

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHELLE IRIS COOL,

Defendant-Appellant.

FOR PUBLICATION

October 22, 2026

10:20 AM

No. 372828

Mecosta Circuit Court

LC No. 2023-010694-FH

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

ACKERMAN, J.

Under the Michigan Indigent Defense Commission Act, MCL 780.981 *et seq.*, the Michigan Indigent Defense Commission (MIDC) oversees a system designed to ensure that all Michigan jurisdictions provide adequate legal representation to indigent criminal defendants. In this prosecution, defendant Michelle Cool was represented by appointed counsel whose services were largely financed by MIDC funds provided to the trial court’s funding unit. She contends that ordering her to reimburse the MIDC-financed portion of “[t]he expenses of providing legal assistance to [her]” under MCL 769.1k(1)(b)(iv) would permit the funding unit to recover twice for the same expense. We disagree, because the statutory scheme specifies how recovered attorney fees must be handled, and those provisions preclude a double recovery.

We also reject defendant’s argument that she was denied her right to counsel of choice and therefore affirm her convictions. We conclude, however, that the trial court did not adequately substantiate its assessment of 10 points under Offense Variable (OV) 19, and we remand for further proceedings on that issue. Finally, we conclude that we lack jurisdiction to review defendant’s challenge to the trial court’s postjudgment modification of the restitution award.

I. FACTS

Sally Batzer, of Bay City, owned a cottage in Barryton. In February 2020, she left Michigan for Wyoming, where she stayed for about 18 months. She did not return to her cottage until April 2022, at which time she noticed that a “vintage camper” was missing from the driveway. After looking through the garage and cottage, she discovered that numerous other items were

missing, including a boat, trailers, canoes, a lawn mower, an ATV, and myriad household furnishings and fixtures.

Batzer reported the theft to police. During the ensuing investigation, several neighbors told police that they had seen defendant removing property from the cottage and that defendant had claimed to have purchased it. Police also discovered that someone had purchased the stolen boat from the cousin of defendant's boyfriend. When questioned, defendant said that she had been trying to purchase the property from a man she understood to be the owner, "Michael Webb" or "Michael Webber." She said that she had been working with his nephew, who had a key to the cottage and had shown her around the property, and she denied knowing anything about the items being removed from the cottage. At trial, however, defendant testified that, at the nephew's request, she towed the camper from the cottage to an agreed location. Police searched property records for "Michael Webb" or "Michael Webber" but found no owner by either name. The records confirmed that Batzer owned the cottage.

Defendant was ultimately charged with second-degree home invasion and larceny in a building. At arraignment, defendant requested appointed counsel, and the district court granted the request. Trial was initially set for October 2023 but was adjourned four times due to defendant's medical issues. The day before trial was scheduled to begin in June 2024, defendant's attorney moved to withdraw. At a hearing defendant did not attend, counsel explained that he had spoken with defendant the previous weekend "really, for the first time, to get into the nuts and bolts" and that defendant "wanted to move forward in a course that I'm not sure I could have taken." Counsel also advised the court that defendant "was going to be retaining counsel." The trial court responded that there was "absolutely no way this court is going to grant an adjournment" given the numerous delays. That same day, defendant sent the court a letter "requesting a new lawyer," stating that her attorney "does NOT have the best intentions for me" and that she had given him certain evidence that he had not provided to the prosecutor.

On the day of trial, defendant renewed her request to change lawyers. She was placed under oath and testified that there had been "a breakdown of our communication" and that she felt "left in the dark on a few things that have come up." The trial court stated that it regarded appointed counsel as one of the finest attorneys performing that work in the area and questioned whether defendant was characterizing his representation as ineffective to obtain another adjournment. Although the same attorney was representing defendant in another matter, she insisted that "he's just not a great lawyer for me" and that she "would like to be way more prepared and have a better understanding of the way and the steps of what we're actually doing." She also suggested she would like a change of venue because she did not believe she could receive a fair trial in light of her brother's criminal history and what she viewed as bias by the district court. The court construed defendant's statements as a request for new appointed counsel and determined that she had not established good cause to adjourn trial and appoint substitute counsel. Defendant then stated that her mother was "cashing in her 401k so that we can just pay for a lawyer," but the court concluded that the case had been pending for 419 days, making her request "[t]oo late."

Defendant was found guilty as charged. Second-degree home invasion is a Class C felony, MCL 777.16f, and she was assessed 10 PRV points and 15 OV points, placing her in cell C-II on the Class C grid with a recommended sentence of 12 to 24 months, MCL 777.64. At sentencing on August 19, 2024, defendant challenged the assessment of 10 points under OV 19 for interfering

with the administration of justice, MCL 777.49(c), because her “original statement to law enforcement [was] consistent with the statement that she gave during her testimony.” The presentence investigation report said that she had “reported to officers that someone else had taken the camper, where in fact she did take it.” The trial court agreed, concluding that she had lied to police, and upheld the assessment of 10 points under OV 19.

