



his right to allocution at sentencing. For the following reasons, the trial court's judgment will be affirmed.

### **I. Procedural History**

{¶ 2} On December 21, 2023, Champeau was indicted on two counts of domestic violence, two counts of failure to comply with an order or signal of a police officer, one count of obstructing official business, and one count of criminal damaging. Several weeks later, Champeau pled guilty to domestic violence (Count 2) and failure to comply (Count 3). He agreed to pay restitution to Nails Specialized Hauling. In exchange for the plea, the State offered to dismiss the remaining four charges. Champeau entered his plea at a joint plea/sentencing hearing with four other individuals facing unrelated charges.

{¶ 3} The court proceeded immediately to sentencing. After addressing other defendants, the court indicated that it had reviewed a pre-plea presentence investigation report (PSI) that had been prepared for Champeau and that his attorney had been given an opportunity to review it.

{¶ 4} The court asked the prosecutor if he had anything to say about each defendant. When the court asked the prosecutor about Champeau, he did not have anything to add to what had already been previously discussed. The court then asked each of the defense attorneys if they had anything to say about their client. Recognizing that Champeau's charges would be served consecutively, Champeau's defense counsel asked if Count III could be served before Count II. Defense counsel further stated, ". . . just want to say, talking to Donald, he's had some time to think about his actions. I think

he's gained some introspective [sic] and has come up with a plan. I'm fairly confident that he's going to do what he set out to do." After defense counsel finished, the trial court discussed with the prosecutor and defense counsel whether the court could dictate the order in which Champeau's sentences would be served.

{¶ 5} The trial court then turned to allocution by the defendants before him. After talking to the first individual, the court informed all defendants that it had considered the statutory principles and overriding purposes of sentencing, as well as the recidivism and seriousness factors. The court found that the defendants had the present or future ability to pay any financial sanctions that he was about to order. The court imposed sentence on the first individual, then addressed the other defendants in turn.

{¶ 6} The court spoke with Champeau last. It began:

THE COURT: All right. Talked to both sets of lawyers. Mr. Champeau, before I proceed with sentencing, is there anything you want to say?

[DEFENSE COUNSEL]: Your Honor, just on Donald's behalf, he just had questions about no contact order, if he's able to talk with his family while he's in jail.

The court did not immediately answer. For approximately 20 seconds, the court looked through papers while Champeau, his attorney, and the prosecutor waited silently. After the pause, the court answered affirmatively and explained its reasoning. While doing so, the court also spoke with an unidentified person in the courtroom. (The video-recording of the hearing showed that the judge was looking toward the prosecutor.)

{¶ 7} The trial court then imposed consecutive sentences totaling 54 months in

prison, suspended Champeau's driver's license for 3 years, and ordered him to pay \$30 to the Reparations Fund. The court also ordered restitution to Nails Specialized Hauling in an amount to be determined. The court indicated its hope that the attorneys would reach an agreement on the amount of restitution, but stated that it would hold a hearing, if necessary. After additional advisements, the court recessed.

{¶ 8} On March 6, 2024, the trial court filed its judgment of conviction. The judgment did not mention restitution (it appears that no hearing on restitution was held) but otherwise incorporated the orally-imposed sentence. Champeau appeals from the trial court's judgment.

## II. Right to Allocution

{¶ 9} In his sole assignment of error, Champeau claims that the trial court denied his right to allocution during sentencing.

