STATEMENT OF THE CASE

Procedural History

On June 16, 2023, the Defendant was arrested and had his initial appearance on the same day. (A. 3.) On September 11, 2023, the Defendant was indicted on seven charges including Attempted Murder (Class A), two counts of Aggravated Assault (Class B), Domestic Violence Terrorizing (Class D), Domestic Violence Criminal Threatening (Class D), Assault on an Officer (Class C), and Violation of Conditions of Release (Class E). (A. 4, 47-49.) The Defendant plead not guilty on September 12, 2023. (A. 4.) Several dispositional conferences were held, including a judicial settlement conference on November 22, 2023. (A. 5.)

On April 10, 2024, the trial court granted a motion for a mental examination on behalf of the Defendant. (A. 6.) Additionally, on April 10, 2024, the Defendant waived his right to a jury trial and a bench trial was scheduled to start on May 28, 2024. (A. 6.) The bench trial was held from May 28, 2024 through May 30, 2024. (A. 7.) Prior to the trial beginning, the Defendant plead guilty by *Alford* plea to Counts 2 and 7 and the State dismissed Counts 3 and 4. (A. 29, 47-49.) After trial, the trial court found the Defendant guilty of the remaining counts. (A. 7, 29-46.)

Once the verdict was rendered, sentencing was scheduled for July 10, 2024. (A. 8.) At sentencing, the trial court heard argument and impact statements from both sides regarding aggravating and mitigating factors. (A. 20-27.) From the State,

the named victim, [redacted] along with her mother, spoke about the significant impact the Defendant's crimes had on her personally and her family, including her minor children. (*Id.*) Additionally, the State argued for the trial court to aggravate the Defendant's sentence based on uncharged conduct stemming from multiple incidents occurring in and out of the State of Maine. (*Id.*) The Defendant had members of his family speak on his behalf and argued that his abnormal condition of the mind should be used as a mitigating factor by the trial court. (*Id.*)

In its sentencing, the trial court found as aggravating factors the impact on the victim, uncharged conduct concerning stalking behavior by the Defendant involving the victim, and uncharged conduct against witnesses to the Defendant's actions on June 14, 2023. (A. 24.)[1] Looking to mitigating factors, the trial court found the Defendant's lack of criminal history, the Defendant's acceptance of responsibility to some charges prior to trial, and the fact that prior to the June 2023 incident the Defendant appeared to be a hard worker to be mitigating. (A. 23.) The trial court took into consideration the Defendant's argument that his abnormal condition of the mind was a mitigating factor. (*Id.*) Despite that consideration, the trial court rejected the Defendant's abnormal condition of the mind as a mitigating factor in its sentence. (A. 23.) After weighing the aggravating and mitigating factors, the trial court found

[1] As noted later in this brief, the State does concede the trial court erred, in part, as to the reliability of one specific incident of uncharged conduct used in sentencing the Defendant.

the aggravating factors outweighed the mitigating and imposed the following sentence:

- Count 1 – Attempted Murder (Class A)
  - 30 Years/All but 18 Years Suspended/4 Years Probation
- Count 2 – Aggravated Assault (Class B)
  - 10 Years Concurrent to Count 1
- Count 5 – Domestic Violence Criminal Threatening (Class D)
  - 364 Days Concurrent to Count 1
- Count 6 – Assault on an Officer (Class C)
  - 30 Months/All Suspended/2 Years Probation Consecutive to Count 1
- Count 7 – Violation of Conditions of Release (Class D)
  - 6 Months Concurrent to Count 1

(A.13-15, 26.)

After sentence was imposed, the Defendant filed notice of appeal on July 11, 2024. (A. 11.)

Statement of Facts

On June 14, 2023, the Defendant attempted to murder [redacted] in a hotel parking lot. (Trial Tr. 69-78 (May 28, 2024).) Specifically, after the Defendant became enraged because [redacted] would not give him the attention he believed he was entitled, he jumped into her motor vehicle while stating "I am going to kill you this time, I am going to kill you now." (*Id.* at 73.) After that statement, the Defendant attempted to do just that. [redacted] testified that the Defendant placed his hands on her throat and pushed her into the back of her car seat. (*Id.*) The Defendant was pushing so hard on her neck she started to cough up blood. (*Id.*) [redacted] was trapped by her

seatbelt with the Defendant pinning her down with his body weight. (*Id*.) She was unable to breath while trapped in her seat. (*Id*.) However, [redacted] did not give up.

