If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 13, 2026 12:18 PM
v	No. 372345 Mecosta Circuit Court
ROBERT MICHAEL PHILLIPS, Defendant-Appellant.	LC No. 2023-010768-FC

Before: O'BRIEN, P.J., and CAMERON and MALDONADO, JJ.

PER CURIAM.

Defendant, Robert Michael Phillips, appeals by leave granted[1] his sentence for 35 to 50 years' imprisonment for his plea-based conviction of criminal sexual conduct in the first degree (CSC-I), MCL 750.520c(1)(a) (sexual penetration of a victim under 13 years of age). We affirm.

I. BACKGROUND

The Michigan State Police received a tip from the National Center for Missing & Exploited Children that defendant's cell phone had been flagged for the transmission or reception of child sexually abusive material (CSAM). Following up on the tip, the officers' investigation revealed numerous files in defendant's possession that contained CSAM consisting of images and videos of children between the ages of 2 to 15 years old engaging in sexual acts with adults. Defendant's stepchild was identified as one of the children depicted in the materials. Defendant was questioned and revealed that he sexually penetrated his 10 or 11-year-old stepchild, videotaped and photographed the sexual abuse, and then shared these images with an unrelated, anonymous third party.

Defendant pleaded guilty to one count of CSC-I; one count of aggravated child sexually abusive activity, MCL 750.145c(2)(b); one count of child sexually abusive activity,

[1] *People v Phillips*, unpublished order of the Court of Appeals, entered October 25, 2024 (Docket No. 372345).

MCL 750.145c(2); one count of aggravated child sexually abusive activity (distribution or promotion), MCL 750.145c(3)(b); one count of aggravated possession of CSAM, MCL 750.145c(4); and one count of using computers to commit a crime, MCL 752.797(3)(f). Defendant received concurrent sentences for these convictions. Relevant to this appeal, the trial court sentenced defendant to 35 to 50 years' imprisonment for the CSC-I conviction.

Defendant now appeals the scoring of two offense variables (OVs) as well as the proportionality of the sentence he received for his CSC-I conviction.

II. ALLEGED SCORING ERRORS

Defendant argues that he is entitled to resentencing because the trial court erred in scoring OVs 7 and 12. We disagree.

"A defendant is entitled to be sentenced by a trial court on the basis of accurate information." *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006). Thus, when "a sentencing court relies on an incorrect guidelines range, the defendant is entitled to be resentenced." *People v Armogeda*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167760); slip op at 12.

"In scoring OVs, a court may consider all record evidence, including the contents of a PSIR [(Presentence Investigation Report)], plea admissions, and testimony presented at a preliminary examination." *People v Horton*, 345 Mich App 612, 616; 8 NW3d 622 (2023). The information in a PSIR "is presumed to be accurate unless the defendant effectively challenges the accuracy of the factual information." *People v Norfleet*, 317 Mich App 649, 669; 897 NW2d 195 (2016) (quotation marks and citation omitted). Additionally, "the trial court may rely on inferences that arise from the record evidence when making the findings underlying its scoring of offense variables." *People v McFarlane*, 325 Mich App 507, 532; 926 NW2d 339 (2018). Nevertheless, "[a] scoring decision is not clearly erroneous if the record contains *any* evidence in support of the decision." *People v Johnson*, 298 Mich App 128, 130; 826 NW2d 170 (2012) (quotation marks and citations omitted).

A. ISSUE PRESERVATION

"A claim that the sentencing guidelines range was improperly calculated is preserved by raising the issue at sentencing, in a motion for resentencing, or in a motion to remand." *People v Sours*, 315 Mich App 346, 348; 890 NW2d 401 (2016) (quotation marks and citation omitted). Generally, however, an appellant must advance the same grounds for objecting to the scoring of an OV on appeal as they did at the trial court. See *People v Thompson*, 314 Mich App 703, 709 n 4; 887 NW2d 650 (2016). Defendant objected to the scoring of both OV 7 and OV 12 at the sentencing hearing, but defendant now advances a new argument as to why the trial court erred in scoring OV 12 at 25 points. Accordingly, defendant's claim of error as to OV 7 is preserved but defendant's claim of error as to OV 12 is unpreserved.