{¶ 10} At sentencing, the trial court must both "[a]fford counsel an opportunity to speak on behalf of the defendant *and* address the defendant *personally* and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment." (Emphasis added.) Crim.R. 32(A)(1). R.C. 2929.19(A) also grants the offender (among others) the right to "present information relevant to the imposition of sentence in the case." The trial court must "ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender." *Id.*

{¶ 11} "R.C. 2929.19(A) and Crim.R. 32(A)(1) unambiguously require that an offender be given an opportunity for allocution whenever a trial court imposes a sentence

at a sentencing hearing.” *State v. Jackson*, 2016-Ohio-8127, ¶ 10, citing *State v. Campbell*, 90 Ohio St.3d 320 (2000), paragraph one of the syllabus; *State v. Frazier*, 2019-Ohio-1546, ¶ 18 (2d Dist.). A trial court complies with a defendant’s right to allocution when it personally addresses the defendant and asks whether he or she has anything to say. *E.g.*, *Frazier* at ¶ 18; *State v. Osie*, 2014-Ohio-2966, ¶ 180.

{¶ 12} “The purpose of affording a defendant the right to speak at sentencing is to allow the defendant an opportunity to state for the record any further information which the judge may take into consideration when determining the sentence to be imposed.” *State v. Conkle*, 2012-Ohio-1772, ¶ 41 (2d Dist.). The right to allocution is “much more than an empty ritual: it represents a defendant’s last opportunity to plead his case or express remorse.” *State v. Green*, 90 Ohio St.3d 352, 359-360 (2000). The defendant’s right to allocution is absolute and is not subject to waiver by failing to object. *Campbell* at 324-325. Accordingly, if the trial court imposes sentence without affording the defendant an opportunity to allocate, resentencing is required unless the error was invited or harmless. *State v. Beasley*, 2018-Ohio-493, ¶ 200.

{¶ 13} An error is harmless when it does not affect the defendant’s substantial rights. See Crim.R. 52(A). Under the invited error doctrine, an appellant cannot attack a judgment for errors committed by himself or herself, for errors that the appellant induced the court to commit, or for errors into which the appellant either intentionally or unintentionally misled the court and for which the appellant was actively responsible. *State v. Minkner*, 2011-Ohio-3106, ¶ 24 (2d Dist.).

{¶ 14} A defendant may decline to exercise his or her right to allocution. *State v.*

*Shepherd*, 2021-Ohio-4230, ¶ 24 (2d Dist.); *Campbell* at 325 (“once the trial court has asked the defendant if he or she wishes to speak in allocution, he or she may waive the right to do so.”). However, “Crim.R. 32(A)(1) imposes an affirmative duty on the court to speak directly to the defendant on the record and inquire whether he or she wishes to exercise that right or waive it.” *State v. Sexton*, 2005-Ohio-449, ¶ 31 (2d Dist.).

{¶ 15} At the February 7, 2024 hearing, the trial court allowed the prosecutor and the defense attorney for each case to speak regarding sentencing, and then the court addressed each defendant personally before imposing the sentence for that individual. When asked if they had anything to say, the first and fourth individuals replied, “No, sir.” The second individual made a statement, speaking for approximately 90 seconds. With the third individual, defense counsel responded to the court’s question. After counsel concluded, the court asked the defendant, “Anything else for you, Mr. Borders?” He shook his head and said no.

{¶ 16} When the court reached Champeau, he and his counsel stood alone at the podium. Turning to his case, the trial court said, “All right. Talked to both sets of lawyers. Mr. Champeau, before I proceed with sentencing, is there anything you want to say?” Plea and Sentencing Tr. 25. With this question, the trial court complied with its obligation to provide Champeau an opportunity to address the court directly before it imposed a sentence. Moreover, Champeau should have understood that this was his opportunity to speak on his own behalf, having just witnessed the same procedure with four other individuals.

{¶ 17} After a brief glance from Champeau, defense counsel responded for

Champeau, telling the trial court that he was speaking on Champeau's behalf. Counsel stated that Champeau "just had questions about no contact order, if he's able to talk with his family while he's in jail." Defense counsel's statement was followed by approximately 20 seconds of silence while the trial court looked through papers. The court then answered defense counsel's question, following which it imposed sentence without inquiring whether Champeau had anything else to say.

