STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Ken-25-137

ANDREW ROBBINS, et al.
Plaintiffs-Appellees

v.

STATE OF MAINE, et al.
Defendant-Appellant.

On Appeal from the Superior Court
Kennebec County

REPLY BRIEF OF PARTY-IN-INTEREST–APPELLANT STATE OF MAINE

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Introduction

In its opening brief, the State of Maine explained why this is the last and final opportunity for the Court to address any procedural or substantive errors committed by the Superior Court in establishing a monumental framework for issuing habeas relief throughout the state. Blue Br. at 20-25. It also explained why any framework for issuing judicial relief must account for the individualized circumstances of those affected. *Id.* at 26-36. It explained why relief is more efficient and practical if it is issued by local judges in local courthouses. *Id.* at 37-40. And it also explained why dismissal of criminal charges is not a remedy provided by the habeas statues invoked by the Plaintiff Subclass ("Robbins"). *Id.* at 40-45.

The State of Maine stands by the arguments in its opening brief, while this Reply addresses several issues raised by Robbins in response. [1] Part I addresses his opposition to hearing the appeal now. Part II addresses the largest flaw in Robbins's legal argument, which is his frequent tendency to conflate material differences between state and federal habeas statutes, procedures, and caselaw. Part III addresses Robbins's argument that the State of Maine has failed to preserve its ability to argue that certain individuals

[1] It likewise adopts rests on the arguments made by Defendants-Appellants associated with the Maine Commission on Public Defense Services regarding Count I and issues related to Sixth Amendment Liability.

charged with felonies may not be entitled to relief. Part IV addresses his assertions regarding public safety's role in issuing habeas relief. And finally, Part V reiterates that the State of Maine's position is not that the weekly in-custody review process currently employed by the Judicial Branch constitutes an adequate habeas framework, but merely that this venue is the most efficient and practical place to deliver such relief, regardless of what the ultimate framework looks like.

I. This appeal fits comfortably under several of the Court's exceptions to the standard rule against interlocutory appeals.

As the State of Maine noted in its opening brief, the Superior Court's March 7, 2025 Post-Trial Order resolved all common factual and legal issues specific to the Subclass's habeas petition regarding nonrepresentation of indigent criminal defendants. Blue Br. at 16-17, 20-21. Though interlocutory, this appeal fits under at least three exceptions acknowledged by this Court: (1) because this is the Court's only chance to review the Superior Court's habeas framework before it is irreparably implemented, this appeal fits under the "death knell exception," *id.* at 20-22; (2) because the legal question of "whether Maine law entitles individuals facing felony charges to the same habeas relief as individuals facing misdemeanor charges," is entirely collateral to the factual and substantive merits of the underlying lawsuit, *see id.* at 22-24,

the "collateral order exception" applies; and (3) the very nature of this action, whereby the Superior Court rejected multiple settlements in favor of *sua sponte* splitting the litigation into two distinct merits phases against additional defendant parties, *see id.* at 24-25, provides ample basis for this Court to apply the "extraordinary circumstances" exception to the final judgment rule.

Robbins offers only a half-hearted protest to hearing this appeal. First, he implies that the State of Maine should have sought certification under M.R. Civ. P. 54(b)(1), by asking the Superior Court to enter a partial final judgment on Count III. *See* Red Br. at 17. But nothing in Rule 54, its advisory notes, or the decisions cited by *Robbins*, indicates that a party must first seek Rule 54 certification before filing an otherwise permissible interlocutory appeal.

Rule 54 supplies trial courts a mechanism to "permit appeal or enforcement of partial final judgments" with their blessing. *Guidi v. Turner*, 2004 ME 42, ¶ 8, 845 A.2d 1189. But this Court's body of caselaw applying exceptions to the final judgment rule provide another valid path forward. *See Salerno v. Spectrum Med. Grp., P.A.*, 2019 ME 139, ¶ 13, 215 A.3d 804 (applying death-knell exception); *Doe v. Roe*, 2022 ME 39, ¶¶ 12-16, 277 A.3d 369 (applying collateral-order exception); *Moshe Myerowitz, D.C. P.A. v. Howard*, 507

A.2d 578, 581 n.5 (Me. 1986) (describing application of an *ad hoc* "extraordinary circumstance" exception).