The court sentenced defendant to concurrent terms of 365 days of incarceration and 36 months of probation for each conviction. It also imposed \$1,400 in attorney fees under MCL 769.1k(1)(b)(iv); the following day, defense counsel submitted an invoice for that amount. The court set restitution at \$0 but explained that “[t]here is no time limit on restitution,” meaning that the prosecution “could get a request for restitution accompanied by receipts or estimates . . . five years from now, and the Court could add it to your judgment.” The court advised defendant that, when that happened, the amount could be added either by stipulation or after a contested hearing, and defendant indicated that she understood. Defendant then timely requested appointed appellate counsel under MCR 6.425(F)(1)(c). The trial court granted her request on October 7, which constituted her claim of appeal. See MCR 7.204(A)(2)(a); MCR 6.425(G)(1)(e).

On November 25, 2024, the prosecution filed a motion in the trial court to amend defendant’s judgment of sentence to include \$17,744.20 in restitution. Meanwhile, in this Court, the parties stipulated in December 2024 to a 28-day extension for defendant to file her brief on appeal under MCR 7.212(A)(1)(a)(iii), and defendant obtained an additional 56-day extension in early January. On February 14, 2025, defendant filed a “Motion to Correct Attorney Fees” in the trial court, arguing that because the court’s funding unit received most of its indigent-defense funding from the state, she should be required to reimburse only the local share of the cost of her representation.

At a hearing on February 24, the trial court explained that its practice was to “err on the side of caution” by setting restitution at zero at sentencing, thereby allowing prosecutors additional time to investigate and determine the correct amount. The court took the parties’ motions under advisement and asked for additional supporting materials regarding restitution. Defendant obtained further extensions in this Court while awaiting the trial court’s ruling. On April 28, 2025, the trial court issued an opinion denying defendant’s request to reduce the attorney fees and amended her judgment of sentence to impose \$8,997.78 in restitution to Batzer and her insurer, State Farm. Defendant then filed her appellate brief together with a copy of the trial court’s amended judgment of sentence, and this appeal proceeded.

II. ADJOURNMENT TO CHANGE COUNSEL

Defendant first argues that the trial court erred in denying her request for an adjournment to change trial counsel. Although her arguments overlap, the record and her brief on appeal present two distinct theories. The first is that the breakdown in her relationship with appointed counsel obliged the trial court to adjourn trial and appoint new counsel. The second is that the court should have adjourned trial to allow defendant to retain a lawyer of her own choosing. We review the trial court’s decision under either theory for an abuse of discretion. *People v Akins*, 259 Mich App 545, 556-557; 675 NW2d 863 (2003); *People v Strickland*, 293 Mich App 393, 397; 810 NW2d 660 (2011).

A. GOVERNING PRINCIPLES

The immediate decision the trial court faced on the morning of trial was whether to grant defendant's request for an adjournment. "The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process" *Ungar v Sarafite*, 376 US 575, 589; 84 S Ct 841; 11 L Ed 2d 921 (1964). In determining whether a trial court abused its discretion by denying a criminal defendant's request for an adjournment, we consider whether "1) the defendant was asserting a constitutional right; 2) he had a legitimate reason for asserting the right; 3) he was not guilty of negligence; 4) prior adjournments of trial were not at the defendant's behest," along with whether "prejudice result[ed] from the trial court's abuse of discretion." *People v Wilson*, 397 Mich 76, 81; 243 NW2d 257 (1976), citing *People v Williams*, 386 Mich 565, 578; 194 NW2d 337 (1972).

The Sixth Amendment to the United States Constitution has been construed to mean "that the accused be defended by the counsel he believes to be best." *United States v Gonzalez-Lopez*, 548 US 140, 146; 126 S Ct 2557; 165 L Ed 2d 409 (2006). That guarantee is said to concern "the right of a defendant who does not require appointed counsel to choose who will represent him." *Id.* at 144. It protects a defendant's ability to be represented by a qualified attorney "whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds." *Id.* (citation omitted).

When a defendant relies on court-appointed counsel, there are further qualifications on the right to choose counsel. Although "the right to counsel of choice does not extend to defendants who require counsel to be appointed for them," *id.* at 151, an indigent defendant may nevertheless become entitled to replacement counsel on a sufficient showing. As our Supreme Court has explained, "[a]n indigent defendant, entitled to the appointment of a lawyer at public expense, is not entitled to choose his lawyer. He may, however, become entitled to have his assigned lawyer replaced upon a showing of adequate cause for a change in lawyers." *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973). Adequate cause may include "that his assigned lawyer is not adequate or diligent or . . . that his lawyer is disinterested." *Id.* at 441-442.