While the Defendant strangled [redacted], she fought back. (*Id.* at 74.) She grabbed at the Defendant's testicles, squeezed as hard as she could, and fought him off all while oxygen was being stripped from her by the Defendant. (*Id*.) Somehow, through her sheer will, [redacted] was able to open her car door and attempt to escape. (*Id*.) The Defendant was not deterred. (*Id*.) He simply readjusted whenever [redacted] was about to get away, so he could get a "better grip." (*Id*.) Luckily for [redacted], when she was able to force the Defendant to reposition, she was able to get little bits of air. (*Id*.) At some point, the Defendant was pushing [redacted] so deep into her seat, she slid out from her seatbelt and got out of the car. (*Id*.) Again, the Defendant persisted.

When [redacted] slipped out of the Defendant's grip, she landed on the ground outside the car. (*Id.* At 75.) [redacted] had noticed there was a man driving a van in the parking lot, so she screamed for help saying the Defendant was going to kill her. (*Id*.) To stop [redacted] from getting help, the Defendant started punching her in the face, ear, and back of the head. (*Id.* at 76.) The Defendant hit [redacted] so hard, so many times, she saw stars and became dizzy. (*Id*.) But the Defendant was still not done with her. (*Id*.) After savagely punching [redacted] time after time, the Defendant got on top of her, placed his knees on her chest, and began strangling her again. (*Id*.) [redacted] described that as the Defendant strangled her, she lost feeling in her hands

and feet. (*Id*.) Eventually, for [redacted], everything went black. (*Id*.) Despite her body shutting down, [redacted] was still mentally present as she prayed to God, telling herself not to approach a white light if it appeared, and thought continuously of her children. (*Id.* at 73, 76-77.)

Thankfully, [redacted] was not alone that summer night. Two bystanders, Heather Paradis and Kyle Cooney, risked their own safety to help [redacted] survive. In June of 2023, Heather was a hotel employee at the Holiday Inn. (*Id.* at 105.) On June 14, 2023, Heather was working the front desk when she got a phone call that some sort of altercation was occurring in the parking lot. (*Id.* at 106.) When Heather got to the parking lot, she saw the Defendant on top of [redacted] and described the scene as follows:

> When I came out there was a man, Irineu Goncalves on top of a female who was not responsive at all, she was laid out, she had blood coming out of the back of her head, her face was beat up pretty badly, her eyeballs were kind of bulging out of her head and Irineu had both of his thumbs with his full body weight on her throat.
>
> (*Id.* at 107.)

Instead of running away, Heather bravely ran toward [redacted] and the Defendant and did her best to try and pull the Defendant off [redacted]. (*Id*.) She told the Defendant he was killing [redacted], pulled at his backpack, using all her body weight to save [redacted]. (*Id*.) Heather was able to get the Defendant to loosen his grip, and even got the Defendant to remove one hand from [redacted]'s neck. (*Id.* at 108.)

However, as she grew tired, she let go and the Defendant immediately placed both hands back around [redacted]'s neck and squeezed. (*Id.*)

Kyle Cooney was also present in the parking lot on June 14, 2023. (Trial Tr. 209 (May 29, 2024).) Kyle was in town for business and staying at the Holiday Inn in Waterville. (*Id.*) That evening, he was coming back from dinner and observed the Defendant beating [redacted]. (*Id.* at 210.) He could hear [redacted] screaming for help saying the Defendant was going to kill her. (*Id.* at 211.) Kyle witnessed the Defendant on top of [redacted], punching her, and got closer to try and help. (*Id.* at 211-212.) Kyle approached the Defendant and told him to stop, that he was killing [redacted], but that did not work. (*Id.* at 214-215.) The Defendant again persisted. In fact, the Defendant threatened Kyle and told him he had a gun he would use to kill Kyle and [redacted]. (*Id.* at 215.) Due to that threat, Kyle did not physically get involved and called 911 instead. (*Id.*)

Shortly after 911 was called, Officer Jake Whitley arrived on scene. (Trial Tr. 116 (May 28, 2024).) Officer Whitley testified that he observed the Defendant on top of [redacted] and saw blood covering her face and the Defendant's hands. (*Id.* at 118.) Officer Whitley ordered the Defendant to let [redacted] go, and when he did not, he began pulling him off. (*Id.*) A fight ensued between the two, where the Defendant refused to submit to arrest and assaulted Officer Whitley. (*Id.* at 119-122.) The Defendant bit Officer Whitley, grabbed at his ear, and tried to

get his gun out of its holster. (*Id.*) Thankfully, other officers arrived to help Officer Whitley, and after being tased numerous times, they were able to get the Defendant in custody. (*Id.* at 121-122.) The Defendant made no statements during the fight, but once at the hospital, the Defendant asked Officer Whitley why he looked so serious. (*Id.* at 127.) When Officer Whitley said he always looks serious, the Defendant said Officer Whitley "should put a smile on [his] face more often and not to take it personally." (*Id.* at 129.)