Second, Robbins argues that the "death knell exception" is unavailable because it applies "only when the injury to the appellant's claimed right, absent appeal, would be imminent, concrete and irreparable." Red Br. at 17 (quoting *Fiber Materials, Inc. v. Subilia*, 2009 ME 71, ¶ 16, 974 A.2d 918). Yet he fails to explain how any of those features are lacking here.

Instead, Robbins argues that the State of Maine's claimed right—the discretion to prosecute criminal conduct in accordance with public policy and the criminal statutes enacted by the Maine Legislature—is "not a legal right at all," but rather a "bid to act illegally." *Id.* at 18. But denigrating the right to implement the State's criminal justice system is a *non sequitur*. It does nothing to diminish the undeniable fact that the Superior Court's decision, if realized, would bring imminent, concrete, and irreparable change to prosecutions in Maine. Nor does Robbins deny the magnitude of such upheaval; he simply thinks the sea change resulting from the Superior Court's decision is worth the cost. But policy preferences are irrelevant to whether the Court should hear this appeal now. The death knell exception applies.

Third, Robbins argues that the "collateral order" exception does not apply because the State of Maine has failed to raise any legal issues truly collateral to

the "gravamen of the litigation," arguing that Subclass members' appropriate remedy is "inseparable" from the Superior Court's determination that a constitutional violation has occurred. *Id.* at 18-19. This assertion, too, is wrong. While it may be true that the appropriate scope of habeas relief for any individual is "inseparable" from proving liability that a constitutional violation has occurred, the question of "whether people accused of committing felonies versus those accused of misdemeanors retain the same legal entitlement to habeas relief under the text of Maine's habeas statutes," is entirely collateral. [2]

Finally, Robbins has failed to address the State of Maine's argument that the Court could invoke the "extraordinary circumstances" exception to the final judgment rule in order to hear this appeal. *See* Blue Br. at 24-25. Because it is a "well-settled appellate rule that 'issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived,'" Robbins' silence on this exception provides the Court sufficient basis for proceeding. *York Hosp. v. Dep't of Health & Human Servs.*, 2008 ME 165, ¶ 29, 959 A.2d 67.

[2] In arguing against the application of the "collateral order" exception, Robbins asserts that the state of Maine cannot demonstrate an "irreparable loss of the rights claimed, absent immediate review." Red Br. at 18. This argument fails for the precise reasons his argument against the death knell exception fails, as set forth above.

II. The Court should decline Robbins's invitation to conflate the text of Maine's habeas statutes with the text of federal habeas statutes and other foreign law.

Throughout his brief, Robbins cites interchangeably between (1) this Court's decisions interpreting Maine's habeas statutes, *see, e.g.*, Red Br. at 20 (citing *In re Opinion of the Justices*, 157 Me. 187, 170 A.2d 660 (1961)), *id.* at 27 (citing *Lewisohn v. State*, 433 A.2d 351 (Me. 1981)); (2) federal decisions interpreting federal habeas statutes, *see, e.g.*, *id.* at 19 n.5 (citing *Satterlee v. Wolfenbarger*, 453 F.3d 362 (6th Cir. 2006)), *id.* at 22 (citing *Betschart v. Oregon*, 103 F.4th 607 (9th Cir. 2024)), *id.* at 25 (citing *Banks v. Gonzales*, 496 F. Supp. 2d 146, 149 (D.D.C. 2007)); and (3) Massachusetts decisions interpreting that state's judicial branch superintendency statutes, *see, e.g.*, *id.* at 21 (citing *Lavallee v. Justs. in Hamden Super. Ct.*, 442 Mass. 228, 812 N.E.2d 895 (Mass. 2004)), *id.* at 22 (citing *Carrasquillo v. Hampden Cty. Dist. Ct.*, 484 Mass. 367, 142 N.E.3d 28 (Mass. 2020)). Doing so is error. These cases are not fungible.

