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DUPONT, J., dissenting in part. I respectfully dissent from part II of the majority decision. Although I agree that the trial court correctly concluded that the defendant, Sadiki Blake, had violated the conditions of his probation, (1) I do not agree that we need not address the merits of his second claim, namely, whether the dispositional phase of his violation of probation hearing should have been continued in order to allow him to meaningfully exercise his right of allocution, and (2) I would address the merits of that claim and hold that because his right of allocution was impaired, he is entitled to another dispositional hearing, although not, as he has argued, before a different court.

The transcript of the sentencing or dispositional phase of the defendant's violation of probation hearing indicates that the defendant wanted "to formally object to proceeding with sentencing" His counsel stated that the defendant had "a right of allocution" and that the underlying charges of which he had been accused had not yet been disposed of because of a mistrial and that he was requesting the court "not [to proceed] at this time and wait until the criminal charges are, in some manner, disposed of." The court stated that "it's obvious here [that] you don't want him to be sentenced today, and that's the bottom line. If he has the right of allocution, if he doesn't want to exercise it, it's his right." Defense counsel responded: "But it's not a question of his ability to speak; it's a question of his ability to speak and be effective in it. . . . [T]he question is whether [the defendant] is fully able to exercise that right." The court stated that all the defendant was entitled to was the opportunity to speak. The state acknowledges in its brief that the defendant "requested a continuance until after the retrial of the underlying case in order to advocate meaningfully in mitigation of sentence, a continuance to find another attorney to represent him, that the court recuse itself on grounds of bias and prejudice and that he needed a transcript of the March 22, 2006 proceedings." The state claims that the defendant is asserting new bases for continuances on appeal that are unpreserved, namely, that at the time the motion was made, there was a possibility that the underlying charges pending against him "would be nolleed or that he could be acquitted in the retrial of the underlying criminal charges."

I do not conclude from the colloquy at the dispositional phase of the defendant's revocation of probation hearing or from the defendant's brief that the defendant is making an argument not asserted at that hearing. At the hearing and on appeal, the defendant was, and is, claiming that his right to allocution was impaired and violated because the court refused to delay sentencing

for the violation of a condition of his probation until after the disposition of the criminal charges underlying that violation. It is this question that is preserved for our review, and I think the defendant is entitled to a review of it on the merits. The specific question that we must answer is whether Practice Book § 43-10 (3)¹ and decisions such as *State v. Strickland*, 243 Conn. 339, 703 A.2d 109 (1997), in light of the particular facts of this case, required a continuance of the dispositional phase of the defendant's revocation of probation hearing in order to preserve his right to a meaningful allocution.

Because I would review the defendant's claim on its merits, the question becomes what standard of review should be used. The defendant claims our review should be plenary because it is a question of law to be determined by an interpretation of Practice Book § 43-10 (3) and decisional law. The state claims that the standard of review is whether the trial court abused its discretion.

The difficulty involved in a resolution of which standard of review should apply in this case arises because a motion for a continuance traditionally involves the discretion of a trial court that will not ordinarily be disturbed absent a clear abuse of discretion; *State v. Fabricatore*, 89 Conn. App. 729, 734–35, 875 A.2d 48 (2005), *aff'd*, 281 Conn. 469, 915 A.2d 872 (2007); whereas the basis for the particular motion in this case was the exercise of a right, allocution, which is based on the rules of practice, as well as decisional law, a basis that ordinarily requires plenary review. The resolution of the question is further compounded by the fact that allocution is not a discretionary right to be given or withheld by a trial court but one that exists, as of right, tempered only by how and when the allocution is to occur. In this case, regardless of the standard of review applied to the defendant's claim that he was deprived erroneously of a continuance to assert his nondiscretionary right of allocution, the conclusion would, in my opinion, be the same. The defendant *was* denied a "reasonable opportunity to make a personal statement in his or her own behalf and to present any information in mitigation of the sentence" as a matter of law under decisional law and Practice Book § 43-10 (3), and the denial was also an abuse of discretion.