Officer Whitley also testified about what he and officers did to try and help [redacted] after the Defendant was secured. (*Id.* at 124.) He noted that [redacted] had blood on her face, marks on her neck, and she had agonal breathing. (*Id.*) Officer Whitley described agonal breathing as gasping for breath. (*Id.*) Officer Whitley made clear his training and experience taught him that when someone is suffering from agonal breathing, his next step is to get medical assistance as soon as possible. (*Id.* at 125.)

To explain more about [redacted]'s medical needs, the State called EMT Ryder Johnston who provided care to [redacted] that night. (*Id.* at 179.) EMT Johnston testified that he was sent to the Holiday Inn for a female suffering from "agonal respirations." (*Id.* at 178.) EMT Johnston explained that agonal breathing is a sign that a person is "on the way to death, it is [the] body's last ditch for staying alive." (*Id.* at 178-179.) Upon arrival, he observed [redacted] laying in a pool of blood with injuries to her face and neck. (*Id.* at 179.)

In addition to EMT Ryder, the State called Dr. Reid Roberts who treated [redacted] a few days after the attack. (Trial Tr. 232 (May 29, 2024).) Dr. Roberts outlined his treatment of [redacted] for dizziness and head pain. (*Id.* at 233.) He also explained the seriousness of agonal breathing and how it can mean a person is close to death. (*Id.* at 238-239.)

[redacted], along with her sister [redacted], testified that the injuries [redacted] sustained were substantial. (Trial Tr. 77-80, 196-204 (May 28, 2024).) [redacted]'s nose was broken, her lip split, her neck rubbed raw, and she suffered a head injury. (*Id.* at 77-82.) [redacted] was not able to swallow without pain, struggled to eat, work out, and has continued to suffer with vertigo since the incident. (*Id.* at 82-85.) Between the Defendant's conduct, the physical injuries, and the mental anguish caused, the Defendant's attack on [redacted] was, and remains, brutal. (A. 42.)

ISSUES PRESENTED

I. Whether the trial court erred by rejecting the Defendant's argument that his abnormal condition of the mind was a mitigating factor?

II. Whether the trial court's error in relying on unreliable uncharged conduct as an aggravating factor in sentencing is harmless?

SUMMARY OF ARGUMENTS

1. The trial court properly considered arguments from both parties as to aggravating and mitigating factors during sentencing. After said consideration, the trial court ruled on what it believed to be aggravating and mitigating, agreeing and disagreeing with both sides. State and Federal jurisprudence require courts to do an analysis of the crime itself, any aggravating and mitigating factors, and render a just sentence. The law does not require the trial court find certain factors aggravating or mitigating, they must just be considered. In this case, the trial court did just that by evaluating all arguments made by the parties, including the Defendant's abnormal condition of the mind. Despite that consideration, the trial court was not persuaded and sentenced the Defendant accordingly. The court's decision did not deviate from legal precedent and should be upheld by this Court.
2. The trial court committed error when it aggravated the Defendant's sentence based on unreliable uncharged conduct. However, notwithstanding that error, the trial court would have elevated the Defendant's sentence due to other aggravating factors, including reliable uncharged conduct, and the impact on the victim. Therefore, said error was harmless and the sentence should be affirmed.

ARGUMENT

I. The trial court did not err by rejecting the Defendant's argument that his abnormal condition of the mind was a mitigating factor.

As noted by the Defendant, this Court denied his request for discretionary review of his sentence by the Sentence Review Panel. Therefore, as this is now a direct appeal, this Court must "review only the legality, and not the propriety, of the sentence, and [] do so de novo." *State v. Dobbins*, 2019 ME 116, ¶ 51, 215 A.3d 769. The State agrees this matter was preserved at sentencing due to it being a primary argument in both written and oral arguments by the Defendant. (Sentencing Tr. 40-48 (Jul. 10, 2024).)

In Maine, courts follow a three-step process in sentencing a criminal defendant on a felony conviction. *State v. Nichols*, 2013 ME 71, ¶ 12, 72 A.3d 503; *see also State v. Hewey*, 622 A.2d 1151 (Me. 1993). First, the trial court shall "determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual." 17-A M.R.S. § 1602(1)(A); *see also Nichols*, 2013 ME 71, ¶ 12, 72 A.3d 503. Next, the trial court must determine the "maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case." 17-A M.R.S. § 1602(1)(B). Finally, the trial court determines "what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate

period of probation or administrative release to accompany that suspension." 17-A M.R.S. § 1602(1)(C).

