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**“ALIVE BUT STILL NOT FREE”:  
NIKKI ADDIMANDO AND JUDICIAL FAILURE TO APPLY  
THE DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT**

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## INTRODUCTION

This Essay addresses the failure of the New York state judicial system to properly apply the Domestic Violence Survivors Justice Act (“DVSJA”), with devastating implications for those whom the law was intended to protect. In order to remedy this serious problem, this Essay proposes detailed considerations that state judges should contemplate when deciding whether to apply the DVSJA to a defendant’s sentencing. The DVSJA, signed into law on May 14, 2019 by Governor Andrew M. Cuomo, codifies sentence reductions for domestic abuse survivors in the criminal justice system.<sup>1</sup> This law is aimed at preventing further victimization of individuals who have endured domestic and sexual violence at the hands of their partners, and it allows judges to reduce survivors’ prison sentences and redirect sentencing from incarceration to community-based rehabilitation programs.

No case exemplifies the courts’ failure to properly apply this law more clearly than that of Nikki Addimando. On April 12, 2019, after three days of deliberation, a jury found Addimando—a thirty-one-year-old woman and a loving mother of two children—guilty of second-degree murder and second-degree criminal possession of a handgun for the killing of her partner and abuser, Christopher Grover. Rachel Louise Snyder, a veteran reporter for *The New Yorker*, said that the abuse Addimando suffered was “among the most extreme I have ever come across in a decade of reporting on domestic violence.”<sup>2</sup>

Despite that fact, and despite the ample evidence that Addimando introduced at trial to show that she was a victim of domestic abuse, the trial judge wrongly refused to apply the recently enacted DVSJA to Addimando’s case, which would have reduced her sentence from twenty-five years to life to between five and fifteen years in prison. He sentenced Addimando to nineteen years to life, noting that she “had the opportunity to safely leave” and that she had not introduced “sufficient proof that the alleged abuse was a significant contributing factor in the defendant’s act of murder.”<sup>3</sup> The judge’s decision reflected a blatant disregard for the factors the court must consider when applying the DVSJA and rendered toothless the legislative purpose for which the DVSJA was enacted.

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<sup>1</sup> Press Release, Andrew M. Cuomo, Governor, New York, Governor Cuomo Signs Domestic Violence Survivors Justice Act (May 14, 2019), <https://www.governor.ny.gov/news/governor-cuomo-signs-domestic-violence-survivors-justice-act> [https://perma.cc/3J5M-5NPV].

<sup>2</sup> Rachel Louise Snyder, *When Can a Woman Who Kills Her Abuser Claim Self-Defense?*, NEW YORKER (Dec. 20, 2019), <https://www.newyorker.com/news/dispatch/when-can-a-woman-who-kills-her-abuser-claim-self-defense> [https://perma.cc/32BK-SFCU].

<sup>3</sup> Geoffrey Wilson, *Addimando Sentenced to 19 Years to Life in Murder of Boyfriend Grover in Poughkeepsie*, POUGHKEEPSIE J. (Feb. 11, 2020, 2:49 PM), <https://www.poughkeepsiejournal.com/story/news/crime/2020/02/11/nicole-addimando-sentenced-murder-christopher-grover-poughkeepsie/4694452002/>.

Addimando is just one of several defendants who have been denied the protections of the DVSJA since its enactment.<sup>4</sup>

This Essay elucidates the egregiousness of the judge's mistake in refusing to apply the DVSJA to Addimando's sentence. If the DVSJA does not apply to the severe and thoroughly documented facts of Addimando's case, it cannot apply in any case. This Essay proceeds in three parts: Part I discusses the legislative history of the DVSJA, and it examines the elements of the DVSJA for initial sentencing determinations and the considerations that judges should contemplate when deciding whether a defendant should be sentenced under the DVSJA. Part II describes in detail the horrific circumstances of Addimando's abuse and her subsequent journey through the criminal justice system. Finally, Part III analyzes the judge's decision not to apply the DVSJA and illustrates why the judge's choice was ill-conceived. Nikki Addimando has been failed by the courts and the criminal justice system; this Essay attempts to bring that failure to light and to ensure that it does not happen again.