The case of *State v. Bronson*, 55 Conn. App. 717, 740 A.2d 458 (1999), *rev'd*, 258 Conn. 42, 779 A.2d 95 (2001), is instructive. In that case, as in the present one, a motion for a continuance was denied. The basis for the motion was the need for a continuance to prepare for a hearing to be held pursuant to a statute, whereas in the present case, the need for the continuance is outlined in a rule of practice. The standard of review used in *Bronson* was abuse of discretion. The Appellate Court's decision that the motion for a continuance was denied properly was overruled by the Supreme Court in *State*

v. *Bronson*, 258 Conn. 42, 779 A.2d 95 (2001), but nothing in the Supreme Court’s decision casts doubt on the standard of review to be accorded a trial court’s action on a motion for a continuance or on the factors involved in determining if discretion was abused. When the denial of the continuance is related to specific language of our rules of practice or a statute, as in *Bronson*, the question of whether there was an abuse of discretion includes whether the court correctly applied the law and reasonably could have concluded as it did. See *State v. Bronson*, supra, 739–40. The court’s “discretion in granting or denying a request for a continuance should be exercised to accomplish the ends of substantial justice.” *State v. Hamilton*, 30 Conn. App. 68, 83, 618 A.2d 1372 (1993), aff’d, 228 Conn. 234, 636 A.2d 760 (1994). Factors involved in the ruling on a motion for a continuance include the likely length of the delay, the age and complexity of the case, prior continuances, the impact of the delay on the participants in the trial, the perceived legitimacy of the reason for the delay, the defendant’s responsibility for the timing of the request and the likelihood that a denial would substantially impair the defendant’s rights. *State v. Bronson*, supra, 723. How a court balances the equities is discretionary but if, in balancing those equities, a trial court draws conclusions of law, our review is plenary. See *Wasko v. Manella*, 269 Conn. 527, 542–43, 849 A.2d 777 (2004).

The answer to the issue in this case is aided by a brief review of the right of allocution as preserved in decisions and Practice Book § 43-10 (3). *State v. Strickland*, supra, 243 Conn. 339, made it clear that in Connecticut, there is a right of allocution during a probation revocation proceeding. The historical underpinnings of the right are that a defendant has a right to make a statement to the court in his behalf and to present information in mitigation of sentence, which right relates back to at least 1689. *Id.*, 343. The right preserves an opportunity to plead for mercy and to enable our system of justice to ensure that sentencing is particularized and reflects individual circumstances. *Id.* It is the defendant’s opportunity to participate meaningfully in sentencing and to present a plea in mitigation of punishment. *Id.*, 345.

Practice Book § 43-10 (3) provides that before imposing sentence, a judicial authority shall allow a defendant a reasonable opportunity to make a “personal statement in his or her own behalf and to present any information in mitigation of the sentence.” The words of the rules of practice are interpreted in accordance with the same principles that guide interpretation of our General Statutes. *State v. Strickland*, supra, 243 Conn. 347. The right does not involve defense counsel’s right to plead for mercy on behalf of his or her client, no matter how artfully. *Green v. United States*, 365 U.S. 301, 304–305, 81 S. Ct. 653, 5 L. Ed. 2d 670 (1961). A defendant must personally be allowed the opportunity to address the

court, which right is to be liberally construed. *Id.*

Revocation of probation is a possible continuing consequence of an original conviction in which probation was granted. A violation of probation hearing has two parts. The first concerns whether the defendant has violated his probation and the second, the punishment to be given to the defendant, in the event of a violation. *State v. Strickland*, *supra*, 243 Conn. 339. In this case, the court found that the defendant had violated his probation, a conclusion with which I agree, and revoked the defendant's probation, committing him to the custody of the commissioner of correction for four years, a conclusion with which I do not agree because the defendant was not afforded a continuance in order to assert his right to allocution meaningfully.

