

STATE OF MAINE

SUPREME JUDICIAL COURT

Sitting as the Law Court

Docket No. Pen-25-107

NICHOLAS SEXTON

Petitioner

v.

**ORDER DENYING CERTIFICATE
OF PROBABLE CAUSE**

STATE OF MAINE

Respondent

Panel: STANFILL, C.J., and MEAD, CONNORS, LAWRENCE, and LIPEZ, JJ.

Pursuant to 15 M.R.S. § 2131(1) (2025) and M.R. App. P. 19, Nicholas Sexton has filed a notice of appeal and memorandum seeking a certificate of probable cause permitting full review by the Law Court of the trial court's (Penobscot, *Mallonee, J.*) dismissal of his petition for post-conviction review.

Sexton contends that the trial court erred in granting the State's motion to dismiss and erred in holding that he waived the claim he brings in a second petition for PCR. He argues that he should be relieved of the requirement that all claims be brought in a single petition for PCR. The Court has reviewed the judgment entered in the trial court and has fully considered the request for a certificate of probable cause. The Court has determined that no further hearing or other action is necessary to a fair disposition of the matter.

It is therefore ORDERED that the request for a certificate of probable cause to proceed with the appeal is hereby DENIED.

Dated: October 9, 2025

For the Court,



Matthew E. Pollack

Clerk of the Law Court

Pursuant to M.R. App. P. 12A(b)(5)(B)

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Maine Supreme Judicial Court

APPDX 128

STATE OF MAINE

PENOBSCOT COUNTY, ss.

UNIFIED CRIMINAL DOCKET

CRIMINAL ACTION

REGION NO. 5

DOCKET NO. PENCDCR-22-1928

APPEAL NO. PEN-25-107

NICHOLAS SEXTON,

Plaintiff

VS.

STATE OF MAINE,

Defendant

**HEARING ON POST-CONVICTION
RELIEF - MOTION TO DISMISS**JANUARY 24, 2025
BANGOR, MAINE

BEFORE:

THE HONORABLE BRUCE MALLONEE

APPEARANCES:

(ALL ARE PRESENT BY VIDEO OR TELEPHONICALLY)

ON BEHALF OF THE PETITIONER:

MEHRON BUERGER, ESQ.

ON BEHALF OF THE RESPONDENT:

LISA MARCHESE, ESQ.

RECORDED BY:

H.K., Clerk

TRANSCRIBED BY:

eScribers, LLC

eScribers

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STATE OF MAINE

PENOBSCOT COUNTY, ss.

UNIFIED CRIMINAL DOCKET

CRIMINAL ACTION

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1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	NONE				
4	<u>MISCELLANEOUS</u>				<u>PAGE</u>
5	COURT'S RULING				19
6					
7	<u>EXHIBIT</u>	<u>MARKED</u>	<u>OFFERED</u>	<u>ADMITTED</u>	
8	NONE				
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1 (This matter came for hearing before The Honorable Bruce
2 Mallonee of the Penobscot County Unified Criminal Docket
3 Court, Bangor, Maine, on January 24, 2025 at 10:03 a.m.)

4 THE COURT: All right. We are on the record in docket
5 number CD-CR-2022-01928. Ms. Marchese is here for the state.
6 Mr. Buerger is here for Mr. Sexton. Mr. Sexton himself is
7 here. I had a chance to say hello to him, and I will again.

8 And I also, to the extent that there's anybody within
9 earshot in New Hampshire, I want to thank the folks at the
10 prison for arranging this for Mr. Sexton. I know sometimes
11 that's difficult from penal institutions, and we've been
12 hamstrung sometimes by a failure to get a connection like
13 this. So I appreciate their following through.

14 A couple of other preliminary things. It really -- I was
15 looking at my notes from when I last spoke with the two of
16 you, and it was a long time ago. It's taken a while to get
17 this hearing, and I am sorry for that, but I'm glad we were
18 able to get it done.

19 I also noted a discussion when we met of an order to
20 which Mr. Rioux referred in his written argument dated August
21 8 of 2022. Now, in my file I have an order dated August 1 of
22 2022. We talked about that, and Mr. Buerger was going to see
23 if he had in his file an order dated August 8, because neither
24 Ms. Marchese nor I have that in our files.

