

FREDERICK LAWLESS

v.

STATE OF MAINE

Submitted on Briefs June 2, 2005
Decided September 28, 2005

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS,
and LEVY, JJ.*

MEMORANDUM OF DECISION

The State appeals, pursuant to 15 M.R.S.A. § 2131(2) (2003), from the granting of a petition for post-conviction review by the Superior Court (Hancock County, *Mills, C.J.*), remanding a multi-count kidnapping matter for a new trial due to ineffective assistance of counsel. Contrary to the State's contention, the court did not commit clear error, *see Aldus v. State*, 2000 ME 47, ¶ 19, 748 A.2d 463, 471, in its findings that (1) the defense attorney's failure to object fell below conduct that might be expected of an ordinary fallible attorney, and (2) such failure

* Justice Paul L. Rudman participated in the initial conference, but retired before this memorandum decision was certified.

deprived the defendant of a substantial defense, *see Kimball v. State*, 490 A.2d 653, 656 (Me. 1985).¹

The entry is:

Judgment affirmed.

Attorney for plaintiff:

William F. Pagnano, Esq.
431 Main Street
Rockland, ME 04841

Attorneys for State:

Michael E. Povich, District Attorney
Jacqueline L. Smith, Asst. Dist. Atty.
P.O. Box 722
Ellsworth, ME 04605

¹ The post-conviction court also concluded that the defense counsel's presentation at sentencing was lacking in terms of the presentation of mitigating factors, a sentencing memo, and comparable cases. It is not necessary for us to reach this issue because the matter must be remanded for a new trial. In addition, we have examined the State's additional issue on appeal and find it to be without merit.