## I. THE DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT ("DVSJA")

### A. *Legislative History of the DVSJA*

For female inmates, the relationship between incarceration and domestic abuse is tangible and has long been documented by enforcement organizations. In 1999, the U.S. Department of Justice found that "approximately half of incarcerated women had experienced past physical or sexual abuse."<sup>5</sup> In 2007, the New York Department of Correctional Services found that "two-thirds of women incarcerated for killing someone close to them had been abused by that person."<sup>6</sup> In recent years, this research has transformed into advocacy, and bills advocating for reduced sentencing for survivors of domestic abuse have emerged in California, Oklahoma, and—most importantly, for the purposes of this Essay—New York.<sup>7</sup>

In 2009, LaDeamMa McMoore was released from prison after serving eleven years for attempted murder and assault of her abusive boyfriend. At advocacy trainings offered by the Coalition for Women Prisoners, which champions the rights of incarcerated abuse victims, McMoore became aware of efforts to pass

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<sup>4</sup> See Victoria Law, *A New York Law Could Reduce Sentences for Domestic Violence Survivors. Why Are Judges Reluctant to Apply It?*, APPEAL (Feb. 24, 2020), <https://theappeal.org/a-new-york-law-could-reduce-sentences-for-domestic-violence-survivors-why-are-judges-reluctant-to-apply-it/?fbclid=IwAR2y0qodtumIe6bNia9e3NPzmkhnn0DVQqxa0qBZvbgXDTjzdUrwsNIQdJo> [https://perma.cc/4M3Z-QKUZ].

<sup>5</sup> Victoria Law, *When Abuse Victims Commit Crimes*, THE ATLANTIC (May 21, 2019), <https://www.theatlantic.com/politics/archive/2019/05/new-york-domestic-violence-sentencing/589507/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

a New York bill revising sentencing considerations for survivors of domestic abuse charged with crimes:

[The bill] would allow a judge to consider whether abuse is directly related to a person’s crime and, if so, depart from the state’s sentencing guidelines for violent felonies. (The bill does not mandate that a judge do so.) This would extend not only to acts of self-defense but also coercion by the abuser into a crime. If abuse was a significant factor, the judge would have discretion to sentence that survivor to an alternative-to-incarceration program, which generally provides access to supportive housing as well as services such as drug rehabilitation and mental-health counseling, or allows for fewer years in prison.<sup>8</sup>

McMoore and other survivor-advocates devoted much of the next two years to working on the bill—reviewing drafts, incorporating the perspectives of imprisoned survivors, and carefully debating the implications of each portion of the bill’s language.<sup>9</sup>

In 2011, the DVSJA was first introduced to the New York state legislature, which at the time had a Republican-majority state senate and a Democratic-majority state assembly.<sup>10</sup> Because of the partisan split in the legislative bodies, the bill failed to make its way out of committee vote year after year.<sup>11</sup> Moreover, the New York District Attorneys’ Association steadfastly opposed the bill, “charging that it didn’t consider the rights of crime victims who had not abused the defendant” and “express[ing] concerns about the public costs associated with resentencing.”<sup>12</sup>

In the 2018 midterm elections—a very successful election cycle for the Democratic Party nationwide—Democrats won a majority in the New York state senate and held their control over the state assembly.<sup>13</sup> By that time, the DVSJA had received the support of “more than 130 organizations, including domestic-violence-survivor service providers and crime-victim groups” such as the Women & Justice Project and the New York State Coalition Against Domestic Violence.<sup>14</sup> In January 2019, Assemblyman Jeffrion Aubry and Senator Roxanne Persaud again brought the DVSJA to the floor of the New York state legislature. It overwhelmingly passed both in the senate and the assembly, and on May 14, 2019, Governor Cuomo signed the DVSJA into law.<sup>15</sup>

The statements on the DVSJA’s passage from Governor Cuomo and the bill’s cosponsors—Senator Persaud and Assemblyman Aubry—are critically

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Press Release, *supra* note 1.

important in determining the legislative purposes for which the DVSJA was enacted. In his press release upon the signing of the DVSJA, Governor Cuomo said the following:

The vast majority of incarcerated women have experienced physical or sexual violence in their lifetime, and too often these women wind up in prison in the first place *because they're protecting themselves from an abuser*. . . . By signing this critical piece of our 2019 women's justice agenda, we can help ensure the criminal justice system takes into account that reality and *empowers vulnerable New Yorkers rather than just putting them behind bars*.<sup>16</sup>

Senator Persaud continued:

Too often survivors of domestic violence are *punished by our criminal justice system for defending themselves or their family*, leading to unjustified prison sentences. These *brave survivors deserve support* and the ability to rebuild their lives, instead of being unfairly incarcerated. The Domestic Violence Survivors Justice Act will finally right this wrong . . . .<sup>17</sup>

Finally, Assemblyman Aubry concluded:

I am proud to be the sponsor of the [DVSJA], legislation that expands judicial discretion in cases involving domestic violence survivors convicted of crimes directly related to the abuse they suffered. . . . All too often, when a survivor acts to protect herself, she receives *punishment and prison instead of compassion and assistance*. The [DVSJA] takes critical steps to change that unconscionable dynamic and restore dignity and justice to criminalized DV survivors in our state.<sup>18</sup>

It is indisputable, based on the clear language of these statements, that the main legislative priority of the DVSJA is to fix the injustice of domestic abuse survivors being incarcerated for defending themselves by prioritizing support and rehabilitation over lengthy prison sentences. Although these stakeholders concede that the judge's decision to apply the DVSJA is discretionary, the onus is clearly on providing "compassion and assistance" to domestic abuse survivors and not on placing an unduly heavy burden of persuasion on the survivor to prove that they were abused.

#### B. *Elements of the DVSJA*

The DVSJA provides, in relevant part, with regard to initial sentencing determinations:

Notwithstanding any other provision of law, where a court is imposing sentence upon a person . . . the court, upon a determination following a

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<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> *Id.* (emphasis added).

<sup>18</sup> *Id.* (emphasis added).

hearing that (a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the defendant . . . (b) such abuse was a significant contributing factor to the defendant's criminal behavior; (c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment . . . would be unduly harsh may instead impose a sentence in accordance with this section.<sup>19</sup>

Though it may take a lexicographer to parse through the law's dense statutory language, the DVSJA essentially gives judges discretion to reduce the sentences of survivors whose abuse was a significant factor in the commission of their crime.<sup>20</sup> In order to be eligible for sentencing under the DVSJA, survivor-defendants must meet the following criteria:

1. The defendant must have been a victim of substantial domestic violence at the time of the offense.
2. Domestic violence must have been a significant contributing factor to the defendant's participation in the offense.
3. The defendant's sentence under the current law would be "unduly harsh."<sup>21</sup>

The DVSJA does not apply to individuals convicted of first-degree murder, aggravated murder, sex crimes, and terrorism offenses.<sup>22</sup> With regard to the type of hearing the DVSJA requires, the law provides: "At the hearing to determine whether the defendant should be sentenced pursuant to [the DVSJA], the court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination. Reliable hearsay shall be admissible at such hearings."<sup>23</sup>

Importantly, the DVSJA does not define what constitutes "substantial domestic violence," a "significant contributing factor," or an "unduly harsh" sentence. While the DVSJA is lean on guidance on how courts should interpret its elements, the legislative history of the law suggests that the emphasis in a DVSJA analysis should be on providing "compassion and assistance" to domestic abuse survivors and not on placing a heavy burden of persuasion on the survivor.<sup>24</sup> Indeed, courts interpreting the law have determined that DVSJA eligibility should be evaluated under a less onerous *preponderance of the evidence* standard.<sup>25</sup> This Section details important factors that judges should

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<sup>19</sup> S. 1077, 2019-2020 Reg. Sess., at 1 (N.Y. 2019).

<sup>20</sup> See *The Domestic Violence Survivors Justice Act (DVSJA)*, SANCTUARY FOR FAMS., <https://sanctuaryforfamilies.org/our-approach/advocacy/justice-for-incarcerated-survivors-ny/> [<https://perma.cc/X7U4-DEYV>] (last visited August 2, 2020).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> N.Y. S. 1077, at 2.

<sup>24</sup> See Press Release, *supra* note 1.

<sup>25</sup> See, e.g., *People v. Addimando*, 120 N.Y.S.3d 596, 601 (Ct. Ct. 2020).

consider when analyzing the individual elements of a claim for reduced sentencing under the DVSJA.

1. The Defendant Was a Victim of Substantial Domestic Violence at the Time of the Offense

What does it mean to be a victim of domestic violence *at the time of the offense*? A finding that a defendant was suffering direct “physical, sexual, or psychological” violence *at the instant the offense occurred* is far too restrictive, particularly for the DVSJA’s more lenient preponderance standard.<sup>26</sup> Such a finding does not adequately take into account the devastating psychological effect that consistent domestic abuse has on an individual<sup>27</sup> and unnecessarily transforms the inquiry into an imminence requirement.