25 Were you able to track that down, sir?

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1 MR. BUERGER: Your Honor, I have to admit, it's
2 admittedly been some time, but I'm just looking through my --
3 I can look through my digital file right now, and I didn't
4 look into that. I apologize. It had been my -- that slipped
5 off my radar, but --

6 THE COURT: That's fine. And I don't want to spend a
7 whole lot of time on this, but it is a loose end I'd like to
8 control if we can. Is your searching of your digital file
9 such that you can tell fairly soon whether you have an order
10 dated August 8 of 2022?

11 MR. BUERGER: Yes. I -- yes, I'm looking right now just
12 to see the last thing that we had here. I guess I'm -- yeah.
13 I'm not -- could you recite the date one more time, Your
14 Honor, just so I can make sure.

15 THE COURT: Yes. August 8, 2022.

16 MR. BUERGER: Yes. I am not seeing anything in our
17 digital files with that date. Now we typically keep them
18 pretty up to date, Your Honor, but there is always a chance
19 this physical file is at my office. So I hate to 100 percent
20 say I don't have it. I might have it and it's physical.
21 Usually everything is scanned in, but I'm not seeing anything
22 with that date right in my system.

23 THE COURT: All right.

24 MR. BUERGER: In my electronic system.

25 THE COURT: The -- the reference in Mr. Rioux's memo is

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1 on page 4.

2 MR. BUERGER: Okay.

3 THE COURT: Toward the bottom, just before the boldfaced
4 legal argument. And it says, "on August 8, 2022, this Court
5 published an order requiring that petitioner brief this Court
6 on why he" -- so forth and so on.

7 He may have been referring to the order of August 1, but
8 that just wasn't clear.

9 MR. BUERGER: Yes, Your Honor. I suspect without knowing
10 100 percent and being in (indiscernible), I think that he was
11 probably referring to that, because I'm assuming the August
12 1st order was the one that required the petitioner to brief
13 the Court to some extent on why he overcomes the timeliness
14 and waiver bar. So if that is in fact what is in the August
15 1st order, then I can say for certainty that I think that was
16 just a typographical error and that it should have been August
17 1st instead of August 8th.

18 THE COURT: All right. Let me ask you, Ms. Marchese,
19 does that from your standpoint, does that control that
20 variable?

21 MS. MARCHESE: I think it does, because when you look at
22 the top of page 5 of Justice Anderson's August 1st memo, it
23 does seem to invite Mr. Sexton to submit something to the
24 Court outlining his argument. So I would imagine it's simply
25 a typo by Mr. Rioux.

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1 THE COURT: All right. Then just the last preliminary
2 matter, we do have that extensive and expertly argued
3 memorandum from Mr. Rioux.

4 We also have the state's motion to dismiss. I understand
5 that today we are addressing only the motion to dismiss.

6 Is that your understanding, Ms. Marchese?

7 MS. MARCHESE: Yes, Your Honor.

8 THE COURT: And yours, Mr. Buerger?

9 MR. BUERGER: Yes, Your Honor, yes. I discussed with
10 Nick (phonetic) extensively that we're kind of trying to see
11 if we can get over some initial procedural bars, so we're not
12 getting into the meat and potatoes of the actual discovery
13 today.

14 THE COURT: Okay. All right. Thank you.

15 And with that I turn to you, Ms. Marchese, to argue your
16 motion.

17 MS. MARCHESE: Thank you, Your Honor.

18 I think the discussion of the argument is laid out fairly
19 well in my motion to dismiss. I'm not taking issue with the
20 fact that during COVID Mr. Sexton and his team didn't have the
21 opportunity to file.

22 The real issue, I think here, is why it was never raised
23 in the first petition for post-conviction review. I mean, you
24 can really go prior to that. The defendant was aware of this
25 alleged conflict. And I'm sure you've read Mr. Bate's

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1 (phonetic) letter expressing at that time that he did not
2 believe he had a conflict. Mr. Sexton never raised that with
3 Mr. Bate. I do not recall if Justice Anderson, Mr. Bate, and
4 I ever had a conversation about this in open court, but
5 certainly I think Mr. Bate's letter speaks for itself.

6 So you have the whole time that Mr. Bate is representing
7 him, it's never raised. Then he has a petition for post-
8 conviction review. It's never raised. So I think for that,
9 for those reasons, this is untimely and should be dismissed.

10 THE COURT: All right. This -- this probably is not
11 germane to the motion to dismiss, per se, but it's a -- it
12 hovers around the topic. I get the sense that Mr. Sexton
13 believes that this alleged conflict was not waivable, if it
14 existed, such that there isn't a question of Mr. Bate's
15 performance at trial, it's simply whether he was eligible to
16 perform at trial at all.