True, they are not entirely irrelevant to the extent that they offer analysis of the nature of the Sixth Amendment right to counsel or even whether a violation has occurred. But their value ends there. They yield no insight as to the scope of relief authorized by the language of Maine's habeas statutes.

For example, a District of Columbia federal court's interpretation of the words "in custody" for purposes of 28 U.S.C. § 2254, *see* Red Br. at 24-25,

provides no guidance on how to interpret the "discharge" text of 14 M.R.S.A. § 5523, *see* Red Br. at 27. The same is true regarding *Levallee*. *See* Red Br. at 21-22. There, the Massachusetts Supreme Judicial Court ("SJC") issued relief in response to a petition brought under a state statute regarding its "superintendence of inferior courts," which allows it to "issue all writs and processes . . . which may be necessary to the furtherance of justice and to the regular execution of the laws." *See* Mass. Gen. Laws Ann. ch. 211, § 3. There is no such broad statutory language at issue here.

Robbins's brief suffers from this type of defect throughout, and the Court should avoid grounding its decision upon such unsound reasoning.

A. The Maine habeas statutes Robbins invokes, 14 M.R.S.A. §§ 5501-5546, do not provide for dismissal of criminal charges.

In its opening brief, the State of Maine explained why the dismissal of criminal charges is not an available remedy under 14 M.R.S.A. § 5523 or any of the other provisions of the Maine Revised Statutes upon which Robbins bases his class habeas petition. *See* Blue Br. at 41-45. He responds by citing Maine caselaw where this Court has acknowledged that a habeas writ can be used not only to obtain freedom from incarceration, but also to secure freedom from unwanted hospitalization or even to return minor children to their lawful guardians. *See* Red Br. at 25-26 (citing *Roussel v. State*, 274 A.2d 909, 913

(Me. 1971); *Snyder v. Talbot*, 652 A.2d 100, 101 (Me. 1995)) . But neither case relates to individuals charged with crimes; nor does either imply that Maine's habeas statutes authorize dismissal of a legal action as a potential form of relief.

Instead, the cases he raises only serve to prove the State of Maine's point: 14 M.R.S.A. § 5523 permits courts to restore individuals' personal liberty to be physically free to move about the world. He cites no example of a Maine court relying upon Maine's pre-conviction habeas statutes to dismiss pending criminal charges. The best he can do is point to *Lewisohn*. *See* Red Br. at 26-29.

But as the State of Maine previously pointed out, *see* Blue Br. at 44 n.14, *Lewisohn* was a post-conviction review case brought pursuant to 15 M.R.S.A. § 2129. And though post-conviction review was referred to as a "habeas" process in Maine until the latter portion of the twentieth century—and still is referred to as a "habeas" procedure at the federal level—neither the Maine nor federal post-conviction review processes support Robbins's theory that his criminal charges should be dropped as a form of relief available under Title 14.

Unlike the habeas provisions found in Title 14, Title 15's post-conviction review framework not only provides for "Release from incarceration or other restraint," but also establishes an entire non-exhaustive list of remedies, which includes "reversal of the criminal judgment" and "reversal of another order or

decision, with or without affording the State or other party a new hearing."[3] Thus, the trial court's decision in *Lewisohn*—to "order that the murder indictment against the petitioner be dismissed with prejudice . . . 'unless the State shall cause petitioner to be retried . . . within ninety (90) days'"—is grounded in statutory text that is not present in Title 14. 433 A.2d at 352 (second ellipsis in original).

If the Maine Legislature had desired to create two identical sets of remedies for pre-conviction habeas relief and the post-conviction review process, then it could have listed the same remedies under both Title 14 and Title 15, respectively. But instead, its decision to list numerous additional remedies in the post-conviction review process implies that the Maine Legislature purposely meant to exclude such remedies from the pre-conviction habeas process—*expressio unius est exclusion alterius*. *See Musk v. Nelson*, 647 A.2d 1198, 1202 (Me. 1994).

