STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MCELROY,

Defendant-Appellant.

UNPUBLISHED
November 23, 2021

No. 354931
Macomb Circuit Court
LC Nos. 2019-002283-FH;
2019-003418-FH

Before: RICK, P.J., and RONAYNE KRAUSE and LETICA, JJ.

PER CURIAM.

Defendant, James McElroy, appeals by leave granted[1] his sentences of two concurrent terms of 10 to 30 years' imprisonment as a fourth-offense habitual offender, MCL 769.12, for two separate charges of domestic violence, third offense, MCL 750.81(4), following defendant's plea of guilty to each charge. Defendant argues that the trial court deprived him of his right to allocution by determining his sentence before defendant had the opportunity for allocution. Defendant also argues that his minimum sentence term is a 44-month upward departure from the top of the sentencing guidelines range, rendering his sentences unreasonable and disproportionate, and that the trial court failed to justify the propriety or extent of the departure. We disagree and affirm.

I. PROCEDURAL BACKGROUND

This appeal arises out of two similar and related, but separate, lower court files. In Macomb Circuit Court Case No. 2019-002283-FH, defendant was charged with domestic violence based on his assault of his then-spouse, MCL 750.81(2), on June 23, 2019. During that incident, defendant came to his spouse's house despite knowing that his spouse had an active personal protection order (PPO) against him, drank alcohol and possibly consumed cocaine, became angry at his spouse regarding the PPO, put his hand over her mouth, threatened to beat her, and pushed her to the ground forcefully. When the police arrived, defendant attempted to flee because he knew he had

[1] See *People v McElroy*, unpublished order of the Court of Appeals, entered November 13, 2020 (Docket No. 354931).

a PPO against him. In Macomb Circuit Court Case No. 2019-003418-FH, defendant was again charged with domestic violence based on his assault of his spouse, MCL 750.81(2), on October 20, 2019. During that incident, defendant again went to his spouse's residence following her filing for divorce, pushed her and assaulted her, resulting in a bloody nose, made uncouth allegations against her, and fled the scene. The spouse reported to police that she believed defendant would kill her if he returned to the residence. Each felony information also contained a third-offense notice based on defendant's commission of two prior acts of domestic violence, in 2012 and in 2018. Indirectly related to this appeal,[2] defendant was also charged with a drug offense.

On November 12, 2019, defendant entered pleas of guilty to both domestic violence charges. Defendant also admitted to the two prior domestic violence convictions, elevating what would be misdemeanors to five-year felonies pursuant to MCL 750.81(5). After being warned that a fourth-offense habitual offender enhancement could subject him to up to life imprisonment, defendant also admitted that he had three other felony convictions from 2002, 2006, and 2011.[3] Following his pleas, defendant asked to address the court, and the following exchange occurred:

> *Defendant*. Your Honor, I take full responsibility for what I've done. I absolutely had acted cowardly throughout my marriage. Pushing my wife around, you know, I'm a coward for that. I did not, I mean, covering my wife's mouth and pushing her down anyway. It's very cowardly for any man to do to a woman, to anybody, but especially a five-foot two woman. I'm sorry for that. She deserves better.
>
> *The Court*. Well, that helps.
>
> *Defendant*. I do take full responsibility of that, that's cowardly. She didn't deserve that, no woman does.
>
> *The Court*. Well, I appreciate you saying that on the record. I'll have to look at the full presentence investigation report before I say anything else. Other than I'm – I'll put it this way, crimes of this nature, now that we've taken the plea and I realize it's been fully voluntary and there's been no promises. As a matter of fact, I even emphasized the worst-case analysis on each. I'm not making any promise, but, of course, you're slightly better off, slightly better off by having admitted this in open court rather than by making the case go to trial. Because, although, I can't officially take notice of it. In the Federal System I could, but in the State System, we don't allow s [sic] person to gain any advantage by pleading and we don't allow the opposite, which is that somebody would be punished by going to trial. . . . So, it really can't count for you or against you, but naturally, in

[2] Defendant was sentenced for the drug offense at the same hearing as his sentencing for the domestic violence offenses.

[3] Half of defendant's lengthy criminal history consisted of assaultive convictions.

terms of my attitude, your attitude about remorse, responsibility, it's a good thing that you did, you did. Thank you.

Defendant. Thank you, your Honor.