17 Is that your understanding of the issue as it has been
18 postured?

19 MS. MARCHESE: Well, is that is -- if that is his
20 argument, I think it's an incorrect argument. I mean, under
21 Rule 1.9 of the Maine Rules of Professional Conduct, there's a
22 waive of provision. So I don't think that's the status of the
23 law that under no circumstances can -- can a conflict be
24 waived. I don't know of a law that says that and I don't
25 think the Maine Rules of Professional Conduct contemplate

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1 that. So I don't agree with it.

2 THE COURT: Okay. All right. Well, I -- and as I say,
3 it's it's probably not relevant to the motion to dismiss
4 itself, but to the extent that it might be, I wanted to
5 clarify that.

6 And with that, I will turn to you, Mr. Buerger.

7 MS. MARCHESE: Can I just add one more thing here, Your
8 Honor?

9 THE COURT: Yes.

10 MS. MARCHESE: You know, Justice Anderson basically
11 invited the defense to respond to his concerns in the
12 assignment order, but I have seen nothing that would suggest
13 that Mr. Rioux or any member of his team had gone to Mr. Bate
14 and discussed this so-called conflict. And the conflict, the
15 Court should be aware, was five years earlier. He did
16 represent one of the victim's case, and the victim had been
17 charged as a juvenile with some burglary and theft. But it
18 had been years since he had seen Nicolle Lugdon.

19 And I -- there is no -- and the defense has the burden of
20 proof here -- the petitioner has the burden of proof and
21 there's been nothing here to demonstrate that there was any
22 sort of conflict by Mr. Bate. Mr. Bate (indiscernible) now
23 and I think something could have been done a little more due
24 diligence on this issue, and it hasn't been done.

25 THE COURT: Okay. Thank you.

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1 Hang on just a moment, Mr. Buerger.

2 MR. BUERGER: Sure, Your Honor.

3 (Pause)

4 THE COURT: Okay. Thank you and the floor is yours.

5 MR. BUERGER: Thank you, Your Honor.

6 So just responding to a couple of -- so that is
7 certain -- that may very well be another grounds for a
8 conflict of interest, Your Honor, but my understanding from
9 discussions with my client was that there are alternate,
10 separate basis was that his counsel had done some type of
11 estate work for one of the alleged victims in this case. So
12 after the state bring that up, I wasn't as aware -- I'll have
13 to talk -- you know, it sounds like there's actually
14 potentially multiple grounds.

15 We can't do -- you know, obviously if the PCR goes
16 forward, Mr. Bate would have to turn his files over. And I
17 mean, so they filed to dismiss this at a preliminary stage.
18 So we'll certainly do our due diligence, but we got to get
19 over this hurdle to get access to a lot of those materials to
20 explore these conflicts (indiscernible).

21 I certainly hear where they're coming from on the issue
22 of weight, but -- well, and I'll just pause.

23 You know, I'll also just touch on the fact I do
24 understand that there are certain conflicts that can be waived
25 in Rule 1.9, but I think the thrust of the argument here is

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1 that it's a nonwaivable conflict because it created such
2 potential, you know, conflict or adverse conflict of interest
3 that it's not waivable. So I think that that's the thrust of
4 our argument, among others, in this piece of our petition.

5 As to the waiver issue, I think, Your Honor -- and you
6 know, Mr. Sexton can -- if you want to ask him about it, he
7 could probably tell, but, you know, I think the idea here is
8 that until he actually had the confidence (indiscernible) of
9 legal counsel, someone who wasn't the attorney who potentially
10 could be the subject of a conflict of interest, he quickly
11 discovered that this issue was a major issue. And I think,
12 you know, he's just a layperson.

13 I cited to a case called, you know, the state
14 (indiscernible) where they consider a waiver of claim, and
15 that's a case where the person kind of failed to look for, I
16 think it was some kind of will or, you know, document after
17 someone had deceased and the family was going in to clean up
18 the estate. I think anyone in that situation would know,
19 okay, well, we've got to look for some kind of will or
20 testament -- testamentary document.

21 In this case, Mr. Sexton, he's a layperson. I don't
22 think that he had the legal expertise or ability to understand
23 that he actually even had a factual predicate to bring a claim
24 for relief. I think he, of course, would have wanted the
25 first VCR otherwise. But you know, he hadn't hated that part.