B. OV 7

Defendant first argues that the trial court erred by assessing him 50 points for OV 7. As this argument is preserved, we review the trial court's factual determination at sentencing for clear error. *People v Carter*, 503 Mich 221, 226; 931 NW2d 566 (2019). "Clear error exists when the

reviewing court is left with a definite and firm conviction that a mistake was made." *People v Lampe*, 327 Mich App 104, 111; 933 NW2d 314 (2019) (quotation marks and citation omitted). The trial court's factual determinations need only be supported by the preponderance of evidence. *Carter*, 503 Mich at 226. "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." *People v Anderson*, 322 Mich App 622, 634; 912 NW2d 607 (2018) (quotation marks and citation omitted).

Under OV 7, 50 points are properly assessed when "[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). The phrase "or similarly egregious conduct designed to substantially increase the fear and anxiety a victim suffered during the offense" is separate from the prior three categories of "sadism, torture, [and] excessive brutality." *People v Walker*, 330 Mich App 378, 389-391; 948 NW2d 122 (2019). Therefore, a sentencing court should first determine whether the conduct at issue involves sadism, torture, or excessive brutality. *People v Lydic*, 335 Mich App 486, 496; 967 NW2d 847 (2021). If not, the court should then determine whether "similarly egregious conduct" occurred, and if so, "whether the conduct substantially increased a victim's fear and anxiety." *Id.* at 496-497. Notably, if the conduct involved sadism, torture, or excessive brutality, the trial court need not consider whether it substantially increased a victim's fear and anxiety. *Walker*, 330 Mich App at 389-390.

Defendant asserts that the trial court erred because his conduct was not designed to increase the victim's fear and anxiety. Defendant's argument is not persuasive because the trial court found that defendant's conduct constituted sadism. Therefore, the trial court did not need to make any findings regarding the victim's fear or anxiety. Moreover, the trial court's finding that defendant's conduct constituted sadism under OV 7 was supported by a preponderance of the evidence.

For the purposes of OV 7, " 'sadism' means conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3). Regarding whether the conduct was "inflicted to produce suffering or for the offender's gratification," the trial court relied on the PSIR and noted "that there was more than one photograph of the victim taken during an act of sexual penetration" and "that the photo itself was produced for the offender's gratification." Further, during the plea hearing, defendant admitted to memorializing the incident and forwarding a video to another person. The PSIR also corroborates these details and further notes that "defendant reported he was messaging with an unknown subject . . . and they agreed to trade files and the subject whom he was conversing with was very specific about the victim." Accordingly, the trial court's findings were supported by a preponderance of the evidence, and it did not clearly err in concluding that defendant's act of photographing the event was done for his gratification.

Regarding whether the conduct subjected the victim to "extreme or prolonged pain or humiliation," the trial court found that defendant's "taking of the photographs was conduct that would subject her to, maybe not extreme, but certainly prolonged pain or humiliation since the act was captured in a photograph or some type of recording." The PSIR indicated that, during a forensic interview, the victim "reported she did not see the defendant use his phone during this incident but heard a noise similar to when a photo is taken from a phone." The trial court's finding that the victim was aware of the photograph was therefore supported by the record. Further, we

cannot conclude that the trial court clearly erred in determining that defendant's recording of the sexual assault of the victim was an act that subjected the victim to prolonged pain or humiliation. Defendant memorialized the assault, as well as the pain and humiliation of the event, in a piece of media that caused further pain and humiliation for the victim. Therefore, defendant's conduct has manifested prolonged pain and humiliation beyond the harm inflicted through the sentencing offense itself. In sum, the trial court's assessment of 50 points for OV 7 was not in error and defendant is not entitled to relief on this claim.

C. OV 12

Defendant next argues that the assessment of 25 points under OV 12 was clearly erroneous because the record contains no evidence that distinct other crimes, not resulting in convictions, occurred within 24 hours of the sentencing offense. As this argument is not preserved, we review for plain error affecting defendant's substantial rights. *People v Ventour*, 349 Mich App 417, 433; 27 NW3d 660 (2023). "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." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "An error affected substantial rights when it affected the outcome of the lower court proceedings." *Ventour*, 349 Mich App at 433 (quotation marks and citation omitted). This means that "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." *Carines*, 460 Mich at 763 (quotation marks, brackets, and citation omitted).

OV 12 is properly assessed at 25 points when "[t]hree or more contemporaneous felonious criminal acts involving crimes against a person were committed." MCL 777.42(1)(a). The conduct to be considered under OV 12 must occur "within 24 hours of the sentencing offense" and must be an act that "has not and will not result in a separate conviction." MCL 777.42(2)(a).