In either setting, a defendant's right to counsel of choice is not absolute. *Akins*, 259 Mich App at 557. "A balancing of the accused's right to counsel of his choice and the public's interest in the prompt and efficient administration of justice is done in order to determine whether an accused's right to choose counsel has been violated." *People v Kryztopaniec*, 170 Mich App 588, 598; 429 NW2d 828 (1988). In striking that balance, the Supreme Court has "recognized a trial court's wide latitude in balancing the right to counsel of choice . . . against the demands of its calendar." *Gonzalez-Lopez*, 548 US at 152. As that Court has explained:

Not every restriction on counsel's time or opportunity to investigate or to consult with his client or otherwise to prepare for trial violates a defendant's Sixth Amendment right to counsel. Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons. Consequently, broad discretion must be granted trial courts on matters of continuances; only an unreasoning and arbitrary insistence upon expeditiousness in

the face of a justifiable request for delay violates the right to the assistance of counsel. [*Morris v Slappy*, 461 US 1, 11-12; 103 S Ct 1610; 75 L Ed 2d 610 (1983) (cleaned up).]

B. ADJOURNMENT TO RETAIN COUNSEL OF CHOICE

With those principles in mind, we turn first to defendant's argument that the trial court should have adjourned trial to allow her to retain substitute counsel.

The first *Wilson* factor favors defendant because her request implicated her constitutional right to counsel. The remaining considerations, however, weigh against an adjournment.

The second *Wilson* factor asks whether the defendant "had a legitimate reason for asserting the right." Under that factor, the most common reason for asserting the right is "a bona fide dispute with his attorney." *People v Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999). That factor does not favor defendant because she failed to articulate a sufficiently specific reason for changing counsel. She vaguely gestured at feeling "in the dark" and "like we are winging it," but those generalized complaints did not identify a bona fide dispute with her attorney. Appointed counsel represented that defendant "wanted to move forward in a course that I'm not sure I could have taken," and defendant claimed to possess evidence that her attorney would not present. But neither in the trial court nor on appeal has defendant identified the disputed course of action or evidence with sufficient specificity to establish a legitimate disagreement. That distinguishes this case from *Williams*, 386 Mich at 576, where "[t]he reason that defendant wished to have new counsel was because of an irreconcilable difference of opinion with his counsel on whether to call certain alibi witnesses." To be sure, a defendant with the means to hire counsel ordinarily need not justify preferring one lawyer over another. See *Gonzalez-Lopez*, 548 US at 146. But when that preference is first asserted on the eve of trial and can be accommodated only through an adjournment, the reason for the request properly bears on whether the resulting delay is justified. See *Echavarria*, 233 Mich App at 369.

The third *Wilson* factor concerns whether the defendant was "guilty of negligence." The record here is mixed. Counsel told the court that he and defendant did not discuss his intended trial strategy until three days before trial, and the matter was brought before the trial court on the next business day. Assuming defendant had no obligation to inquire earlier about counsel's strategy, this resembles *Williams*, 386 Mich at 576, where "[t]he disagreement had only occurred the day before trial and thus defendant was not guilty of negligence in informing the court of his desire for different counsel." Other portions of the record, however, suggest that defendant's dissatisfaction predated those discussions. On the morning of trial, defendant stated that she had "emailed [counsel] countless times" to no avail and that she had "asked and asked and asked for [her] evidence in the other case to be turned in" to the prosecutor, which occurred only after defendant herself "printed it out and brought it to court." Those statements suggest the communication breakdown of which defendant complains had been apparent to her for some time before trial.

The fourth *Wilson* factor asks whether "prior adjournments of trial were not at the defendant's behest." It has been said to focus on "whether the defendant is merely attempting to delay trial." *Echavarria*, 233 Mich App at 369. Here, the trial court questioned "what is the real

underlying purpose or motive” of defendant’s request and asked whether defendant believed counsel was ineffective or instead “want[ed] to delay the proceeding again.” Given the timing of the request, the prior adjournments, and the nonspecific nature of defendant’s complaints, the record supports the trial court’s concern that defendant’s motivation for the request was dilatory.

Regardless of defendant’s motivation, another adjournment would have been disruptive. As the trial court observed, the case had been pending for over a year due to adjournments defendant requested. Jurors had been summoned and were assembled at the courthouse for trial. When a trial date had long been established and “defendant waited until the morning of trial to announce that he . . . preferred another attorney,” this Court has held that an adjournment for a substitution would be unreasonably disruptive. *People v Flores*, 176 Mich App 610, 614; 440 NW2d 47 (1989). With jurors, witnesses, and counsel assembled and ready to proceed, this was precisely the circumstance described in *Morris*, in which the “burden counsels against continuances except for compelling reasons.” *Morris*, 461 US at 11. Defendant offered no such reason.