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APPDX 96

1 Some of these reasons are because of COVID. He just had to
2 have the opportunity to communicate with an attorney who --
3 who could inform him about this. And then when he did, you
4 know, he diligently pursued his claims. COVID came, and he
5 had had some, you know, substantive discussions with an
6 attorney in Massachusetts. We're not exactly sure what
7 happened there. You know, she kind of just fell off the
8 radar.

9 But I -- I would submit, Your Honor, I think that, you
10 know, we're -- we're just trying to get through the initial
11 door here. And then, of course, we still have a very high,
12 you know, mountain and a lot of -- you know, a lot of things
13 to overcome if we were to actually have a PCR (indiscernible).
14 But I think, you know, Mr. Sexton took a lot of steps once he
15 was aware of the issue to bring it up, and I'm sure he wishes
16 that he had known about it earlier. But, you know, if you're
17 incarcerated, you just don't have access to the resources like
18 people on the outside do.

19 THE COURT: Okay. Well, let me acknowledge it appears
20 that Mr. Sexton put a lot of time and energy into this, as did
21 his mother, and who knows who else who doesn't appear in Mr.
22 Rioux's memo. So I -- I appreciate that.

23 But let me -- let me frame what appears to me the
24 critical question here. I'm looking at the first PCR, the
25 docket number of which is Penobscot-CDCR-17-01530. That

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1 resulted in an actual contested hearing.

2 At that hearing, both of Mr. Sexton's trial attorneys
3 testified, Mr. Toothaker and Mr. Bate. And even more
4 importantly, Mr. Sexton was represented by an expert criminal
5 attorney, Mr. Andrus. And he had the benefit of another
6 expert criminal attorney, Mr. Mason, to comment on the trial
7 performance of the two trial attorneys.

8 So we have Mr. Andrus and Mr. Mason providing Mr. Sexton
9 with an expert sieve to try to find issues. And this issue,
10 to the extent it is one, slipped through that sieve. Wasn't
11 that the point at which it had to be identified and presented
12 if it were going to be? That, I think, is the state's
13 argument, and that is the way the question appears to me.

14 So I want to give you a chance to answer it squarely.

15 MR. BUERGER: Your Honor, I would submit I think he
16 certainly had legal counsel. And, you know, I'm not sure, you
17 know, what level of discussions did or didn't occur with Mr.
18 Andrus and Mr. Sexton. I guess, I just know that it wasn't
19 raised, which I -- you know, I'm not sure why.

20 I -- you know, but I my understanding is that, you know,
21 Mr. Sexton didn't appreciate the significance of this issue
22 until about three years after he had filed that -- that first
23 PCR. So I mean, I know sometimes the -- the individual files
24 the PCR, and then counsel get assigned, and maybe they didn't
25 file the additional petition and raises the grounds. I'm not

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1 sure exactly what happened. I wasn't there, Your Honor.

2 THE COURT: Sure.

3 MR. BUERGER: I wish I had been. But I guess I just
4 responded --

5 THE COURT: But --

6 MR. BUERGER: -- you know, he -- I think that he still --
7 it should run from what he had some idea about the claim. And
8 if he -- if there was some evidence he had awareness of it
9 before that proceeding, which I don't think there is much.
10 You know, the state noted that there was -- they couldn't
11 quite remember if there had been any discussion about this
12 issue during that underlying case.

13 So I guess I would just submit, Your Honor, that I think
14 it should run from the date which he had awareness of it based
15 on his knowledge of the lay -- as a layperson.

16 THE COURT: Okay. I will just -- I'll state for this
17 record, that the focus of that hearing -- I think it was the
18 only -- the proposed ground for error, although I may be wrong
19 about that -- was that the failure to press for an instruction
20 concerning duress. Mr. Sexton was claiming that at the time
21 of the events, he was subject to duress from Mr. Deleuze
22 (phonetic). And the way that that issue was raised and
23 dispensed with at trial, apparently, Mr. Toothaker declined to
24 argue duress, and the Court did not give that instruction, I
25 believe, was the basis for Mr. Mason's critical testimony and

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1 Mr. Anderson's argument at the first post-conviction review.

2 But let me ask you, Mr. Marchese, am I characterizing
3 that correctly and do you have any follow up argument you want
4 to offer?