The basic sentence is arrived at by "considering the particular nature and seriousness of the offense as committed by the individual." 17-A M.R.S. § 1602(1)(A). The trial court must "review the facts and nature of the crime and the conduct in committing the crime in as objective a manner as possible, without regard to the offender's individual circumstances." *Nichols*, 2013 ME 71, ¶ 14, 72 A.3d 503. *See also State v. Stanislaw (Stanislaw II)*, 2013 ME 43, ¶ 21, 65 A.3d 1242 ("[t]he court examines the crime, the defendant's conduct in committing it, and, at its discretion, other sentences for similar offenses."). The trial court also considers the general sentencing purposes in 17-A M.R.S. § 1501 in formulating the basic sentence to be imposed. *Nichols*, 2013 ME 71, ¶ 14, 72 A.3d 503. These legislative purposes include: "deterrence, restraint in the interest of public safety, minimization of correctional experience that may promote future criminality, and the elimination of inequalities in sentencing that are unrelated to criminological goals." *Id.; see also* 17-A M.R.S. § 1501. In *Stanislaw*, this Court explained the sentencing court should consider "the very highest sentence and the very lowest sentence available at law, and should be aware of factors that would change the class of the crime." *State v. Stanislaw (Stanislaw I)*, 2011 ME 67, ¶ 9, 21 A.3d 91 (quotation marks and internal citation omitted).

In determining the maximum period of imprisonment to be imposed, the trial court should consider "all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case." *State v. Reese*, 2010 ME 30, ¶ 16, 991 A.2d 806. The trial court looks at "the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest." 17-A M.R.S. § 1602(1)(B). The trial court is not required to assign a specific weight to each aggravating or mitigating factor. Rather, the trial court should "consider all mitigating and aggravating factors, determine their combined impact on the basic sentence, and then quantify that impact by increasing or decreasing the basic sentence accordingly." *State v. Cook*, 2011 ME 94, ¶ 12, 26 A3d 834. This Court has found that:

> mitigating factors, [] may include the favorable prospect of rehabilitation of the offender, demonstrate the offender's low probability of re-offense and, thus, justify a diminution of the basic period of incarceration; aggravating factors demonstrate a high probability of re-offense and, in order to protect the public, justify enhancing the basic period of incarceration.

Hewey, 622 A.2d 1151 at 1154.

Following the determination of the maximum period of incarceration, the trial court "may suspend a portion of the period of maximum incarceration when, for example, the court determines that society will better be protected by affording a period of supervised probation of an offender." *Id.* at 1155; *see also Reese*, 2010 ME

30, ¶ 20, 991 A.2d 806. In all three steps of this sentencing process, including the final step, the trial court must take into account the general sentencing purposes. *Reese*, 2010 ME ¶ 20, 991 A.2d 806.

As is clear in the record, each party was permitted to argue before the trial court what aggravating and mitigating factors should be considered in sentencing. (Sentencing Tr. 4-56 (Jul. 10, 2024).) However, just because a party believes a factor should be considered, does not mandate the trial court to agree. All that is required is mere consideration. *Cook*, 2011 ME 94, ¶ 12, 26 A3d 834; *Hewey*, 622 A.2d 1151 at 1154.

Here, the trial court did just that: In its sentencing, the trial court analyzed the Defendant's argument regarding his abnormal condition of the mind. (A. 23.) The trial court agreed the Defendant was suffering from an abnormality and identified it as "blind rage." (*Id.*) Despite that finding, it distinguished this from other types of abnormal conditions of the mind. (*Id.*) Unlike a person who suffers from a mental illness or disability, the Defendant here allowed himself to become so enraged, so incensed, by his jealousy and need to control [redacted], he tried to kill her. (*Id.*) The trial court justly found the Defendant's state of mind at the time was abnormal, but under the *circumstances* in which he came to be that way, it was not mitigating. (*Id.*)

The Defendant correctly outlines the jurisprudence regarding mitigating factors nationally and on the State level, but what is consistent through his entire

argument is one word – consideration. With that, the State fully agrees with the legal framework outlined by the Defendant. However, the State does not agree that any violation occurred in sentencing. Put simply, the trial court considered the argument, did a thorough and thoughtful analysis, thus following its legal obligation under both state and federal law. The Defendant's lack of satisfaction with the trial court's consideration of his abnormal condition of the mind does not raise an issue of legality for this Court to remand for resentencing, and such request should be denied.