In the words of *Strickland*, allocution involves an "opportunity to meaningfully participate" in sentencing, with timing being an important element of the right. *Id.*, 345. The right of the defendant to allocution should provide an opportunity for a defendant to provide significant facts relating to his sentencing. Such facts may include those that might affect punishment or the exercise of mercy. *Id.* We are not concerned here with whether the defendant had such a right but, rather, with the issue of when the right should be exercised in order to provide the defendant with meaningful participation in his sentencing, as outlined in *Strickland*. Although the fact that the jury eventually did not find the defendant guilty of the underlying charges that led to the hearing on the violation of probation is not necessary to conclude that a condition of probation was or was not violated, the jury's action *is* relevant to consider whether a defendant may be entitled to the mercy of the court when the court is considering the penalty to be imposed during the dispositional phase of a probation revocation hearing. Knowledge of the acquittal that eventually resulted could affect the decision of a court as to whether to revoke probation, or its decision as to the amount of punishment the defendant should serve for the violation of probation, although it might not change the finding that he violated a condition of probation because of the different standard of proof between a criminal trial and a probation revocation hearing. See *State v. Durant*, 94 Conn. App. 219, 892 A.2d 302 (2006), *aff'd*, 281 Conn. 548, 916 A.2d 2 (2007).

The reason why the punishment to be given the defendant might be affected by the outcome of his future trial on the underlying charges is that the facts and circumstances of the case, including the defendant's motive, as elicited during the trial, could involve the degree of culpability of the defendant and whether the conditions of his probation continued to serve their original purpose. This is information that relates to his "reasonable opportunity to make a personal statement in mitigation of his sentence" as provided by the rules

of practice. Allocution not only gives the defendant a right to participate in the sentencing process but the right to participate “meaningfully.” *State v. Strickland*, supra, 243 Conn. 353. An adjective, such as “meaningful” implies that the important qualities of the noun modified are utilized in determining what “meaningful” means in the particular phrase. See *Household Finance Corp. v. Nival*, 37 Conn. Sup. 606, 612, 430 A.2d 1311 (1981). If a word such as “meaningful” has not yet been defined by our Supreme Court in a particular decisional context, we may refer to its dictionary definition. *State v. Bronson*, 55 Conn. App. 728. “Meaningful” is defined in Webster’s New World Dictionary (2d College Ed.) as “full of meaning, having significance or purpose.”

A court is vested with broad discretion during the disposition phase of a revocation hearing. It could require the defendant to serve any or all of his remaining sentence or continue probation or modify or enlarge its conditions. *State v. Strickland*, 243 Conn. 353. I conclude that the denial of a continuance was improper, and another dispositional phase of the defendant’s probation revocation hearing is required because the defendant was deprived of a meaningful right to allocution.

The defendant seeks a dispositional phase to be held before a different trial court in the event that he is entitled to another hearing. Although I would grant him a new dispositional hearing for the foregoing reasons, I would not remand his resentencing to a different judge, as he has argued should be done.

Remanding to a different trial court is an extraordinary remedy to be reserved for an extraordinary case. *United States v. Li*, 115 F.3d 125, 134 (2d Cir. 1997) citing to *Sobel v. Yeshiva University*, 839 F.2d 18, 37 (2d Cir. 1988), cert. denied, 490 U.S. 1105, 109 S. Ct. 3154, 104 L. Ed. 2d 1018 (1989). Resentencing before a different judge is appropriate only when the original judge would have “substantial difficulty in putting out of her mind her previously expressed views, or where reassignment is advisable to preserve the appearance of justice.” (Internal quotation marks omitted.) *United States v. Li*, supra, 134. In this case, reassignment would not be appropriate. The transcript of the hearing is devoid of any special circumstances that suggest that the trial judge would be unable to follow Practice Book § 43-10 (3) or unable to afford the defendant a fair resentencing.² We rely on the trial judge to give “careful consideration to any mitigating comments that [the defendant] might offer during her allocution.” *United States v. Li*, supra, 134.

I would set aside the judgments of revocation of probation and the sentence of the defendant and remand the case to the trial court for another dispositional phase of his probation revocation proceeding in order to afford him a meaningful right of allocution. The judgments that the defendant violated his probation

should be affirmed.

¹ Practice Book § 43-10 (3) provides: “The judicial authority shall allow the defendant a reasonable opportunity to make a personal statement in his or her own behalf and to present any information in mitigation of the sentence.”

² In *State v. Strickland*, supra, 243 Conn. 354, the case was summarily remanded, without discussion, to a trial court other than the court that revoked the defendant’s probation with direction to conduct another disposition phase of his probation revocation proceeding. Nothing in the decision itself, however, addresses the special circumstances that required that result.