5 MS. MARCHESE: You are characterizing that correctly,
6 Your Honor.

7 And I think -- I think the critical point here, this is
8 not a case where Mr. Sexton didn't realize that Mr. Bate had
9 previously represented the victim. If you go under Mr.
10 Buerger's argument, Mr. Buerger's argument is, well, it should
11 run from the time he realized it was significant. But that's
12 -- that's not a proper basis. Mr. Sexton was aware right from
13 the beginning, November 2nd, 2012, that Mr. Bate had
14 represented Nicolle Lugdon.

15 Now, I don't know whether or not he told Mr. Andrus about
16 that, but it's certainly the timing is not appropriate to run
17 from the time he so-called realized it could be a problem. He
18 was aware all along. He didn't bring it up with Mr. Bate. He
19 didn't bring it up -- maybe he did or maybe he didn't. Maybe
20 Mr. Andrus rejected it out of hand. We don't know.

21 But that's the time is November 2nd. And then if it
22 wanted to be pressed then Mr. Andrus should have pressed it.
23 We're now way, way beyond the time that is permitted, and I
24 would argue it's waived, and you should grant my motion to
25 dismiss.

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APPDX 100

1 THE COURT: All right. Thank you.

2 Mr. Buerger, I'll give you the last word.

3 MR. BUERGER: Yes, Your Honor.

4 I'll just -- I think I kind of touched on a lot of the
5 arguments here. I mean, I think that it comes down to here, I
6 know that we have these very, you know, what can be very
7 technical rules sometimes. But I think at the end of the day,
8 we have to kind of take people as they are and consider them
9 in the positions they're in.

10 He might have had awareness to some extent that Mr. Bate
11 had represented the individual in some capacity, but he didn't
12 have the awareness or knowledge of the potential estate
13 representation until after this had all happened, Your Honor.
14 So he didn't have that knowledge in 2011, and he was trying to
15 defend very serious allegations.

16 So I -- I'm not trying to point fingers at every attorney
17 here, Your Honor. That's not my objective. I -- I think
18 these -- this issue somehow slipped through the cracks and,
19 you know, that happens in these cases. But after, you know,
20 looking back at it, I think it's an important one here because
21 I -- I think that there really probably was a nonwaivable
22 conflict of interest.

23 And of course, the Court might not agree with that.
24 That's a whole nother argument I think that has to be dealt
25 with. And I (indiscernible) strong arguments there as well.

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1 But I think on this waiver issue, you should really, you
2 know, I think it's clear, based on the proceedings, that I
3 think that the record of the proceedings themselves that we
4 discussed here today, Your Honor, back up our argument to some
5 extent. It wasn't raised or even mentioned by any -- I mean,
6 there was Attorney Bate, then there was Attorney Andrus,
7 Attorney Mason. There's a lot of attorneys here, and it
8 wasn't raised by anyone until we filed this -- this brief.
9 And I submit that's because Mr. Sexton, being, you know, a
10 layperson, not a legal expert, didn't have the -- the
11 knowledge to know he had a factual predicate for a claim.

12 So I know it's kind of a tough. You know, I understand
13 we're trying to rewind the clock back here to some extent.
14 But I do think that in this exceptional circumstance, you
15 know, I think he waived the claim, Your Honor. I don't think
16 he can claim something that you have no knowledge or awareness
17 of.

18 Now, if this was something simpler, you know, like,
19 commonly understandable, like, hey, Nick, you got to pay a
20 fine of \$100 to X place by the first of the month. And he
21 didn't, you know? Something -- but this is a pretty
22 complicated legal thing. I mean, before I (indiscernible,) I
23 didn't even know conflict of interest existed.

24 So I think the Court should really be cognizant of that
25 in -- in considering whether you can just get through this --

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1 this gate here. That's all we're asking.

2 THE COURT: Okay.

3 MR. BUERGER: For a chance.

4 THE COURT: All right. Thank you both, counsel, thanks
5 for your arguments, I appreciate them.

6 THE DEFENDANT: Your Honor?

7 THE COURT: Yes, sir?

8 THE DEFENDANT: Could I say something, please, Your
9 Honor?

10 THE COURT: Yes, you may.

11 MR. BUERGER: Nick, only -- only if it's related to the
12 -- the procedural stuff, right?

13 THE DEFENDANT: No, I know. Well, I wanted to -- I
14 wanted to say how, like, I came upon this -- this conflict.

15 They told me not to worry about the conflict, that he
16 talked to some other lawyers. So that's why it was never
17 brought up after that. They told me he's, like, don't worry
18 about this, it's not a conflict.