The requested delay was also indefinite. The trial court was told only that defendant “was going to be retaining counsel” and that her mother was “cashing in her 401k so that we can just pay for a lawyer.” Nothing in the record indicates that defendant had retained, or even identified, a particular attorney, that the funds to do so were in hand, or how long a new lawyer would need to prepare for trial. In *Williams*, 386 Mich at 568, by contrast, the defendant had already retained the attorney he wished to substitute. The same was true in *Gonzalez-Lopez*, 548 US at 142. An adjournment of uncertain duration to permit defendant to locate and retain a new attorney weighs heavily against her request, particularly where trial had already been adjourned several times at defendant’s behest.

Finally, the fifth *Wilson* factor asks whether defendant was prejudiced by the trial court’s denial of the adjournment. Here, defendant has not shown prejudice from the denial of her motion. Instead, she relies on the notion that “erroneous deprivation of the right to counsel of choice . . . unquestionably qualifies as structural error.” *Gonzalez-Lopez*, 548 US at 150 (cleaned up). But *Gonzalez-Lopez* addressed the consequence of an erroneous deprivation of counsel of choice. There, the defendant had already retained a specific substitute attorney, and the trial court “denied without explanation” the defendant’s substitution request. *Id.* at 142. The government conceded “that the District Court erroneously deprived respondent of his counsel of choice,” *id.* at 144, and the Supreme Court held that the resulting deprivation of counsel of choice was a structural error not subject to harmless error analysis. The Court expressly distinguished, however, “a court’s power . . . to make scheduling and other decisions that effectively exclude a defendant’s first choice of counsel.” *Id.* at 152. This case concerns precisely that authority. Because the trial court acted within its “wide latitude” in refusing to adjourn a long-delayed trial on the morning it was to begin, *id.*, there was no erroneous deprivation of the right to counsel of choice to which the structural-error rule would attach.

Weighing these considerations together, we conclude that the trial court did not abuse its discretion by denying counsel’s motion to withdraw and declining to adjourn trial so that defendant could attempt to retain new counsel. Its ruling was not “an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay,” *Morris*, 461 US at 11-12 (cleaned up), but a reasoned refusal to postpone a long-delayed trial mere hours before it was

scheduled to begin based on nonspecific complaints about counsel and an indefinite plan to hire a replacement.

C. APPOINTMENT OF SUBSTITUTE COUNSEL

Defendant also asserts that, apart from any right to retain counsel of her choosing, the breakdown in her relationship with appointed counsel required the trial court to appoint a different attorney. In that context, we have held:

An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced. Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic. The decision regarding substitution of counsel is within the sound discretion of the trial court and will not be upset on appeal absent a showing of an abuse of that discretion. [*People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991) (citations omitted).]^[1]

For largely the reasons already discussed, defendant did not show good cause. “A mere allegation that a defendant lacks confidence in his or her attorney, unsupported by a substantial reason, does not amount to adequate cause. Likewise, a defendant’s general unhappiness with counsel’s representation is insufficient.” *Strickland*, 293 Mich App at 398 (citations omitted). Defendant’s complaints that she felt “in the dark” and that counsel was “winging it” were of that general nature. Neither she nor counsel identified a concrete disagreement over a fundamental trial tactic.

To the extent that defendant’s dissatisfaction concerned a possible change of venue or alleged bias by the judge who conducted the preliminary examination, the trial court addressed those concerns and explained why it considered them meritless. In doing so, it satisfied its obligation to “adequately inquire into the nature of the breakdown of the attorney-client relationship.” *Id.* at 397.

Substitution would also have unreasonably disrupted the judicial process. Defendant argues that “the trial court made no specific finding” that an adjournment would unreasonably

¹ Notably, *Mack* does not appear to require consideration of two factors identified in *Wilson*—whether the defendant was “guilty of negligence” and whether the defendant can show prejudice. Arguably, these considerations may overlap, respectively, with whether substitution would “unreasonably disrupt the judicial process” and whether the defendant has shown a “legitimate” disagreement with counsel, but no authority squarely resolves the relationship between the two tests. Furthermore, while *Wilson* focuses on whether the defendant’s subjective motivation was dilatory, *Mack* asks the objective question whether the adjournment would “unreasonably disrupt” the proceeding. *Mack* appears to be consistent with federal authority such as *Gonzalez-Lopez* and *Morris*, both of which postdate *Wilson*, *Williams*, and the federal authority on which they relied.

disrupt the judicial process, but that is plainly incorrect. As noted, the trial court emphasized that the case had been pending for over a year and that jurors were assembled at the courthouse for trial. “[I]t is apparent that the trial court was concerned that appointing substitute counsel, when the jury was waiting to hear a case that had already experienced substantial delay, would unreasonably disrupt the judicial process.” *People v Russell*, 254 Mich App 11, 14; 656 NW2d 817 (2002), rev’d on other grounds 471 Mich 182 (2004). Appointing a new attorney on the morning of trial would necessarily have required another adjournment, and for the reasons given above, the trial court reasonably declined to impose that additional delay.