[3] Robbins asserts "this Court did not draw any distinction between pre- and post- conviction habeas" when it decided *Lewisohn*. Red Br. at 28. That assertion is technically true. But not because no distinction exists. Rather, it was the Maine Legislature—and not the Judicial Branch—that drew it.

B. The Massachusetts Supreme Judicial Court's superintendence over Massachusetts's trial courts provides no guidance on how to interpret Maine's habeas statutes.

Throughout his brief, Robbins points this Court to two Massachusetts SJC decisions, *Lavallee* and *Carrasquillo*, for guidance on how to interpret and effectuate the contours of the Maine habeas statutes under which his petition falls. *See, e.g.*, Red Br. at 21-24, 33. But while these cases share some similarities with Robbins's suit—mainly that the plaintiff/petitioning parties sought to establish liability for a Sixth Amendment violation of the right to counsel due to a shortage of available indigent defense attorneys—neither was a state (or federal) habeas case.

Instead, *Lavallee* and *Carrasquillo* were brought pursuant to Massachusetts General Laws chapter 211, section 3, which is titled "Superintendence of Inferior Courts; Power to Issue Writs and Process." Under this provision, the Massachusetts SJC is granted "general superintendence of all courts of inferior jurisdiction" in the state. Mass. Gen. Laws Ann. ch. 211, § 3. Moreover, the statute explicitly permits the Massachusetts SJC to "issue all writs and processes . . . which may be necessary to the furtherance of justice and to the regular execution of the laws." *Id.* And it authorizes the Massachusetts SJC to do this "without limitation." *Id.*

Under such broad language empowering that state's highest court, the Massachusetts SJC enjoys the express statutory authority to manage criminal dockets and even to instruct trial judges when certain prosecutions must be dismissed for lacking defense counsel. But Maine's habeas statutes invoked by Robbins contain no analogous "general superintendency" provision or "necessary to the furtherance of justice" language. Instead, the habeas statutes in Title 14 permit two forms of relief. They provide that a trial "court or justice shall discharge" individuals held without legal cause, 14 M.R.S.A. § 5523, and they permit courts to lower bail if a "justice thinks that excessive bail is demanded," *id.* § 5516.

Levallee and *Carrasquillo* may provide some practical insight on identifying what the Sixth Amendment right to counsel entails and whether it has been violated. But they are naturally devoid of any useful guidance in terms of understanding what remedies are available under Maine's habeas procedure to rectify a violation. If anything, they operate to underscore the Superior Court's departure from the statutory language of Title 14. It is not unreasonable that Massachusetts has a statute that provides its highest court with clear authority and superintendence over all other courts in that state. But it is unreasonable to read the statutory text of 14 M.R.S.A. §§ 5501-5546 as authorizing a Justice of the Superior Court to dismiss criminal charges brought

in the Maine Unified Criminal Docket ("UCD")—authority reserved under Maine's Constitution and statutes to prosecutors and to judges acting in their official roles presiding over the UCD.

The fact that *Lavallee* and *Carrasquillo* are the only Sixth Amendment cases Robbins can identify that provide for dismissal of pending charges becomes less surprising when the unique Massachusetts statute underlying them is compared to Maine's (or even federal) habeas statutes.

III. Individuals charged with Class A, B, and C crimes are not entitled to habeas relief "as of right" under Maine law.

Robbins asserts that the State of Maine has waived its ability to argue individuals charged with felonies are not entitled to pre-conviction habeas relief. Red Br. at 43-45. He also argues that the State of Maine's position is substantively wrong. *Id.* at 45-48. He is incorrect on both fronts.

First, Robbins asserts that the State of Maine "utterly failed to timely present any felony-bar argument to the trial court." *Id.* at 43. Not so. The proper time to argue that an individual charged with a felony should be denied habeas relief is at that individual's release hearing, when a judge is assessing all appropriate *Morrison* and public-safety factors. It is at these hearings where Maine's habeas statutes provide "any other person [who] has an interest in

continuing such imprisonment or restraint . . . to appear and object, if he sees cause." 14 M.R.S.A. § 5522.