Insofar as we can determine from the presentence investigation report (PSIR), by that time defendant had already entered a plea of guilty to the drug charge.

A single PSIR was prepared addressing defendant's drug charge and domestic violence charges. Among other matters, the PSIR noted that the victim, defendant's spouse, had suffered a concussion and deviated septum as a result of injuries inflicted by defendant in Case No. 2019-003418-FH, and defendant had threatened to kill her and her family if she had "anything to do with him going to jail." The PSIR also contained a statement from defendant in which he again characterized his conduct as "cowardly" and regrettable. On January 15, 2020, the trial court held a combined sentencing hearing for all three charges. Defendant's sentencing guidelines minimum range for his domestic violence charges were calculated to be 19 to 76 months in Case No. 2019-002283-FH, and 22 to 76 months in Case No. 2019-003418-FH. In the process of discussing defendant's challenge to offense variables (OVs) 4 (psychological impact to the victim) and 10 (exploitation of a vulnerable victim), the victim provided an impact statement. During that statement, she described a lengthy and continuous history of severe verbal, emotional, and physical abuse inflicted by defendant far exceeding the number of times for which he was charged. She described in detail many particular incidents, the lasting physical and emotional harm left by defendant, and the fact that defendant had enrolled in domestic violence classes twice to no effect. The victim asked that defendant "should finally and absolutely be held accountable for crimes against me and the very far reach that his violence has had." The trial court rejected defendant's challenges to his guidelines scores, emphasizing that it was unacceptable for defendant to suggest that defendant's crimes were mitigated on the theory that the victim could have left.[4]

The trial court then proceeded to sentence defendant for the drug charge, during which it asked defendant if he had anything to say. Defendant stated that he had struggled with drug use for most of his adult life and "could really use treatment." After imposing sentence for the drug charge, the trial court proceeded to hear argument from defendant's attorney regarding the domestic violence charges. Defendant's attorney asked the trial court to follow the Department of Corrections recommendation of concurrent 24-month minimum sentence terms for each charge. The hearing then proceeded as follows:

[4] Defendant does not challenge his guidelines scores on appeal. We note in addition that although the victim apparently permitted defendant to come into her residence, doing so does not in any way excuse defendant's knowing violation of the PPO against him. Unless the holder of a PPO actually attempts to use it as a sword instead of a shield, which the victim in this matter clearly did not, "the proper focus is on the behavior of the individual against whom the PPO is held, *not* the behavior of the person who holds the PPO." *In re Kabanuk*, 295 Mich App 252, 258; 813 NW2d 348 (2012) (emphasis in original).

The Court. They will run concurrent. In this – in file number 2019-2283-FH the charge was domestic violence, third offense notice and, again, it was habitualized [sic] fourth. So, that the term could be life or any term of years up to life.

So, on those two files, the Court is charged by the laws of the State of Michigan, the constitution of the State of Michigan and the various cases, now, handed down by our Supreme Court to come up with a sentence that is reasonable or proportionate and just. It takes into account the rehabilitation of the offender, but also the safety and security of society and is charged with fashioning the sentence that is proportionate to the crime that [is] neither too light nor too heavy. Something as the court cases tell us must [be] reasonable, proportionate and just. In order to be reasonable, proportionate and just in this case, the Court has to take into account a number of things, including the fact that the victim of this case, certainly, suffered at the hands of the defendant. That the defendant accomplished his purposes by threatening to kill the victim and her family. The family includes a child with disabilities. And the degree of terror that was experienced by the victim, I believe, is not reflected adequately in the . . . sentence guidelines.

And therefore, under People versus Lockridge, I must take into account what is recommended in the sentence guidelines. But the Supreme Court, now, has told us trial judges that we must use those as guidelines, we do use them as guidelines, but they are only guidelines. And they are the collective wisdom of the courts of this state and the number of scholars as to what a reasonable and proportionate and just sentence would be. But it's not the end of the analysis. Because justice in Michigan has to [be] individualized in order to reflect what the goal of the state judicial system is to end up with a sentence that truly both allows for the rehabilitation of the offender and the protection of society and is proportionate to the crime.