In sum, whether defendant’s request is understood as one for an adjournment to retain counsel of her choosing or as one for the appointment of substitute counsel, she did not make the showing necessary to justify delaying a trial that was ready to begin. We therefore conclude that the trial court did not abuse its discretion by denying the requested adjournment, that defendant was not denied her right to counsel of choice, and that she was not entitled to the appointment of substitute counsel.

III. OV 19

Next, defendant challenges the trial court’s assessment of 10 points for OV 19, which applies when “[t]he offender . . . interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). The trial court based its assessment on its conclusion that defendant lied to police. Defendant contends that the discrepancy between her statements amounted to no more than a denial of culpability and therefore cannot support the score. We conclude that the trial court did not adequately justify its scoring of OV 19 and remand for further proceedings.²

“[T]he proper interpretation . . . of the legislative sentencing guidelines . . . [is a] legal question[] that this Court reviews de novo.” *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). “Under the sentencing guidelines, the circuit court’s factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence.” *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). “Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo.” *Id.* When reviewing a trial court’s scoring of the variables for clear error, this Court may not uphold the score on a factual rationale the trial court itself did not adopt. See *People v Gloster*, 499 Mich 199, 209-210; 880 NW2d 776 (2016) (“The Court of Appeals likewise erred by concluding that the trial court’s scoring of OV 10 was supported by defendant’s own conduct. Because the trial

² We disagree with the prosecution’s contention that this issue is moot because defendant has already served the carceral portion of her sentence. She remains on probation, and “probation orders are revocable.” MCL 771.4(2). If revoked, “the court may sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made,” MCL 771.4(5), meaning “revocation of probation . . . clears the way for a resentencing on the original offense,” *People v Kaczmarek*, 464 Mich 478, 483; 628 NW2d 484 (2001). And because “the legislative sentencing guidelines apply, even if the sentence follows the imposition and revocation of probation,” *People v Hendrick*, 472 Mich 555, 560; 697 NW2d 511 (2005), defendant retains an interest in properly-scored guidelines.

court did not itself find that defendant’s own conduct was predatory in nature, the Court of Appeals failed to review the trial court’s findings for clear error as required by *People v Hardy*.”).³

The phrase “interfered with or attempted to interfere with the administration of justice” is broad. *People v Barbee*, 470 Mich 283, 286; 681 NW2d 348 (2004). It means “to oppose so as to hamper, hinder, or obstruct the act or process of administering judgment of individuals or causes by judicial process.” *People v Hershey*, 303 Mich App 330, 343; 844 NW2d 127 (2013). Qualifying conduct “does not have to necessarily rise to the level of a chargeable offense,” *Barbee*, 470 Mich at 287, and OV 19 “is generally scored for conduct that constitutes an attempt to avoid being caught and held accountable for the sentencing offense,” *People v Sours*, 315 Mich App 346, 349; 890 NW2d 401 (2016).

The trial court assessed 10 points under OV 19 based on the discrepancy between defendant’s initial representation to the police that she was not involved in moving Batzer’s camper from the cottage and her later admission at trial that she had moved it. That rationale is understandable because “[t]he investigation of crime is critical to the administration of justice.” *Barbee*, 470 Mich at 288. After all, “the act[] of . . . deceiving police investigators seek[s] to prevent incriminating evidence from being used throughout the process of administering judgment of individuals by judicial process, including during the pretrial and, potentially, trial stages.” *Hershey*, 303 Mich App at 344. But OV 19 “contemplate[s] something more than a suspect’s denial of culpability.” *People v Deweerd*, 511 Mich 979, 980 (2023). “[A] defendant’s denial of culpability—without more—does not slow or prevent a criminal investigation or constitute an effort to do so.” *Id.*

The trial court did not explain how defendant’s statement to police was distinguishable from the statements at issue in *Deweerd*. In that case, “the defendant stated that he had not consumed methamphetamine, that he was not aware of methamphetamine being consumed or produced in the apartment, and that—had he been aware that methamphetamine was being consumed or produced in the apartment—he would have left the apartment.” *Id.* The Supreme Court held that “[t]hese statements are not sufficient to establish that the defendant interfered with or attempted to interfere with the administration of justice” because “the defendant’s denial here did no more to affect the investigation than if the defendant had not spoken at all.” *Id.* Similarly,