A comprehensive 2008 study examining the psychological effects of domestic violence found that victims report “very high rates of PTSD and depression.”<sup>28</sup> Approximately one-third of participants in that study reported having *severe* PTSD, “and 39% of participants had depression scores in the *severe* range.”<sup>29</sup> Moreover, the “economic and social costs of [domestic violence] are staggering” and “accrue directly from lost wages, loss of earning potential, and indirectly from traumatogenic consequences of partner abuse that impair functioning and reduce quality of life.”<sup>30</sup> Why is this important for determining whether a defendant was a victim of domestic violence at the time the offense occurred? Because it broadens the scope of what it means to be a “victim”—simply because an individual is not being attacked at the moment the offense occurred does not mean that they are not a victim of domestic violence.

The psychological damage that victims face from domestic violence is compounded by a number of factors that prevent them from leaving the abusive relationship. Craig Malkin, a clinical psychologist at Harvard Medical School, states:

The person being abused is focused on the positive and waiting for the next positive. There’s a psychological effect like gambling: the moments of tenderness and intimacy are unpredictable, but they are so intense and fulfilling that the victim winds up staying in the hopes that a moment like that will happen again.<sup>31</sup>

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<sup>26</sup> N.Y. S. 1077, at 1.

<sup>27</sup> See Mindy B. Mechanic, Terri L. Weaver & Patricia A. Resick, *Mental Health Consequences of Intimate Partner Abuse*, 14 VIOLENCE AGAINST WOMEN 634, 647 (2008).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (emphasis added).

<sup>30</sup> *Id.* at 648.

<sup>31</sup> Eliana Dockterman, *Why Women Stay: The Paradox of Abusive Relationships*, TIME (Sept. 9, 2014, 2:59 PM), <https://time.com/3309687/why-women-stay-in-abusive-relationships/> [<https://perma.cc/E85N-MR3Y>].

Still other factors include “isolation, entrapment, coercive control, financial issues, lack of support and safely-accessible resources, as well as fear for their own lives and those of their loved ones.”<sup>32</sup> Moreover, “victims of domestic violence do not want to be separated from their children,” adds Cassandra Loch, President and CEO of Prototypes, a nonprofit organization serving victims of domestic violence.<sup>33</sup> Loch continues: “[W]hen law enforcement is contacted in a domestic violence situation, dual arrests are likely to take place, and the children are more likely to enter the foster care system. This is an important factor in [a victim’s] reluctance to contact the authorities when facing domestic violence.”<sup>34</sup>

Further, as domestic violence scholar Leigh Goodmark notes, “imminence is difficult to pin down when severe domestic abuse is involved.”<sup>35</sup> Goodmark draws a clear distinction between “a sudden attack by a random stranger ‘versus someone you’ve studied for a long time, whose tendencies you know very well. You can easily believe the threat is imminent, because you know what is coming based on your past experience.’”<sup>36</sup>

Accordingly, when determining whether the defendant was a victim of domestic violence, the court must fully consider the full picture of “the social realities that victims face—a lack of alternatives and how dangerous it is to leave.”<sup>37</sup> This includes expanding the scope of the inquiry beyond just the incident in question, considering testimony and other evidence to identify a pattern of abuse, and determining whether the defendant was under the coercion or control of their abuser at the time the offense occurred.

What constitutes *substantial* domestic violence? Black’s Law Dictionary provides several useful definitions of “substantial”: “1. Of, relating to, or involving substance; material . . . 3. Important, essential, and material; of real worth and importance . . . 6. Considerable in extent, amount, or value . . .”<sup>38</sup> When applying these definitions to the DVJSA, which considers the impact that domestic violence has on the commission of a crime, one could infer that “substantial” domestic violence must be both “material” and “considerable.” In

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<sup>32</sup> *Domestic Violence: Why Do Women Stay?*, PR NEWSWIRE (Mar. 11, 2013, 12:56 PM), <https://www.prnewswire.com/news-releases/domestic-violence-why-do-women-stay-196986121.html> [<https://perma.cc/R8ZT-DTZD>].