19 And during COVID, when I was doing the -- the appeal on
20 the duress, I'm calling around to a bunch of different lawyers
21 and nobody's answering, nobody's at their office. I ended up
22 calling Drake Law, and they couldn't represent me because I
23 told them, like, my name, and my case, and I was kind of
24 discussing it with them, and they said, oh, we can't represent
25 you because we represented your codefendant. And they were,

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1 like, that's a big conflict, and we can't do that.

2 And basically, that's how I realized that I had a
3 conflict, because all that they was telling me at first, he
4 was, like, don't worry about it, I talked to several attorneys
5 about this, and I don't believe it's a conflict, so don't
6 worry about it. So I never brought it up again until when I
7 was looking for a lawyer during COVID and then I discovered
8 this issue.

9 Yeah, that's -- that's all. And the appellate lawyers,
10 the conflict was not objected to. So I don't think they even
11 thought about it, you know?

12 THE COURT: All right. Thank you, sir. I appreciate it.

13 I'm going to take all of that at face value. I have no
14 reason to think that you considered at the time of your first
15 post-conviction review, whether Mr. Bate's conflict might be a
16 ground that the Court could consider. I accept that you did
17 not think of that. Perhaps if you had, Mr. Andrus could have
18 advanced that as a ground at that time.

19 I don't have an opinion about this. I don't know what
20 the result of that argument would have been, but I can
21 imagine, based on this hearing we're having today, that Mr.
22 Andrus might have argued, and Mr. Mason might have commented
23 on, whether Mr. Bate had an actual conflict, whether it was a
24 conflict that could be waived under the rules, whether if it
25 was a conflict that could be waived under the rules, whether

1 it had to be waived in a certain form, either in writing or on
2 the record. He might have argued that because of that
3 conflict, Mr. Bate's trial performance was in some way
4 affected.

5 All those things might have been raised and argued at
6 that time, and that is the problem that you face here today.
7 All of those things could have been raised at that time, and
8 they were not. Mr. Buerger argues that you can't waive an
9 argument that you don't know about, and the the unhappy legal
10 reality is that you can. You can waive it by not raising it
11 at the time that you are required to raise it. And that is
12 the situation that we have here.

13 This is harsh, sir, and I'm sorry -- I'm sorry to give
14 you the bad news face-to-face, but by the same token, I just
15 don't want to leave you in suspense.

16 COURT'S RULING

17 THE COURT: The state's motion to dismiss is legally
18 sound. I don't think I have any basis on which I could not
19 grant it. And therefore, I am going to do so.

20 Let me ask --

21 THE DEFENDANT: Your Honor -- Your Honor, I don't even
22 think to (indiscernible) the lead counsel even knew about
23 this. I don't know why they wouldn't even discuss with them,
24 because I have a -- I never heard nothing from Toothaker about
25 this either. So --

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APPDX 105

1 THE COURT: Well, I don't want to -- I don't want to
2 spend a whole lot of time speculating with you, sir. But I
3 know that Mr. Bate wrote a letter to you. I know that that
4 letter was in your file. I know that Mr. Andrus had that
5 file, and that is the point at which it would have had to be
6 raised, were it going to be raised.

7 Ms. Marchese, is there anything further you want to say
8 to complete the record for today?

9 MS. MARCHESE: No, Your Honor. Thank you.

10 THE COURT: Mr. Buerger?

11 MR. BUERGER: No, Your Honor. Just that --

12 I'll speak with you when we planned to by phone next
13 week, Nick.

14 THE DEFENDANT: All right, I appreciate it.

15 THE COURT: All right.

16 THE DEFENDANT: Thank you, Your Honor.

17 THE COURT: Yes. All right. So a couple last things.
18 Thanks to counsel for your arguments.

19 Mr. Buerger, please tell Mr. Rioux I said, hello.

20 MR. BUERGER: Will do, Your Honor.

21 THE COURT: And Mr. Sexton, take care. I wish you well.

22 THE DEFENDANT: All right. Thank you.

23 MS. MARCHESE: Thank you.

24 MR. BUERGER: Thank you.

25 (Proceedings concluded at 10:28 a.m.)

scribers

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CERTIFICATION

I HEREBY CERTIFY, that the foregoing, pages 1 through 21, is a true transcript of a CD recorded on Friday, January 24, 2025, at the Penobscot County Unified Criminal Docket Court located at Bangor, Maine, of the case entitled, NICHOLAS SEXTON VS. STATE OF MAINE, to the best of my professional skills and abilities.