³ There is tension between *Gloster* and *People v Hernandez*, 443 Mich 1; 503 NW2d 629 (1993). In *Hernandez*, the Supreme Court held that “a remand to challenge the judge’s scoring of the sentencing guidelines is unnecessary where there is evidence to support the judge’s initial scoring” and that, “[i]f the judge made an initial scoring decision that is supported by the evidence, then remand would not serve a useful purpose.” *Id.* at 16-17. *Hardy*, 494 Mich at 438 & n 18, later clarified that under the legislative sentencing guidelines, scoring decisions are reviewed for clear error rather than an abuse of discretion, and it rejected the “any evidence” standard that appellate courts had applied after *Hernandez* in favor of a preponderance standard. *Gloster* further held that an appellate court may not sustain a scoring decision by relying on a factual basis the trial court did not itself find. The resulting tension suggests that *Hernandez* no longer controls on this point, although overruling precedent without saying so expressly can cause confusion. See *In re Simpson*, 500 Mich 533, 565-569; 902 NW2d 383 (2017).

although the trial court here found that defendant lied to police investigators, it did not explain how doing so “affect[ed] the investigation [more] than if the defendant had not spoken at all.” On the rationale given by the trial court, the assessment of 10 points under OV 19 cannot stand.

Subtracting 10 points from defendant’s OV score would move her from cell C-II to C-I on the Class C grid. MCL 777.64. “[W]hen a sentencing court relies on an incorrectly calculated guidelines range, a defendant is entitled to be resentenced.” *People v Armogeda*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167760); slip op at 2. Defendant notes, however, that she has already served the carceral portion of her sentence and asks that we simply direct the trial court to remove the 10 points rather than remand for resentencing. But even though the trial court’s rationale for scoring 10 points under OV 19 is inadequate, it does not follow that the record cannot support scoring 10 points under OV 19. We therefore conclude that a remand is warranted. Cf. *People v Chelmicki*, 305 Mich App 58, 72 n 3; 850 NW2d 612 (2014); see also *People v Hall*, 503 Mich 989 (2019). Defendant identifies no authority permitting this Court, when a scoring change would alter the guidelines range, to direct rescoring while foreclosing resentencing.

We conclude that the proper remedy is a “*Crosby*^[4] remand” as was directed in *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), but modified for these circumstances. On remand, the “trial court should first allow . . . defendant an opportunity to inform the court that . . . she will not seek [rescoring].” *Id.* at 398. If defendant seeks rescoring, the trial court must determine whether the record supplies a legally sufficient basis for assessing 10 points under OV 19. If it does, the existing score remains unchanged and resentencing is unnecessary. If defendant persuades the court to change the scoring of OV 19, the matter “returns . . . to the trial court in a presentence posture, allowing the trial court to consider every aspect of defendant’s sentence de novo.” *People v Odom*, 327 Mich App 297, 305; 933 NW2d 719 (2019) (cleaned up).

IV. RESTITUTION

Defendant also challenges the trial court’s April 2025 imposition of \$8,997.78 in restitution. We conclude that we lack jurisdiction to consider that challenge in this appeal.

Defendant’s present appeal is from the trial court’s August 2024 judgment of sentence, which imposed \$0 in restitution. There is no dispute that the August 2024 judgment was a final order over which this Court has jurisdiction. See MCR 7.203(A)(1); MCR 7.202(6)(b)(ii). But our law “recognize[s] the possibility of more than one appeal as of right.” *People v Pickett*, 391 Mich 305, 316; 215 NW2d 695 (1974). “Obviously the scope of appeal as of right following original conviction . . . can only cover matters arising up to that time.” *Id.* Limited exceptions exist to that rule under MCR 7.208(B). While an appeal is pending, a *defendant* may move in the trial court “for a new trial, for judgment of acquittal, to withdraw a plea, or to correct an invalid sentence,” and the parties may then litigate the disposition of that motion in the pending appeal. MCR 7.208(B)(1), (5)-(6). But the restitution award at issue here did not result from a motion filed by *defendant*; rather, it resulted from a motion brought by the *prosecution*. Although such a motion is permitted, see MCL 780.766(22), MCR 6.430(A), it is not one of the motions to which

⁴ *United States v Crosby*, 397 F3d 103, 117-118 (CA 2, 2005).