In this case, although I'm aware of [the] guidelines and understand how they would apply in the usual case, this is not a usual case. I think the degree of barbarity showed [sic] by the defendant is not at all adequately accounted for in the guidelines. And I also note this, that there are four prior felonies and eight prior misdemeanors. This is a person who has lived a life in which he has violated the law on a number of occasions. The People of the State of Michigan expect at some point that the Courts will stand up to career criminals and have a sentence that is actually reasonable and proportionate to the way that they have lived their lives. That's why the People of the State passed by referendum the statutes having to do with increasing the potential term for habitual offenders.

Taking all that into account, I think that the recommendation of the Department of Corrections in this case is vastly, way too lenient for the seriousness of these crimes. Therefore, under People versus Lockridge, and pursuant to the authority of the statutes and the directions of the Appellate Courts, I am sentencing the defendant on both of these files --

Defense Counsel. Your Honor.

The Court. Yes.

Defense Counsel. My client would like to make a statement before you --

The Court. Yes.

Defense Counsel. -- pass sentence.

The Court. Okay. Go on.

Defendant. First of all, your Honor, I'm sorry and I am a coward for bullying my wife. And a lot of what she said is not true. I have bullied her on several occasions, pushed her around. And I did violate the PPO, because we were a family. I know that's not a good reason, but he is – he has cerebral palsy, and she asked me to come home and help take of [sic] him. She does have lupus. The man you have on paper is not the man that you have standing before you. I went home and took care of him, I bathed him, I showered him, I wiped his behind, because I love him. I love him today. I know my wife or ex-wife, whoever she is to me at this point, I would never see them again. I lost my family, your Honor, because I was a bully and abusive. And I'm a coward for doing that, a big fat coward. I lost everything that I loved. But I'm a monster as you're portraying me in that record, that record right there portrays, I get it. But that's not who you have standing before you. Who you have is a loving person. I met them and I fell in love. And yes, I bullied my wife many times, several times and I abused her, I did that. And I pled guilty to it. But I pray you don't throw the book at me, because I'm not a monster. I took care them [sic]. A lot of what she said was true, but a lot of it wasn't. And I kept going home, she kept asking me to come because they needed me. And I did throw caution to the wind and go home and violate the PPOs. And I wouldn't do it again. But I did it because I loved them and they needed me, your Honor. They, obviously, survived before me and they will survive again without me. But at that point in time, we were better together than we were apart. And we were getting high and the one thing that I did do, that she's not saying, is our arguments were because we were up for four days smoking crack cocaine and when the money ran out, that's why I threatened her on that she was going to lose the kids because she was taking money from her special needs child bank account. That is what our arguments were for, your Honor. She doesn't want to bring that to light and I'm not trying to throw stones, because I am guilty here. And I said that. But she doesn't want to bring that to light and I didn't take this to trial because I am guilty of doing what I said I did. And I'm not the monster you have on paper, sir. And I really hope you can take that into consideration. I am a big fat coward for bullying and abusing my wife and she was right I verbally, physically, and mentally abused her. I did that and I'm very sorry for it.

The Court. Okay. Okay. Are we ready for the sentence?

Defendant. Yes, sir.

The trial court then proceeded to impose concurrent sentences of 10 to 30 years' imprisonment for each count of domestic violence. The trial court noted that it was aware it had exceeded the guidelines, but that nevertheless, "on the basis of this record, this is on the low and merciful side for the terror that you've subjected the victim to."

II. DEPARTURE SENTENCE

Defendant first argues that he is entitled to resentencing because his sentences of 10 to 30 years' imprisonment for domestic violence were unreasonable and disproportionate upward departures from his recommended sentencing guidelines ranges of 19 to 76 months' and 22 to 76 months' imprisonment.[5] Defendant's sentences were therefore upward departures of 44 months, or slightly less than 60%. We disagree that defendant's sentences were unreasonable, disproportionate, or inadequately justified under the circumstances.

A. STANDARD OF REVIEW

This Court reviews the trial court's sentencing decision for an abuse of discretion. *People v Skinner*, 502 Mich 89, 131-132; 917 NW2d 292 (2018). In general, an abuse of discretion occurs where a trial court chooses an outcome falling outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). In the context of sentencing, a trial court abuses its discretion by violating the principle of proportionality. *People v Dixon-Bey*, 321 Mich App 490, 524-525; 909 NW2d 458 (2017). Under the principle of proportionality, as set forth in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), sentences must be proportionate to the circumstances of the offense and to the offender. *People v Steanhouse*, 500 Mich 453, 459-460, 474-477; 902 NW2d 327 (2017). Factors relevant to the proportionality of a departure sentence "include (1) whether the guidelines accurately reflect the seriousness of the crime, (2) factors not considered by the guidelines, and (3) factors considered by the guidelines but given inadequate weight." *Dixon-Bey*, 321 Mich App at 525 (citations omitted). Other factors include "the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation." *Id*. at 525 n 9 (quotation marks and citations omitted).