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Snyder, *supra* note 2.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Substantial*, BLACK’S LAW DICTIONARY (11th ed. 2019).



other words, the domestic violence must be “significant”<sup>39</sup> and “[o]f such a nature that [it] . . . would affect a person’s decision-making.”<sup>40</sup>

Similar to the discussion above regarding whether the domestic violence occurred “at the time of the offense,” analysis of whether the violence was “substantial” should consider the full picture of the dangers that domestic violence victims face. The severity of a domestic violence victim’s abuse should not be determined by how many visible bruises they have; domestic abuse has profound psychological, economic, and interpersonal impacts that extend beyond physical harm.<sup>41</sup> Rather, one should consider: Was the violence of such a nature that it affected the victim’s decision-making?<sup>42</sup> Accordingly, if the violence has caused the victim to feel isolated and trapped, created economic strain that has made the victim financially dependent on their abuser, made the victim fear for the safety and well-being of their children or other loved ones, or otherwise caused the victim to alter their life choices or behavior, the violence is substantial.<sup>43</sup> This expanded analysis takes full accounting of “the social realities” and dangers that victims face regardless of the cuts or bruises they had at the time the crime was committed.<sup>44</sup> Judges should therefore interpret this first element of the DVSJA broadly to encompass the many nuanced and complex challenges that prevent victims from leaving abusive relationships.

## 2. Domestic Violence Was a Significant Contributing Factor in the Victim’s Participation in the Offense

The DVSJA does not define what constitutes a significant contributing factor. However, the phrase “significant contributing factor” does appear in other New York state statutes, such as workers compensation laws.<sup>45</sup> In cases interpreting these laws, courts have taken a comparative approach consistent with this concise definition of what constitutes a “significant contributing factor”: “[T]he employment must contribute to the occurrence of the injury in a way that is not insignificant, trivial, or minimal,” and the determination of whether something is a significant factor must “entail[] a comparison with other contributing

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<sup>39</sup> *Material*, BLACK’S LAW DICTIONARY (11th ed. 2019); *Considerable*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/considerable> [<https://perma.cc/ZWF4-BVUX>] (last visited August 2, 2020).

<sup>40</sup> *Material*, *supra* note 39.

<sup>41</sup> See generally RACHEL LOUISE SNYDER, NO VISIBLE BRUISES: WHAT WE DON’T KNOW ABOUT DOMESTIC VIOLENCE CAN KILL US (2019) (detailing often-hidden harms beyond physical wounds that abusers perpetrate upon domestic violence victims).

<sup>42</sup> *Material*, *supra* note 39 (“Of such a nature that knowledge of the item would affect a person’s decisionmaking . . .”).

<sup>43</sup> Dockterman, *supra* note 31.

<sup>44</sup> Snyder, *supra* note 2.

<sup>45</sup> See, e.g., *Kilcullen v. AFCO/AVPorts Mgmt. LLC*, 30 N.Y.S.3d 375, 377 (App. Div. 2016).

factors.”<sup>46</sup> This definition is consonant with the legislative purpose of the DVSJA, which is to provide more lenient sentencing to victims of domestic abuse.<sup>47</sup> Accordingly, when determining whether the defendant’s domestic abuse was a “significant contributing factor,” judges should (1) compare the domestic violence to other potential factors that may have contributed to the offense and (2) find in the defendant’s favor on this element if the defendant shows to a preponderance that domestic violence was “not insignificant, trivial, or minimal” in their participation in the crime. Although at first blush this may seem like a low bar, this more permissive review is consonant with the DVSJA’s preponderance standard—a significantly easier burden to carry than the onerous beyond-a-reasonable-doubt standard at trial.

The inquiry for this element must be closely related to the inquiry of the first element. When determining the defendant’s eligibility, the court should take a comparative approach that uses the available evidence presented at the hearing to establish whether the abuse contributed to the offense. In taking the broader view of the psychological and socioeconomic impacts of abuse in ascertaining whether the defendant was a domestic-violence victim at the time of the offense, the court should be able to more clearly see whether that abuse significantly contributed to the defendant’s commission of the crime.