MCR 7.208(B) applies. Indeed, MCR 6.430(F) indicates that a postjudgment order modifying restitution is a separately appealable order.⁵

The April 2025 amended judgment of sentence is therefore distinct from the August 2024 judgment from which defendant appeals. Because “the scope of appeal as of right following original conviction . . . can only cover matters arising up to that time,” *Pickett*, 391 Mich at 316, and the restitution amount defendant challenges was imposed only in the subsequent April 2025 amended judgment, we lack jurisdiction in this appeal to review that award.⁶

V. ATTORNEY FEES

Finally, defendant challenges the trial court’s assessment of attorney fees. Under MCL 769.1k(1)(b)(iv), at sentencing a trial court “may impose . . . [t]he expenses of providing legal assistance to the defendant.” Here, the trial court imposed \$1,400, which was the entire cost of defendant’s representation. Defendant argues that she should be required to reimburse only the portion of that cost paid from the trial court’s funding unit’s local funds, excluding the portion financed by state grants from the MIDC. In her view, requiring reimbursement of the full amount would allow the funding unit to recover twice for the same expense. We disagree because that argument misapprehends the statutory funding scheme.

In 2011, Governor Rick Snyder began Michigan’s current era of criminal defense reform by creating the Indigent Defense Advisory Commission. Executive Order No. 2011-12. The Commission recommended that the Legislature create a permanent body with “the authority to establish and enforce minimum standards statewide for the delivery of constitutionally effective assistance of counsel to indigent criminal defendants.” *Report of the Michigan Advisory Commission on Indigent Defense* (June 22, 2012), p 9, available at <<https://michiganidc.gov/wp-content/uploads/2015/05/Final-Report-Advisory-Commission.pdf>> (accessed October 20, 2026). It also recommended that “[s]tate funding should be made available through the annual appropriations process at times and in amounts necessary to meet the demonstrated and quantified needs of local systems to meet the minimum standards established.” *Id.* at 14. The Legislature

⁵ We need not decide whether such an order is appealable of right or by leave. Although MCR 6.430 and MCL 780.766 appear to treat an order of restitution as something distinct from the judgment of sentence, trial courts are directed to impose restitution at sentencing, MCL 769.1a(2), MCL 780.766(2), and this Court has said that “restitution to crime victims [is] a mandatory part of a convicted criminal defendant’s sentence,” *People v Foster*, 319 Mich App 365, 386; 901 NW2d 127 (2017). Here, the trial court modified the restitution through an amended judgment of sentence. Whether that modification constitutes “resentencing” such that the April 2025 amended judgment qualifies as a final order under MCR 7.202(6)(b)(iii) remains an open question.

⁶ Although defendant stated in her motions for extensions of time that she intended to challenge the restitution award, this Court’s orders granting those extensions did not adjudicate whether we had jurisdiction over that challenge.

responded with the Michigan Indigent Defense Commission Act. See generally *Oakland Co v Michigan*, 325 Mich App 247, 253; 926 NW2d 11 (2018).

Under the statute, the MIDC establishes minimum standards for indigent defense and supervises their implementation. MCL 780.985(3)-(5), (7). In light of those standards, “each indigent criminal defense system shall submit a plan to the MIDC for the provision of indigent criminal defense services . . . and shall submit an annual plan for the following state fiscal year on or before October 1 of each year.” MCL 780.993(3). The plan “must include a cost analysis for meeting those minimum standards,” and that analysis “must include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC’s minimum standards.” *Id.* “Local share” is defined as “an indigent criminal defense system’s average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC,” but “excluding money reimbursed to the system by individuals determined to be partially indigent.” MCL 780.983(i). The MIDC then reviews and approves the proposals. MCL 780.993(4).⁷ The MIDC then “request[s] the appropriation of funds necessary to implement compliance plans after all the systems compliance plans are approved.” MCL 780.993(5). Each indigent criminal defense system “shall maintain not less than its local share,” and if more is required to achieve compliance, “that excess funding must be paid by this state.” MCL 780.993(7). As a result, “[a]n indigent criminal defense system must not be required to provide funds in excess of its local share,” and “[t]he MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into compliance with minimum standards established by the MIDC.” MCL 780.993(8).

Defendant’s argument focuses on those grants. A trial court is “required to determine the cost of providing legal assistance to [a] defendant pursuant to MCL 769.1k(1)(b)(iv).” *People v Lewis*, 503 Mich 162, 168; 926 NW2d 796 (2018). She contends that this means the court must determine the cost *to the court’s funding unit* of providing legal defense. She presented evidence that Mecosta County spent \$1,365,841.50 on indigent criminal defense during the 2024 fiscal year, and \$1,197,624.99 of that amount—or 87.7%—was funded through MIDC grants under MCL 780.993(8). She asserts that under MCL 769.1k(1)(b)(iv), she may be required to reimburse only the remaining 12.3% of the \$1,400 cost of her representation, or \$172.20.