Although the applicable sentencing guidelines range is advisory only, "a sentencing court must determine the applicable guidelines range and take it into account when imposing a sentence." *People v Lockridge*, 498 Mich 358, 365; 870 NW2d 502 (2015). The sentencing guidelines are "a highly relevant consideration in a trial court's exercise of sentencing discretion," and the trial court "must consult those [g]uidelines" when making a sentencing determination. *Id*. at 391 (quotation marks and citation omitted). This Court is only required to review a sentence that departs from the range recommended by the statutory guidelines for reasonableness. *People v Anderson*, 322 Mich App 622, 636; 912 NW2d 607 (2018).

[5] Defendant's calculated guidelines range was doubled because he was sentenced as a fourth-offense habitual offender. See MCL 777.21(3)(c).

A trial judge may impose a sentence that departs from the guidelines when the recommended range "is disproportionate, in either direction, to the seriousness of the crime." *Milbourn*, 435 Mich at 657. In addition to adhering to the principle of proportionality, "sentencing courts must justify the sentence imposed in order to facilitate appellate review." *Lockridge*, 498 Mich at 392. This justification must include "an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *Dixon-Bey*, 321 Mich App at 525 (quotation marks and citation omitted). Nevertheless, "[r]ather than impermissibly measuring proportionality by reference to deviations from the guidelines, our principle of proportionality requires 'sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.' " *Steanhouse*, 500 Mich at 474, quoting *Milbourn*, 435 Mich at 636. Notably, even before the sentencing guidelines became advisory only, trial courts were not required to justify departures from the guidelines with mathematical precision or pursuant to a mathematical formula. *People v Smith*, 482 Mich 292, 315-316; 754 NW2d 284 (2008).

B. ANALYSIS

In this case, the trial court articulated several reasons for its upward departure sentences. The trial court found that the sentencing guidelines ranges did not consider "the degree of terror" that was experienced by the victim. The trial court noted that the victim suffered at the hands of defendant, and that defendant accomplished his purpose by threatening to kill the victim and her family, which includes a child with disabilities. Moreover, the trial court indicated that "the degree of barbarity" defendant had shown was not "at all adequately accounted for in the guidelines." The trial court noted that defendant had four prior felonies and eight prior misdemeanors.[6] The trial court found that those experiences had not prevented defendant from reoffending. The trial court thus properly considered defendant's lengthy history of prior offenses, sentences, and his failure to rehabilitate. The trial court also expressed a need to adequately protect society. Defendant's pattern of committing new criminal acts posed a significant threat to society. Given defendant's failed rehabilitation, the trial court was justified in its concerns for the safety of society. Defendant argues that his criminal history was accounted for in the sentencing guidelines, but it is proper for the trial court to determine whether the guidelines *adequately* account for a particular characteristic or consideration. Considering the record as a whole, the trial court adequately supported that upward departure sentences were warranted in this case.

Defendant further argues that the trial court did not justify the *extent* of the departures made in this case. We disagree.

Our Supreme Court has explained that it is not enough to articulate grounds justifying a departure from the sentencing guidelines range, because the trial court must also articulate reasons for the extent of the departure. *Milbourn*, 435 Mich at 660. However, as noted, trial courts were

[6] As noted above, half of defendant's criminal history consisted of assaultive convictions. According to the PSIR, defendant had three convictions for assault and battery, two convictions for domestic violence (not including those in the present matter), and two convictions for assault with intent to commit great bodily harm.

never obligated to justify the exact length of a departure, down to the month or day, with mathematical precision. *Smith*, 482 Mich at 315-316. As also noted, the touchstone is proportionality to the offender and to the circumstances, with departure from the guidelines an important, but not dispositive, consideration. *Steanhouse*, 500 Mich at 474-475. Our Supreme Court has held that sentencing courts must articulate their reasoning to permit meaningful appellate review. *Lockridge*, 498 Mich at 392, citing *People v Coles*, 417 Mich 523, 549; 339 NW2d 440 (1983). It does not follow that trial courts must provide a treatise that would withstand scientific peer-review.