### 3. The Sentence Would Be “Unduly Harsh”

The DVSJA gives judges a fair bit of discretion in determining whether a non-DVSJA sentence would be “unduly harsh.” The law does, however, give the court two factors to consider when arriving at this conclusion: (1) “the nature and circumstances of the crime and the history” and (2) the “character and condition of the defendant.”<sup>48</sup>

These factors are closely related to the first two elements of DVSJA eligibility, particularly where the offense is an act of violence against the alleged abuser. For instance, if a defendant is charged with killing their alleged abuser,<sup>49</sup> a broad understanding of the history of the abuse is crucial in understanding the nature of the crime committed. If the defendant has been subjected to a history of abuse, they may have “fear[ed] for their own lives and those of their loved ones” at the moment that they killed their abuser.<sup>50</sup>

Similarly, the “character and condition of the defendant” is dependent on the history of abuse that they have suffered. For many defendants who commit violent crime against their alleged abusers, this is the first time that they will

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<sup>46</sup> 2.1.5.2 *Significant Contributing Factor*, WORKSAFE, [http://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims\\_Manual/2-claims-management/2-1-workers-and-injuries/2-1-5-define-an-injury.htm](http://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims_Manual/2-claims-management/2-1-workers-and-injuries/2-1-5-define-an-injury.htm) [https://perma.cc/MF8M-V722] (last visited August 2, 2020).

<sup>47</sup> See Press Release, *supra* note 1.

<sup>48</sup> S. 1077, 2019-2020 Reg. Sess., at 2 (N.Y. 2019).

<sup>49</sup> See Snyder, *supra* note 2.

<sup>50</sup> *Domestic Violence: Why Do Women Stay?*, *supra* note 32.

have been convicted of any offense. These defendants are also far more likely to be suffering from PTSD, depression, and other debilitating psychological conditions resulting from the abuse that affect their decision-making capabilities.<sup>51</sup> Psychological evidence—such as the testimony and records of therapists and social workers—is an important tool in determining whether the defendant’s condition was diminished or compromised.<sup>52</sup>

Finally, the legislative purpose of the DVSJA leans strongly in favor of compassion and leniency. Indeed, as Assemblyman Aubry stated upon the signing of the DVSJA: “All too often, when a survivor acts to protect herself, she receives punishment and prison instead of compassion and assistance. The [DVSJA] takes critical steps to change that unconscionable dynamic and restore dignity and justice to criminalized DV survivors in our state.”<sup>53</sup> The text of the DVSJA, coupled with its legislative purpose, signals that criminalized victims of domestic violence are particularly “vulnerable” within the criminal justice system and should be treated with “compassion” over strict incarceration.<sup>54</sup> Accordingly, courts applying this third element should err on the side of leniency and mercy when determining whether a sentence is “unduly harsh.”

Domestic violence is a complex and sensitive issue, and the law is often ill-equipped to provide complex and sensitive solutions. The DVSJA is an attempt by the New York legislature to provide some assistance and compassion for victims who often become unwitting entrants into the criminal justice system. It is therefore incumbent upon the judges making DVSJA eligibility judgments to take a full and fair view of the whole picture before making their determinations. This panoramic lens is crucial when considering the tragic case of Nikki Addimando.

## II. NIKKI ADDIMANDO

### A. *The Abuse*

In 2008, Nikki Addimando met her abuser, Christopher Grover, at the gymnastics center where they both worked in Poughkeepsie.<sup>55</sup> When they started dating, Addimando confided in Grover that she had been sexually abused as a child by a neighbor; he responded that they could hold off on having sex until she was ready.<sup>56</sup> When they started having sex, however, he would often ignore

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<sup>51</sup> Mechanic, Weaver & Resick, *supra* note 27, at 647.

<sup>52</sup> See Snyder, *supra* note 2.

<sup>53</sup> Press Release, *supra* note 1.

<sup>54</sup> *Id.*

<sup>55</sup> Snyder, *supra* note 2.

<sup>56</sup> *Id.*

her when she asked him to stop.<sup>57</sup> They moved in together when Addimando became pregnant, and in early 2013, Addimando's first child, Ben, was born.<sup>58</sup>

When Ben was six weeks old, Grover made a sexual advance at Addimando, which she refused.<sup>59</sup> He smashed her face into a door frame and forcibly raped her.<sup>60</sup> This began a long and painful pattern of forced sex, and Grover began videotaping the rapes without her knowledge.<sup>61</sup> When she found out about the videotaping, she brought the camera to a counseling session with a clinical social worker, Robin Nason, and played a portion of the video for her.<sup>62</sup> Describing Addimando's reaction as "mortified," Nason said that Addimando "was scared to death to confront" Grover.<sup>63</sup>