But this issue surfaced during the time period in which the Superior Court had stated its intent to move forward with release hearings while this appeal was pending. During a conference of counsel with the Superior Court, the State of Maine flagged in advance of the first hearing that this issue would likely arise. In response, the Superior Court directed the parties to brief the issue and ultimately stated in its May 7, 2025 order that it intended to go forward with providing relief to such individuals. As described above, this scenario underscores why this is a "collateral issue" appropriate to resolve now.

Robbins is also wrong on the merits. He argues that "any statutory effort to limit the writ . . . for all individuals accused of felonies would violate the Suspension Clause [of the Maine Constitution]." Red Br. at 45. But as the State of Maine noted in its opening brief, the statutory text underlying 14 M.R.S.A. § 5512 pre-dates not only the Maine Constitution, but the federal constitution. *See* Blue Br. at 26-27. The *Opinion of the Justices* that Robbins cites does not support his position. *See In re Opinion of the Justs.*, 157 Me. 187, 211, 170 A.2d 660 (Me. 1961). That case noted that it would be unconstitutional if the Legislature were to enact a statute that eliminated all possible access to habeas

for certain individuals hospitalized in mental health facilities. *Id.* It was completely unrelated to individuals charged with crimes.

Moreover, *In re Opinion of the Justices* warned against eliminating the ability for entire classes of people to petition for habeas relief. *Id.* The language of 14 M.R.S.A. § 5512 can be read consistently with the notion that anyone may seek habeas relief, even those charged with felonies. It simply confirms that courts need not issue such relief on an individual basis "as of right," as the law would otherwise require for individuals who are uncharged or charged only with misdemeanors. *See Welch v. Sheriff of Franklin Cty.*, 95 Me. 451, 451, 50 A. 88, 88 (Me. 1901) (considering habeas petition of individuals charged with a felony while acknowledging that such individuals "are not entitle to the writ of habeas corpus as a matter of right").

Robbins also argues that "felony" as used in 14 M.R.S.A. § 5512 might have been meant to designate a narrower group of individuals charged only with the most heinous of crimes, rather than all people charged with crimes punishable by more than one year in prison. Red Br. at 46. But this Court has already answered that question in *Welch*. There, the criminal charge divesting petitioners of habeas relief "as a matter of right" was "cheating by false pretenses." *Welch*, 95 Me. at 451, 50 A. at 88. The language of 14 M.R.S.A.

§ 5512 clearly applies to more than only those charged with "murder, manslaughter, arson, burglary, robbery, rape, sodomy, mayhem and larceny."[4]

Finally, Robbins notes that the Superior Court stated that it would "exercise its discretion to consider habeas corpus relief for any unrepresented Plaintiff, regardless of whether or not they are being restrained on 'felony' charges, so long as they meet other criteria established in prior orders." Red Br. at 47-48 (quoting J.A. 75). The State of Maine does not dispute that the Superior Court has the discretion to "consider" habeas relief for any individual charged with a felony. However, as the State of Maine argued in its opening brief, Blue Br. at 29-30, it would be inappropriate to pre-decide that no felony charge or specific circumstances surrounding such a charge could ever bar a Subclass member from obtaining relief. This Court should say as much.

IV. Relief should be tailored on an individualized basis in a manner that takes into account public safety.

The State of Maine explained in its opening brief why public safety should be considered in the habeas framework, including examples of how other courts have factored it in their analysis. *See* Blue Br. at 29-36. In response,

[4] Robbins's assertion that some felony charges may not be serious enough for a court to rely upon 14 M.R.S.A. § 5512 to deny relief serves only to underscore that the State of Maine has not waived the right to argue for the statute's application on an individualized basis at legally mandated objection hearings if "the Attorney General or other attorney for the State . . . sees fit." *See* 14 M.R.S.A. § 5522.