The trial court did not purport to explain why 44 months precisely, as opposed to, say, 43 months or 45 months, was an appropriate and proportionate departure from the top of defendant's sentencing guidelines range. However, the trial court was not required to do so. Properly, the trial court did not merely conclude that a departure was warranted in the abstract and then pronounce an arbitrary sentence. The trial court provided an extensive discussion and explanation for why the principle of proportionality demanded a very significant upward departure.

Defendant appears to tacitly admit that the trial court could have scored OV 7 at 50 points, which is appropriate if "[a] victim was treated with sadism, torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). Doing so would place defendant's guidelines range at the very top of the range permitted by the guidelines, which, as defendant notes, would not actually affect the highest minimum sentence permitted.[7] MCL 777.66. Notably, however, scoring OV 7, which only takes into account conduct *during the offense*, would clearly not address the totality of defendant's behavior or the way in which defendant's pattern of abuse affected the victim during the charged offenses. The victim described defendant's threats to kill her and her family on numerous occasions, the vast extent of defendant's verbal and emotional abuse, defendant's racist shouting interfering with her work, defendant's insistence on controlling the kind of underwear she could wear, the "masterful make-up job" she required to cover up the bruises and blisters defendant caused, acts of violence and torture followed by forcing her to kiss him afterward, acts of trapping her in a room and smashing her phone when she tried to seek help, the after-effects she continued to suffer from the concussion he inflicted, and the permanent fear he instilled in her children. Scoring OV 7 would not have taken into account a fraction of the harm defendant

[7] Defendant's PRV level for his domestic violence convictions were both level F, representing 100 and 116 points respectively, the highest possible level. Defendant's OV scores were levels V and IV, representing 50 and 45 points. If, as defendant suggests, OV 7 were to be scored for both convictions, resulting in total OV scores of 100 and 95 points, he would far exceed the 75 points necessary to place him in level VI, the highest possible level. See MCL 777.66.

caused.[8] It is also noteworthy that defendant violated a personal protection order and insinuated that his doing so was the victim's fault—an insinuation the trial court rightly found offensive.[9]

The record unambiguously shows that the trial court was correct in observing that the case was unusual, that defendant was clearly a career criminal who had displayed exceptional barbarity, and it was long overdue for the law to stand up to him. We think it highly noteworthy that the trial court emphasized that, in light of the terror described by the victim during her impact statement, its sentence was actually "on the low and merciful side." It is readily apparent that, as the trial court recognized, the guidelines did not reflect the seriousness of defendant's crimes, and they took woefully inadequate account all relevant factors of defendant's conduct and their consequences. See *Dixon-Bey*, 321 Mich App at 525. Defendant had clearly not been the slightest bit deterred by prior sentences, and society was clearly in need of protection from defendant. See *People v Solmonson*, 261 Mich App 657, 671; 683 NW2d 761 (2004). Defendant displayed little potential for rehabilitation; and although defendant claims that he took responsibility for his conduct, we think that to be an extremely generous interpretation of defendant's statements to the trial court. See *People v Houston*, 448 Mich 312, 323; 532 NW2d 508 (1995). In any event, this Court defers to trial courts' superior abilities to evaluate the demeanors of the parties who appear before it, even where the applicable standard of review would otherwise be de novo. *In re Loyd*, 424 Mich 514, 535; 384 NW2d 9 (1986). The familial relationship between defendant and the victim, including the ensuing harm to the victim's children, is also an important consideration. *Houston*, 448 Mich at 323.

Given the trial court's sound reasoning and ability to observe both defendant and the victim, and the lack of a need to provide a mathematically precise justification for the exact extent of a departure, we are unable to conclude that the trial court failed to adequately explain why an upward departure of 44 months was proportionate to defendant and to the circumstances of his offenses. *Lockridge*, 498 Mich at 392. We agree with the trial court that the guidelines' failure to accommodate the sheer extent of defendant's misconduct amply warranted at least a 60% upward departure.