March 24, 2025

Gabrielle Eason

Gabrielle Eason
Court-Approved Transcriber

MAINE SUPREME JUDICIAL COURT

Sitting as the Law Court
Docket No. Pen-25-107

Nicholas Sexton

v.

**ORDER DENYING MOTION
TO RECONSIDER**

State of Maine

On October 23, 2025, Nicholas Sexton filed a motion to reconsider the Court's order of October 9, 2025, denying his request for a certificate of probable cause to appeal the order of the trial court dismissing his petition for post-conviction review. He did not tender any filing fee with the motion.

On October 24, 2025, Sexton paid the filing fee for a motion for reconsideration and filed a motion to enlarge the time for the motion for reconsideration or to treat the motion for reconsideration as one filed under M.R. App. P. 10 and not one filed under M.R. App. P. 14(b).

On October 31, 2025, Sexton filed a motion to supplement his motion for reconsideration.

The Court accepts the motion to reconsider as one properly and timely filed under Rule 10. The Court grants the motion to supplement the motion for

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reconsideration and has considered the arguments contained in the motion to reconsider and the motion to supplement the motion to reconsider.

The motion to reconsider is DENIED.

Dated: November 7, 2025

For the Court,



Matthew Pollack
Clerk of the Law Court
Pursuant to M.R. App. P. 12A(b)(5)(A)

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Law Court

APPDX 152

STATE OF MAINE
PENOBSCOT, ss.

NICHOLAS SEXTON
Appellant

v.

STATE OF MAINE
Appellee

UNIFIED CRIMINAL DOCKET
DOCKET NO: CR-22-1928

**DEFENDANT'S NOTICE OF APPEAL
TO THE LAW COURT**

Appellant Nicholas Sexton, by and through counsel, timely appeals within 21 calendar days to the Law Court pursuant to Me. R. App. P. Rule 2B(b)(1) from a dismissal of his post-conviction review petition on January 24, 2025.¹

On January 24, 2025, this Court, Justice Mallonee presiding, granted the State of Maine's Motion to Dismiss Mr. Sexton's Post Conviction Review Petition. Justice Mallonee ruled orally on the State's Motion to Dismiss indicating that Mr. Sexton had waived his post-conviction review claim because he had failed to raise it in a prior post-conviction review petition filed in 2017.

This is a special proceeding discretionary appeal governed by Me. R. App. P. Rule 19(a)(2)(F); therefore, Appellant shall, as required by the rules, submit a timely memorandum outlining to this Court why he should be granted a Certificate of Probable Cause.

A Transcript Order Form is attached to this Notice of Appeal.

Copies of this Notice of Appeal have been provided to the Maine Office of The Attorney General, Lisa J. Marchese specifically.

QUESTIONS OF LAW

Mr. Sexton appeals to the Law Court and requests that a certificate of probable cause issue on the following questions of law:

¹ There is no written order or decision of dismissal that Appellant or his counsel has received from the court in Bangor but Justice Mallonee ruled orally on Appellee's Motion to Dismiss, the subject of this appeal, on January 24, 2025.

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1. Whether the presiding justice erred as a matter of law when he granted the State's Motion to Dismiss ruling that Appellant had waived his claim of a non-waivable conflict of interest constituting ineffective assistance of counsel because he failed to raise it in his 2017 post-conviction review filing.

Dated at Portland, Maine, this 14th day of February 2025.

Respectfully Submitted,

_____/s/²_____
Mehron D. Buerger, Esq., Bar No. 10255
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Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I ELECTRONICALLY FILED THIS DOCUMENT ON FEBRUARY 14, 2025 USING THE ELECTRONIC SHAREFILE FILING SYSTEM AND THAT I FORWARDED A COPY OF ALL FILINGS VIA MAIL AND EMAIL TO OPPOSING COUNSEL IN THIS MATTER.

_____/s/³_____
Mehron D. Buerger, Esq., Bar No. 10255
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Counsel for Appellant

² This hereby constitutes my electronic signature as is allowed by the Maine Rules of Electronic Court Systems (M.R.E.C.S.).

³ *Id.*

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**Additional material
from this filing is
available in the
Clerk's Office.**