{¶ 18} Champeau argues that the trial court should have asked him again if he wanted to say anything before sentence was imposed, as it did with the third individual. He asserts that if the trial court interrupts a defendant's allocution, the right to allocution is violated unless the court allows the defendant to speak after the interruption has ended. See *State v. Roach*, 2016-Ohio-4656, ¶ 16 (7th Dist.) ("even if a court interrupts a defendant's allocution, his right is not violated if he is permitted to speak after the interruption").

{¶ 19} Here, the trial court did nothing to prevent Champeau from responding to its inquiry, and we do not interpret defense counsel's response on Champeau's behalf to be an interruption of Champeau's right to allocution. Rather, defense counsel affirmatively represented to the trial court that he was exercising Champeau's opportunity for allocution on Champeau's behalf, and he relayed Champeau's concern about visiting with his family while incarcerated. Nothing in Champeau's behavior – either when asked if he wished to say anything or during the 20-second pause following defense counsel's response – indicated that he wanted to speak on his own behalf. Defense counsel's statement, coupled with Champeau's body language, reasonably led the trial court to

conclude that Champeau did not wish to speak for himself. Any violation of Crim.R. 32(A)(1) by the trial court was invited error.

{¶ 20} Our conclusion is supported by *State v. Clifford*, 2010-Ohio-4867 (7th Dist.). In *Clifford*, after the victim impact statements were presented, the trial court asked if there was “anything on behalf of the defense.” The record did not reflect whether the trial court directed this question toward Clifford or his counsel. Defense counsel responded, “[T]he Defendant has asked me to say that he is truly sorry for the offense he committed and for the difficulties that he has caused the family for the loss of their son.” The trial court imposed sentence without unambiguously asking Clifford if he wanted to speak in mitigation on his own behalf.

{¶ 21} On review, the Seventh District noted that “defense counsel did not merely present legal arguments on Clifford’s behalf but, instead, recited Clifford’s own *personal statement*, with an indication that Clifford had requested that counsel deliver the personal statement rather than deliver it personally to the court.” (Emphasis in original.) *Clifford* at 38. The appellate court concluded that the trial court had begun to address the defense as required by Crim.R. 32(A), but defense counsel’s affirmative act – counsel’s recitation of Clifford’s personal statement at his request – invited the trial court to not inquire further regarding allocution. *Id.* at 39. The appellate court thus held that any error was invited by defense counsel.

{¶ 22} In this case, the trial court unambiguously asked Champeau personally whether he had anything to say; the trial court had previously asked the prosecutor and defense counsel whether they had any comments. Defense counsel indicated that he



was responding on Champeau’s behalf, and he relayed a concern Champeau had about a no-contact order. As in *Clifford*, defense counsel’s statement was an affirmative act that led the trial court to believe that no further inquiry of Champeau was needed.

{¶ 23} The State asserts, as an alternative argument, that any denial of Champeau’s right to allocution was harmless. Citing *State v. McBride*, 2001 WL 62543 (2d Dist. Jan. 26, 2001), it contends that denial of the right of allocution is harmless “unless the defendant comes forward with specific information that he would have presented to the trial court had he been given the opportunity, information which could have mitigated the offense in relation to the punishment the court could impose.” *Id.* at \*4.

{¶ 24} We previously declined to follow *McBride* in *State v. Cowen*, 2006-Ohio-3191 (2d Dist.), and we conclude that *McBride* is no longer good law. Significantly, the Ohio Supreme Court has since stated that a defendant should not be required to specify what additional information would have been presented to the trial court to establish that the lack of allocution was not harmless. *Jackson*, 2016-Ohio-8127, ¶ 16. We reject the State’s assertion that any error regarding allocution was harmless because Champeau did not specify in his appellate brief what he would have said.

{¶ 25} Champeau’s assignment of error is overruled.

### III. Conclusion

{¶ 26} The trial court’s judgment will be affirmed.

.....

TUCKER, J. and HUFFMAN, J., concur.