---

[8] Although not discussed by the parties or by the trial court, we also note that OV 13, "continuing pattern of criminal behavior," was already scored at 25 points, the highest score possible for a crime other than CSC-I, and that score only accounts for "3 or more crimes against a person." MCL 777.43(1). Thus, scoring merely 25 points for OV 13 is clearly inadequate, but hypothetically scoring further points would also not have increased defendant's sentencing guidelines range. If MCL 777.66 permitted further OV levels and scaled both the lower and upper sentence ranges accordingly (instead of simply dead-ending at 38 months), it is highly likely that an OV level VII, combined with PRV level F, would encompass at least a 60-month sentence. With the doubling of the range due to defendant's status as a fourth-offense habitual offender, his sentence therefore would actually be within such an extrapolated guidelines range.

[9] See footnote 4.

III. RIGHT TO ALLOCUTION

Defendant next argues that he is entitled to resentencing because he was denied the right to allocution before his sentences were imposed, and that the trial court's determination of defendant's sentences prior to allocution rendered defendant's allocution meaningless. We disagree.

A. STANDARD OF REVIEW

This issue is not preserved, because defendant did not timely argue at sentencing that the trial court's sentences were improperly imposed without giving consideration to his allocution. See *In re Guilty Plea Cases*, 395 Mich 96, 137; 235 NW2d 132 (1975); *People v Callon*, 256 Mich App 312, 332; 662 NW2d 501 (2003). Unpreserved issues are reviewed for plain error. *People v Cain*, 498 Mich 108, 116; 869 NW2d 829 (2015).

> To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice. Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence. [*People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999) (quotation marks, citations, and brackets omitted).]

B. ANALYSIS

"[A] defendant must be allowed to exercise his right of allocution *before* sentence is imposed." *People v Parks*, 183 Mich App 647, 649; 455 NW2d 368 (1990) (emphasis in original). In relevant part, MCR 6.425(D)(1)(c) states that the trial court imposing sentence "must" "give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence." Appellate courts have interpreted this plain language as requiring strict compliance with the right to allocution. *People v Kammeraad*, 307 Mich App 98, 149; 858 NW2d 490 (2014). Failure to comply with this rule requires resentencing. *Id*. "[W]here a trial court indicates, prior to allocution, that it has already determined the sentence it is going to impose, any subsequent allocution is rendered meaningless and resentencing is required." *Parks*, 183 Mich App at 649.

This matter superficially seems to entail a close question, although that seeming closeness evaporates upon consideration of the entire record. The record does suggest that the trial court was prepared to impose sentence when defendant's attorney interrupted and requested that defendant be allowed to speak. However, the trial court did not actually impose sentence until after it permitted defendant a full and uninterrupted opportunity to address the trial court. The trial court ensured that defendant was satisfied that he had nothing else to say before imposing sentence.

Notably, defendant had already allocuted as to his drug charge earlier at the same hearing, after the victim provided her statement and after the attorneys disputed OVs 4 and 10, so it might not have been entirely clear whether defendant had more to say. Importantly, although defendant's allocution as to his domestic violence charges was somewhat longer than his earlier statements, the gravamen of his allocution had already been presented to the court at his plea hearing and in his statement in the PSIR. We therefore do not think it a hypertechnicality that the trial court did not impose sentence until after allocution. The proceedings as a whole show that the trial court was attentive and gave serious consideration to anything defendant said. We are not inclined to presume that the trial court would have abruptly departed from its obvious practice by disregarding defendant's allocution.

It is also clear that the trial court would have needed little additional time to ponder, because defendant said little, if anything, that he had not already told the trial court. Of grave and disturbing significance, defendant's dismissal of his behavior as merely "cowardly," and his suggestion that it was not representative of who he really was, reflects that defendant had no comprehension of the nature of his conduct or—not to put too fine a point on it—who he really was. Defendant's repeated efforts to pass off his persistent, destructive, selfish, and controlling behavior as somehow nothing more than a lack of courage is not the kind of meritorious story that would reflect positively on him at sentencing, no matter when it was recited. That the trial court declined to comment on defendant's story does not prove the trial court did not consider defendant's story. There may be circumstances under which it does require bravery to refrain from engaging in violence or from hurting others, but none of those circumstances were ever present for defendant. Under the circumstances, defendant has not shown that any error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. Accordingly, defendant was not denied the right to allocution before his sentences were imposed.

Affirmed.

/s/ Michelle M. Rick
/s/ Amy Ronayne Krause
/s/ Anica Letica