That argument mistakes the source of the funding for the measure of the reimbursable expense. First, MCL 769.1k(1)(b)(iv) permits a court to “impose . . . [t]he expenses of providing legal assistance to the defendant.” It does not limit those expenses to amounts ultimately borne by the local funding unit. Nor does the statute make the amount imposed at sentencing turn on the defendant’s present ability to pay. In general, a “defendant is not entitled to an ability-to-pay assessment until the imposition of the fee is enforced,” and “trial courts should not entertain defendants’ ability-to-pay-based challenges to the imposition of fees until enforcement of that

⁷ Although not relevant to this case, there is a process in MCL 780.993(4) by which the MIDC can disagree with an indigent criminal defense system’s plan and send it back for re-evaluation, and in the event of an impasse, there is a dispute resolution arrangement under MCL 780.995.

imposition has begun.”⁸ *People v Jackson*, 483 Mich 271, 292; 769 NW2d 630 (2009). Defendant concedes that her attorney’s invoice provides information that satisfies *Lewis*, which supports the trial court’s imposition under MCL 769.1k(1)(b)(iv).

Second, the Michigan Indigent Defense Commission Act has extensive mechanisms for handling funding that prohibit a double recovery. When a court collects attorney fees, the recovered fees are transferred to the local indigent criminal defense system. MCL 780.993(17). Of those funds, 20% must then be remitted to the State, which uses them to “support [] indigent criminal defense systems in this state.”⁹ *Id.* The remaining 80% is used by the local indigent criminal defense system “for purposes of reimbursing the costs of collecting the funds under this subsection and funding indigent defense in the subsequent fiscal year.” *Id.*

Critically, recovered attorney fees “must not alter the calculation of the local share.” *Id.* And the local share excludes “money reimbursed to the system by individuals determined to be partially indigent.” MCL 780.983(i). Thus, the county remains obligated to contribute its local share even when it also retains 80% of recovered attorney fees for future indigent-defense expenditures. To the extent recovered funds reduce the amount of state funding needed in a later fiscal year, the state grant is correspondingly reduced, and grant funds may not be redirected to unrelated county expenses. MCL 780.993(15). The statutory structure therefore prevents the funding unit from receiving the double recovery defendant posits.

There remain questions about what share of the cost of appointed counsel a partially indigent defendant may properly be required to pay. The MIDC is directed to “promulgate objective standards for indigent criminal defense systems to determine the amount a partially indigent defendant must contribute to his or her defense.” MCL 780.991(3)(f). The application of those standards at sentencing under MCL 769.1k(1)(b)(iv) has been a matter of ongoing dispute.¹⁰ But whatever reduction may be required for a partially indigent defendant, it is not

⁸ The statute distinguishes between defendants who are “fully indigent” and “partially indigent,” but the MIDC is directed to “promulgate objective standards for indigent criminal defense systems to determine the amount a *partially* indigent defendant must contribute to his or her defense.” MCL 780.991(3)(f) (emphasis added). The apparent implication is that fully indigent defendants are not obliged to make any financial contribution. Defendant expressly concedes, however, that the trial court had the authority to impose some amount of attorney fees, so we need not address the “fully indigent” exception further.

⁹ Attorney fees recovered under MCL 769.1k(1)(b)(iv) are therefore distinguishable from court costs recovered under MCL 769.1k(1)(b)(iii). This Court’s remark in *People v Jones*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365590); slip op at 8, that “[t]he amounts collected are used to defray local courts’ costs, and the state neither collects the amounts nor retains any interest or penalties,” was about court costs.

¹⁰ See, e.g., *People v Blank*, unpublished per curiam opinion of the Court of Appeals, issued January 28, 2025 (Docket No. 368474), slip op at 5-7, held in abeyance 34 NW3d 899 (Mich, 2026).

determined by comparing the percentage of the local indigent-defense budget financed through MIDC with the percentage supplied by the local funding unit.

VI. CONCLUSION

For the reasons explained above, we affirm defendant's convictions. The trial court did not abuse its discretion by denying defendant's request for an adjournment to change counsel, and defendant was neither denied her Sixth Amendment right to retained counsel of choice nor entitled to the appointment of substitute counsel.

We remand, however, for further proceedings concerning OV 19. The trial court did not adequately explain why defendant's statements to police justified assessing 10 points under that variable. On remand, the trial court shall proceed as described in Part III of this opinion.

We do not consider defendant's challenge to the April 2025 restitution award because that award was entered after the judgment from which this appeal was taken, and we lack jurisdiction to review it in this appeal.

Finally, we affirm the trial court's assessment of attorney fees. Because the statutory scheme prevents the trial court's funding unit from realizing a double recovery, we reject defendant's argument that her share of the cost of legal representation should be determined by the percentage of the local indigent defense system's budget funded by the local funding unit.

Accordingly, defendant's convictions and the trial court's August 2024 judgment of sentence are affirmed, subject to the remand concerning OV 19. We do not retain jurisdiction.

/s/ Matthew S. Ackerman
/s/ Brock A. Swartzle
/s/ Christopher M. Trebilcock