In the present case, the trial court considered "the criminal sexual conduct first degree charge, the taking of the photo of that penetration, and the fact that he was in possession of other child sexually abusive activity at the time[.]" On appeal, defendant essentially asserts that the trial court erred in three distinct ways, arguing 1) that the trial court erroneously included the sentencing offense as a contemporaneous felonious act, 2) that the trial court erroneously counted felonious acts that resulted in convictions, and 3) that there was no evidence upon which the trial court could have found that the contemporaneous felonious acts occurred within 24 hours of the sentencing offense.

Defendant is correct regarding his first assertion. The sentencing offense in this instance is CSC-I. "When scoring OV 12, a court must look beyond the sentencing offense and consider only those separate acts or behavior that did not establish the sentencing offense." *People v Abbott*, 330 Mich App 648, 654-655; 950 NW2d 478 (2019) (quotation marks, brackets, and citation omitted). The trial court therefore plainly erred when it considered the sentencing offense of CSC-I when determining the number of contemporaneous felonious acts.

Regarding his second assertion, beyond the CSC-I conduct it improperly considered, the trial court also considered that defendant photographed the sexual abuse and was in possession of

other CSAM at the time of the offense. However, defendant's act of photographing the sexual abuse of the victim was a felony that resulted in a separate conviction and was therefore improper to consider for OV 12. MCL 777.42(2)(a)(*ii*). Similarly, the possession of one photograph of CSAM was a felonious act that also resulted in a separate conviction and could not be considered under OV 12. MCL 777.42(2)(a)(*ii*). Despite this, the trial court did not plainly err because defendant created and possessed *multiple* images of himself sexually abusing the victim, and each of these acts of creation and possession constituted a separate felonious criminal act, and defendant was not charged for each image. See *People v Harmon*, 248 Mich App 522, 528; 640 NW2d 314 (2001) (concluding that "defendant made four 'photograph[s]' under MCL 750.145c(1)(*i*) and therefore could be convicted of four counts under the plain language of the relevant statutes.").

Further, the PSIR indicates that police informed defendant that they were aware of "four images that were taken in his bedroom." Additionally, during that same interaction, defendant admitted to taking "photographs of the act" of him sexually abusing the minor victim as well as "sen[ding] the photos to the unknown subject" through a messaging app. The record therefore supports that there were at least three felonious acts which supported the assessment of 25 points under OV 12.

Defendant is also incorrect that there was no evidence that such acts occurred within a 24-hour timespan of the sentencing offense. The record clearly supports an inference that the multiple photographs and possession of such photographs happened within a 24-hour time span because defendant admitted to taking multiple photographs of the victim while he sexually abused her and his statements to police established that the incident lasted less than a minute.

In sum, the trial court did not commit plain error because defendant's three uncharged, separate acts of photographing himself sexually abusing the victim occurred within a 24-hour time span and, therefore, supported the assessment of 25 points under OV 12.

III. PROPORTIONALITY

Lastly, defendant argues that the trial court abused its discretion in sentencing him to a minimum 35 years' imprisonment because it failed to provide adequate justification for the sentence it imposed and failed to consider the *Snow*[2] factors. We disagree.

"There are no special steps that a defendant must take to preserve the question whether the sentence was proportional; a defendant properly presents the issue for appeal by providing this Court a copy of the presentence investigation report." *People v Walden*, 319 Mich App 344, 350; 901 NW2d 142 (2017). We review the reasonableness of sentences imposed by the trial court for abuse of discretion. See *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). "An abuse-of-discretion standard recognizes that there may be more than one principled outcome and the trial court may not deviate from that principled range of outcomes." *People v Boykin*, 510 Mich 171, 182; 987 NW2d 58 (2022) (quotation marks and citation omitted).

[2] *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972).