II. The trial court's erroneous reliance on certain uncharged conduct as an aggravating factor is harmless

The State agrees the trial court was incorrect when it found the Defendant assaulted Heather Paradis. (A. 24.)[2] However, that erroneous reliance should not impact the sentence as the sentence would have been aggravated regardless. This Court has held that a harmless error analysis should be used when the trial court "improperly consider[s] unproven aggravating factors in setting the maximum term of imprisonment." *State v. Bean*, 2018 ME 58, ¶¶ 30-32, 184 A.3d 373 (citing *State v. Cobb*, 2006 ME 43, ¶ 24, 895 A.2d 972). Reversal based on harmless error only occurs if there is sufficient proof that the error prejudiced the outcome of the proceeding. *Bean*, 2018 ME 58, ¶ 31, 184 A.3d 373. "In the context of an error in

[2] The State believes it is likely the trial court simply misspoke when it used the word assault. There was evidence that Heather Paradis was present when the Defendant threatened Kyle Conney with a firearm. (Trial Tr. 105-115 (May 28, 2024).) Heather was also present during the vicious fight between Officer Whitley and the Defendant. (*Id.*) Based on that context, it is the State's belief the trial court meant to say the Defendant threatened both Heather and Kyle. Nonetheless, the record is clear, and the State agrees there was no evidence in the record that the Defendant physically assaulted Heather Paradis.

the application of sentencing procedures, a defendant's substantial rights are not compromised if we determine, by a review of the entire record, that even if proper procedures had been followed, it is highly probable that the sentence would not be different." *Id.*

In comparison, this Court found in *State v. Cobb* the trial court erred by aggravating a sentence based on unreliable conviction data. 2006 ME 43, ¶ 23, 895 A.2d 972. The error was deemed harmless because this Court found the sentence would have been elevated despite the improper reliance. *Id.* ¶ 24. This is directly analogous to the case at bar.

In the second step of its sentencing analysis, the trial court listed three aggravating factors it considered. First, the trial court found uncharged conduct evidence of the Defendant stalking [redacted] prior to the assault was reliable and aggravating. (A. 24.) Next, the trial court found, erroneously, that an assault on Heather Paradis was credible and aggravating. Additionally, the trial court properly found the Defendant's act of criminally threatening Kyle Cooney was an aggravating factor. (*Id.*) Finally, the trial court found the "physical and psychological" impact on [redacted] to be "very significant." (*Id.*) The trial court detailed the physical injuries [redacted] sustained, the long-lasting post-traumatic stress and vertigo she will be forced to live with, and the fear [redacted] will have for the rest of her life regardless of any sentence imposed. (*Id.*)

The aggravating factors in the record are overwhelming. Even if the trial court had not factored in anything associated with Heather Paradis, arguably a less substantial factor in comparison to the others, the Defendant's sentence would have been significantly elevated. The record is clear that this assault was brutal, unrelenting, and vicious. On the night of June 14, 2023, the Defendant was doing all he could to control [redacted], as he had in the past. As the trial court found, this was not the first time the Defendant did not take no as an answer from [redacted]. He would follow her, leave her verbally abusive voicemails, and show up to her house in the middle of the night while her children were sleeping in an effort to maintain his power and control. (A. 24, Sentencing Tr. 7-9 (Jul. 10, 2024).)

That night, when the Defendant realized he was going to lose control over [redacted], he decided his only option was to murder her. The Defendant strangled [redacted] in her car, punched her repeatedly, broke her nose, and placed his entire body weight on her as he tried to kill her while she laid in a pool of her own blood. (Trial Tr. 69-78 (May 28, 2024).) When doing this, he threatened Kyle Cooney with a gun to stop any interruption in his goal of ending [redacted]'s life. (Trial Tr. 215 (May 29, 2024).) The Defendant's impact on [redacted], and the other witnesses, from that night and many nights before is more than enough to elevate the sentence. This Court should find that while an error was made, such error was harmless based on the exuberant aggravating factors that exist in this record.

CONCLUSION

For the aforementioned reasons, the State requests this Court to affirm the trial court's sentence.

Date:

Respectfully Submitted,

_____

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CERTIFICATE OF SERVICE

I, Shannon Flaherty, Assistant District Attorney, hereby certify that one (1) copies of the within Brief for Appellant were mailed to Appellant's Attorney addressed as follows:

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The State has sent a native .pdf file for submission to the court (at lawcourt.clerk@courts.maine.gov).

Dated: _____

_____
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