Robbins initially appears to align himself with the Superior Court's view that applying the Supreme Court's *Morrison* precedent is "somewhat mystifying" in a Sixth Amendment pre-conviction habeas action. *See* Red. Br. at 31. But Robbins's position is unsustainable, given that a single Justice of this Court instructed just last year that "cases involving a deprivation of the right to counsel, even under the Sixth Amendment, 'are subject to the general rule that remedies should be tailored to the injury suffered' and 'should not unnecessarily infringe on competing interests.'" *Peterson v. Johnson*, Dkt. No. No. SJC-23-2, "Final Dec. & Order" slip. Op. at 28 (Jan. 12, 2024).

Robbins then pivots to argue that the Superior Court "properly" factored in public safety concerns by affording for individualized release conditions and barring relief to those charged with formerly capital offenses. Red Br. at 36. He likewise implies that the Superior Court already performed the "tailoring" requirements of *Morrison* when it determined that prejudice should be presumed as applied to all class members who have suffered a Sixth Amendment violation. *Id.* at 32.

But the true "tailoring" of release conditions requires some amount of individualized assessment, which can occur only after Subclass members have been identified. Even if the Superior Court was correct to "presume" that every plaintiff Subclass member has suffered some amount of "prejudice" in Maine's

criminal justice process, it does not mean that everyone suffered the same degree of prejudice or that all Subclass members are entitled to identical conditions of relief and release.[5]

As the State of Maine previously pointed out in its opening brief, perhaps every member of Robbins's Subclass will be adjudged as deserving release after a proper tailoring analysis occurs under the *Morrison* framework. Blue Br. at 31. But those decisions must be made based upon a court's review of known facts about the individuals, not in the abstract on behalf of an unrepresented Subclass of unknown size or identity. While a Subclass member who has never seen an attorney sixty days after arrest might be deserving of release, the prejudice suffered by a Subclass member whose appointed counsel withdraws after a dispositional conference might not be enough to justify release when the court considers all pertinent factors.

Even Clarence Earl Gideon—despite Robbins's inaccurate assertion to the contrary—was not ordered to be released from prison by the Supreme Court of the United States. *See* Red Br. at 33 (incorrectly asserting that the Supreme Court "held" that Gideon "was entitled to reversal of the conviction and release from prison") (emphasis added). Instead, Gideon was provided

[5] As noted above, the State of Maine adopts the arguments of the MCPDS Defendant-Appellants relating to Count I and Sixth Amendment liability.

with a new trial as provided for in the operative federal habeas statutes at that time. If the Court deems appropriate a relief-and-release protocol based on the facts and law reviewed within this appeal, the State of Maine respectfully requests that this Court confirm that the protocol shall include an individualized balancing of the harms suffered against any competing public interests.

V. Any habeas relief should be implemented by local judges in local courthouses.

Robbins accuses the State of Maine of "mockingly" characterizing the Superior Court's habeas framework as a plan to "ride circuit across Maine." Red Br. at 39. There is no disrespect in this characterization—it is simply a fact that the Superior Court's current framework for relief sets up a system of intermittent habeas hearings at various locations throughout the state on no set timeframe. It would not only represent a novel and unpredictable way of effectuating Sixth Amendment habeas relief, it constitutes an abuse of discretion.

Robbins also accuses the State of Maine of advocating for no change from the status-quo. Red Br. at 40. But that is not its position. The State of Maine is not asserting that the current, weekly in-custody reviews are substantively the same as effectuating habeas relief. Rather, these hearings are both merely

where and when an appropriate habeas framework and remedy can be best effectuated—under the purview of local judges whose knowledge of the area criminal bar places them in the best position to cure any potential Sixth Amendment violation. This would not be "less efficient," *id.* at 40, than a single judge scheduling habeas reviews on an ad hoc, county-by-county basis.

CONCLUSION

For the foregoing reasons and those set forth in the State of Maine's opening brief, as Party-in-Interest on Count III, the State of Maine respectfully requests that the Court vacate the Superior Court's March 7, 2025 Post-Trial Order and remand this matter with instructions to proceed consistent with the State of Maine's legal arguments.

Dated: September 12, 2025

Respectfully submitted,

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