A trial court must "consult the applicable guidelines range and take it into account when imposing a sentence." *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). However, the sentencing guidelines are "advisory in all applications." *Steanhouse*, 500 Mich at 466. "[T]he key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines' recommended range." *Id*. at 472 (quotation marks and citation omitted). Whether a sentence is reasonable or not is guided by the principle of proportionality set out in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), which considers "the nature of the offense and the background of the offender." *Steanhouse*, 500 Mich at 471-472. Proportionality is also informed by the following four *Snow* factors: "the reformation of the offender, the protection of society, the discipline of the offender, and the deterrence of others from committing the same offense." *Boykin*, 510 Mich at 183. "However, these are not the only relevant sentencing criteria and trial courts are not required to consider each of these factors when imposing a sentence." *Id*. at 183-184. Additionally, "trial courts are not required to expressly or explicitly consider mitigating factors at sentencing." *People v Bailey*, 330 Mich App 41, 63; 944 NW2d 370 (2019).

When a trial court imposes a sentence outside of the presumptively proportional guidelines range, it must "provide adequate reasons for the extent of the departure sentence imposed." See *Steanhouse*, 500 Mich at 476. In other words, "the trial court must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been." *People v Smith*, 482 Mich 292, 304; 754 NW2d 284 (2008). "A sentence cannot be upheld when the connection between the reasons given for departure and the extent of the departure is unclear." *Id.* This Court has held that "relevant factors for determining whether a departure sentence is more proportionate than a sentence within the guidelines range continue to 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." *People v Dixon-Bey*, 321 Mich App 490, 525; 909 NW2d 458 (2017) (citations omitted).

The conduct that defendant pleaded to included CSC-I of a victim under the age of 13 years old while defendant was over the age of 17 years old. Under MCL 750.520b(2)(b), a violation of CSC-I "that is committed by an individual 17 years of age or older against an individual less than 13 years of age" is punishable "by imprisonment for life or any term of years, but not less than 25 years." The trial court sentenced defendant to 35 to 50 years' imprisonment for his CSC-I conviction. Therefore, the trial court upwardly departed from the 25-year mandatory-minimum sentence. In sentencing defendant, the trial court first noted that it was considering the facts and circumstances of the case as well as its impression that defendant had "little understanding and little remorse" for his conduct. Additionally, the court found it quite pertinent that defendant memorialized and shared images of his sexual abuse of the minor victim.

The conduct described in the PSIR and the underlying charges to which defendant pleaded included defendant sexually penetrating his 10 or 11 year old stepchild, videotaping and photographing the sexual abuse, and then sharing these images with an unrelated, anonymous third party. To aid in the facilitation of these crimes, defendant groomed the child and showed them pornographic videos. Beyond the specific incident for which defendant was charged, the victim reported in a forensic interview that defendant had touched their genital area and may have digitally penetrated them; and further, that they had been subjected to sexual abuse similar to the charged incident on other occasions. These facts and circumstances support a determination that

defendant's conduct underlying the sentencing offense was more serious than just the penetration itself.

Additionally, the investigation that led to defendant's interview and arrest revealed numerous files containing CSAM depicting children from 2 to 15 years old engaging in sexual acts with adults, including defendant's own stepchild. Further, the PSIR notes that the offense dates ranged from October 2022 to August 2023. Such facts and circumstances support a determination that defendant had a more serious history of involvement in the sexual abuse of children than his criminal history or the baseline offense of CSC-I would suggest. Moreover, the court's determination that defendant lacked remorse and understanding of his actions supports that defendant was a serious offender with a presently low likelihood of rehabilitation. When officers asked defendant whether the interaction was consensual, defendant responded, "yeah in a way, [the victim] wanted to." Later, when asked by Michigan Department of Corrections to provide an offense narrative, defendant responded "[l]ast year after a day of drinking I was laying down and walked into the room I asked [the victim] to perform oral sex on me and [they] said ok." Considering these statements together with the additional CSAM-related conduct to which defendant pleaded guilty, the trial court had a reasonable basis for concluding that defendant had a low likelihood of rehabilitation.

Defendant also argues that the trial court failed to consult the *Snow* factors. However, in the present case the trial court considered that the sentence it was imposing was proportionate and reasonable based on the *Snow* factors. Beyond the *Snow* factors, defendant also argues that the trial court did not consider the fact that he had been struggling with alcohol abuse at the time he committed the sentencing offense. This is incorrect because the trial court took into consideration defendant's alcohol use alongside several qualities it perceived as positive before ultimately imposing a sentence. Nevertheless, the trial court had no duty to consider or weigh any mitigating factors, so defendant's argument is without merit.

In sum, we cannot conclude that defendant's sentence was disproportionate to his circumstances as an offender and the seriousness of his offense.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado