STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. CUM-2025-454

STATE OF MAINE,
Appellee,

- against -

ABDIHAMIT ALI,
Appellant

Appeal from the Unified Criminal Docket

for the County of Cumberland and State of Maine

Brief of the Appellant

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I. DID THE TRIAL COURT ERR WHEN IT FAILED TO CONDUCT A NEW SENTENCING ANALYSIS WHEN ORDERED TO CONDUCT A RESENTENCING?

Summary of the Arguments

I. The trial court refused to conduct a new sentencing analysis when it held its resentencing as ordered in *State v. Ali*, 2025 ME 30. Failing to do so was both contrary to this Court's remand order and established case law. Furthermore, had the sentencing court followed this court's remand order, it was compelled by law, and its new factual findings, to sentence the Appellant to a lower sentence than previously imposed.

Statement of Facts

This case was heard in Cum-23-417 and this Court issued an opinion in 2025 ME 30. In that opinion the Court gave a factual summation and the Appellant's previous briefs and statement of facts are incorporated by reference in this brief. As such, the Appellant will only outline here the facts that have come to light since that opinion was issued.

Since his original sentencing in September of 2023 Mr. Ali used his time as well as he could while incarcerated. In the spring of 2025 he achieved a 4.0 grade point average at the University of Maine Augusta which earned him a spot on the president's list for his academic performance. (A. at 37). In addition, in 2024 he successfully completed the Maine Inside Out program at the Mountainview Correctional Center. This is a twelve-week theater workshop where the men involved in it created an original play titled "Life Lost in the Streets" that touched on "themes of rites of passage, growing into manhood, the struggles of street life and incarceration and brotherhood." (A. at 43).

The organizers of the program called the play "humorous and heartbreaking, a powerful tale woven in by the group members' life experiences." In speaking about Mr. Ali directly they called an "a thoughtful artist, an incredible storyteller, writer and poet" and said "it was a pleasure to work with such a thoughtful and artistic person." *Id*.

The truth of those words were apparent during Mr. Ali's allocution where he thoughtfully explained to the court all of the emotions he was feeling the day of his crime and the empathy he had for the victim of his horrible crime. He showed that he had clearly reflected on his prior actions and the words of the Court:

> "Your Honor, I recall your words two years ago…you told me I had shown a reckless disregard for human life, and emphasized the harm that I caused to both the victims and community in this case…you urged me to use my time in prison wisely, to rehabilitate and continue my studies." (Tr. 9/17/2025 p. 14)

The Court clearly found that these words were of genuine remorse and thoughtfulness. The Court did "find [Mr. Ali] remorseful" whereas in the prior sentencing the Court found the opposite. *Id*. at 22.

Procedural History

As stated above, an opinion in this case was issued by this Court on or about March 20, 2025. In that case this Court found that the sentencing Court should have merged counts one and two and failure to do so constituted obvious error. To correct the error in its remand order this Court ordered the Appellant's sentence to be vacated and for him to be resentenced consistent with the Court's opinion.

At the resentencing hearing the Court failed to conduct a new sentencing analysis under *State v. Hewey*, 622 A.2d 1151, 1154 (Me. 1993). *See also* 17-A M.R.S.A. §1602.

Arguments

General Sentencing Scheme

Generally, felony sentencing in Maine is governed by Section 1602 of Title 17-A, which provides as follows:

> In imposing a sentencing alternative that includes a term of imprisonment relative to murder, a Class A, Class B, or Class C crime, in setting the appropriate length of that term as well as any unsuspended portion of that term accompanied by a period of probation, the court shall employ the following 3-step process:
>
> > **A.** First, the court shall first determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the offender.
> > **B.** Second, the court shall next determine the maximum period of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case. These sentencing factors include, but are not limited to, the character of the offender and the offender's criminal history, the effect of the offense on the victim and the protection of the public interest.
> > **C.** Third, the court shall finally determine what portion, if any, of the maximum period of imprisonment should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation to accompany that suspension.

17-A M.R.S.A. § 1602. Section 1602 codifies the three-step analysis developed in *State v. Hewey*, 622 A.2d 1151. 1154-55 (Me. 1993).

In the first step of the sentencing court's analysis, courts must determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as it was committed. *State v. Reese*, 2010 ME 30, ¶ 18, 991 A.2d 806, 814

(citation omitted). The sentencing principles set forth in 17-A M.R.S. §1501 are relevant to this analysis.[1] In determining the basic term, courts should not to consider the subjective impact of the crime on the victim but may take into account objective factors—including the age or other characteristics of the victim and the nature of the injuries inflicted. *Id.* (citation omitted). When a sentencing court sets a basic period of incarceration, it is required to measure the defendant's conduct on a scale of seriousness against all possible means of committing the crime in order to determine which acts deserve the most punishment. *State v. Schofield*, 2006 ME 101, ¶ 11, 904 A.2d 409, 414 (citation omitted). A court, in determining a defendant's "basic" sentence, which involves a consideration of the particular

[1] 17-A M.R.S.A. § 1501 (emphasis added): The general purposes of the provisions of this part are:

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety;

2. To encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served.

3. To minimize correctional experiences which serve to promote further criminality;

4. To give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;

5. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;

6. To encourage differentiation among offenders with a view to a just individualization of sentences;

7. To promote the development of correctional programs which elicit the cooperation of convicted persons; and

8. To permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of:

A. The age of the victim; and

B. The selection by the defendant of the person against whom the crime was committed or of the property that was damaged or otherwise affected by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation or homelessness of that person or of the owner or occupant of that property.

nature and seriousness of the offense, gives no regard to a defendant's particular circumstances. *State v. Bates*, 2003 ME 67, ¶ 25, 822 A.2d 1129, 1135.

In the second step of the sentencing analysis, courts must determine the maximum period of imprisonment by considering the principles of sentencing set forth in §1501 as well as all other relevant aggravating and mitigating factors. *Reese*, 2010 ME 30, ¶ 19, 991 A.2d at 814 (citation omitted). The purpose of the second sentencing step is to allow the sentencing court to appropriately individualize each sentence. *Schofield*, 2006 ME 101, ¶ 13, 904 A.2d at 414 (citation omitted). Aggravating sentencing factors include, *inter alia*, the presence of a prior criminal record, lack of remorse, the need to protect the public, the subjective impact of the crime on the victim, and the existence of factors indicating a likelihood of reoffending. *Schofield*, 2006 ME 101, ¶ 14, 904 A.2d at 414 (citation omitted). Conversely, mitigating sentencing factors include, *inter alia*, a lack of prior criminal conduct, remorse, and any other factor that points to the defendant's favorable prospect of rehabilitation or a lesser likelihood of reoffending. *Id.* In determining the appropriate degree of mitigation or aggravation of the offender's basic period of incarceration, the sentencing court may consider any evidence that is factually reliable and relevant. *Hewey*, 622 A.2d at 1154. By this means, the sentencing court determines the maximum period of incarceration. *Id.*

In the third step of the sentencing analysis, courts must determine whether any portion of the maximum sentence should be suspended and, if so, what period of probation should accompany that suspension. *Reese*, 2010 ME 30, ¶ 20, 991 A.2d at 815 (citation omitted). In determining the final sentence—as with the basic and maximum periods—the Court must take into account the sentencing principles as set forth in Section 1151. *Id.* (citation omitted).

The Trial Court Failed to Follow this Court's Remand Order by Filing to Conduct a new Sentencing Analysis

"It is axiomatic that a trial court *must* "conform with the directions of the appellate court on remand.'" *State v. Armstrong*, 2020 ME 97, at ¶13 (quoting *United States v. Davila-Felix,* 763 F.3d 105, 109 (1st Cir. 2014). In that case, the Law Court admonished the trial court stating that "despite our mandate…the court simply reimposed its previous sentence on the felony murder conviction rather than resentencing Armstrong on a new, merged conviction, as required by our mandate." *Id*. It is also of note, that the Law Court's mandate in the first Armstrong was less clear than in the Defendant's appeal. In Armstrong's first appeal the Law Court provided, "Judgment vacated. Remanded for further post-trial proceedings consistent with this opinion." Additionally, in relevant part the last paragraph of that opinion provided that "we remand for further post-trial proceedings where the court may take appropriate action to eliminate the double

jeopardy effect arising from the two charges by merging the two counts into a single defined count…and then imposing sentence on the merged count." *State v. Armstrong*, 2019 ME 117, ¶26.

In Armstrong the Court clarified the procedure when a case is remanded on appeal after a double jeopardy violation is identified. It found that to remedy a double jeopardy violation "merger is the correct remedy because it prevents constitutional injury while preserving multiple verdicts." *Armstrong II* at ¶12. The Court suggests that not all cases would require resentencing when merger is ordered. However, whether it is required "is a question of substantial justice that depends on the particular circumstances of each case, including whether and to what extent the sentences imposed on the duplicative convictions were 'interrelated.'" *Id*.

In this case, the Law Court in *Ali I* already made the determination that resentencing was required in its remand order. As in *Armstrong* "the trial court was *required* to hold a new sentencing proceeding at which both parties could be heard, and conduct a new sentencing analysis pursuant 17-A M.R.S. §1602. *Its failure to do so deprived Armstrong of a substantial right*." *Id*. at ¶14 (emphasis added). Mr. Ali had the exact same situation and his substantial rights were violated by the trial court refusing to conduct a new analysis.

Furthermore, had the court conducted a fresh analysis, given the Trial Court's findings of fact and recent developments of law, a lesser sentenced was *compelled* compared to the sentence that was imposed on September 22, 2023. There are three reasons for this lesser sentence, one at each stage of the *Hewey* analysis. First, the Court in its original sentencing analysis considered the nature and seriousness of counts one and two collectively including the objective facts related to Mary Smith[2] and her family which upon resentencing on a merged count would be inappropriate.

In the second step the during the original sentence hearing the Trial Court found that "the Defendant's lack of empathy [and his]…failure to take responsibility for his actions…[were] significant, serious [aggravating factors] and far outweigh the mitigating factors." (Tr. 9/23/2023 p. 50). The Court found these factors despite there being no record evidence of his failure to take responsibility or lack of empathy as required by the recent case *State v. Ellis* 2025 ME 56.

In *Ellis* the Court emphasized that "the fact that a particular factor can be considered mitigating does not mean that the *absence* of that factor is necessarily aggravating. *This is especially true when the only evidence of lack of remorse…is that the defendant exercised his right to require the State to prove guilt beyond a reasonable doubt at trial*." *Ellis* at ¶24. In the original sentencing proceeding the

[2] Consistent with privacy protections of victims and the Court's naming convention in *Ali I* the Appellant uses the pseudonym Mary Smith to reference the second victim originally named in Count 2 of the indictment.

Court did not point to any record evidence to support its description of his supposed lack of remorse as a "significant" and "serious" aggravating factor. Without specific record evidence this finding, as this Court has since clarified, is inconsistent with the constitutional protection of the right to trial by a jury of ones peers. *See Ellis* at ¶24. *See also State v. Farnham* 479 A.2d 887, 891 (Me. 1984); *State v. Moore*, 2023 ME 18, ¶ 25, 290 A.3d 533; *State v. Grindle*, 2008 ME 38, ¶ 15, 942 A.2d 673.

Not only that, but the trial court at the most recent proceeding made the opposite finding with regards to Mr. Ali's remorse: "I do find that you are remorseful. And the fact that you're doing so well does, in fact signify to me that you are on the right path." (Tr. 9/17/2025 p. 22). The trial court then found that because of Mr. Ali's tremendous progress it signified to the Court that its previous sentence was correct. However, had the Court followed the remand order, those findings would have flipped the second step analysis completely in the other direction. Making his remorsefulness a mitigating factor which potentially even could have flipped the overall balancing and his mitigating factors might have then outweighed his aggravating. Either way, it certainly should have reduced how much the Court aggravated the initial basic sentence.

Lastly, the Court failed to consider the significant steps the Defendant has taken while at the Department of Corrections (DOC) which go to both mitigation

and towards his prospects for rehabilitation under both steps two and three. The Court noted the Defendant's admirable participation in these programs and his prospects during its proceedings on the merger, but because the Court failed to conduct a fresh sentencing analysis it did not adjust its sentence. As discussed at length above, the Court was compelled to undergo a new sentencing analysis. Given the various points of law stated above, the Court should have been compelled as a matter of law to reduce the sentence it originally handed down in September of 2023.

Conclusion

The trial court failed to conduct a resentencing as ordered by this Court in its remand order. As such, the Court failed to adjust the Appellant's sentence in any way despite coming to several contrary conclusions to its original sentencing analysis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Daniel A. Wentworth, counsel for the Appellant, hereby certify that I have delivered via email copies of the Appellant's Brief to the State through AAG Jennifer Ackerman and ADA Kristen Hughes. Once approved, I hereby certify that two true copies will be delivered to the State by either in hand deliver or certified mail.

February 9, 2025
Date

Daniel A. Wentworth, Esq.