The following year, Addimando—pregnant with her second child—"shrugged off a kiss from Grover," who responded by biting her, smashing her face into the counter twice, and raping her.<sup>64</sup> When Addimando called Sarah Caprioli, a worker at a victim-assistance program called Family Services, Caprioli implored her to obtain an exam from a forensic nurse.<sup>65</sup> The examiner noted that Addimando responded to her questions in "barely audible whispers" and that Addimando refused to file a police report because she was afraid that Grover would take Ben away from her.<sup>66</sup>

Two days later, Addimando was cooking breakfast for Ben, and Grover told her to make enough for him to eat too.<sup>67</sup> She sarcastically responded, "Yes, sir."<sup>68</sup> Grover "forced her to the floor, admonished her for being disrespectful, put a metal spoon into the gas flame on the stove, and assaulted her with it."<sup>69</sup> Addimando once again went to get a forensic exam, this time accompanied by Caprioli.<sup>70</sup> The examiner took photographic evidence of the bite mark on Addimando's shoulder and the burns on her breasts, thighs, and genitalia; she described Addimando's demeanor as "nervous, whispering, poor eye contact, shaking."<sup>71</sup> Once again, Addimando was too frightened of what would happen to her and her children to report Grover to the police.<sup>72</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *See id.*

In 2015, Addimando gave birth to her second child, Faye.<sup>73</sup> During that year, Grover obtained a “fixation on pornography,” particularly depicting forced rape:

[H]e began to construct homemade sex toys out of PVC piping, cement glue, and athletic tape, and he would insert them into her vagina and anus. He tied her up. He fashioned a rubber ball into a gag. He assaulted her vaginally with a gun. He used the belt from her bathrobe to strangle her until she almost passed out. She often had black eyes and bruises. Caprioli administered a domestic-violence risk assessment, which placed Addimando in the highest-risk category for homicide. (Criteria included sexual assault, abuse while pregnant, gun ownership, and strangulation.)<sup>74</sup>

Grover filmed himself raping Addimando and uploaded the videos to PornHub, using video names like “Bound and Pound” and “Break a Bitch.”<sup>75</sup> In November 2015, Family Services contacted a detective, informing him that Addimando had been alleging that she was being abused and that Grover was publishing rape videos of her without her consent.<sup>76</sup> Addimando met with the detective but was too frightened to sign an affidavit prepared by Caprioli acknowledging the abuse.<sup>77</sup>

On several occasions, Addimando visited a midwife, Susan Rannestad, and shared her concerns that if she reported Grover, he would take custody of their children and claim that her injuries were self-inflicted.<sup>78</sup> After one particularly severe incident in 2017, Rannestad was unable to complete a pelvic exam because of “the extreme swelling around Addimando’s vaginal and anal areas.”<sup>79</sup> Rannestad stated that Addimando’s “insides were on the outside.”<sup>80</sup>

On September 26, 2017, Child Protective Services (“CPS”) called Addimando and Grover, informing them that they had received an anonymous report from a mother from the gymnastics center who had learned about Addimando’s injuries and Grover’s short temper.<sup>81</sup> The next day, a CPS representative visited Addimando and Grover’s apartment and interviewed them separately.<sup>82</sup> After CPS left, Addimando began calling friends and family whom she thought might be contacted by CPS—her sister, Grover’s family and boss—

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *See id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

and telling them to let CPS know that everything was fine.<sup>83</sup> She was afraid that CPS would uncover the abuse and would take her children away from her.<sup>84</sup>

At around 2:00 AM on September 28, 2017, Poughkeepsie Police Officer Richard Sisilli came upon a car that was stopped at a traffic light and did not move when the light turned green.<sup>85</sup> Addimando, wearing only socks on her feet, got out of the driver's side of the car to speak to Sisilli; Ben and Faye were safely inside the car in their car seats. Later, Sisilli testified, "She told me she tried to leave, but he said he would kill her. . . . She said he's still in the apartment and the gun had just gone off."<sup>86</sup> When Grover returned home from work, he and Addimando got into a fight about the CPS visit.<sup>87</sup> Grover threatened to kill her and himself, and he pulled out his gun. They struggled for control of the weapon, and she shot him in self-defense.<sup>88</sup> He was lying dead on the couch.<sup>89</sup>

"What do I do now?" she asked.<sup>90</sup>

#### B. *The Trial*

Addimando was charged with second-degree murder, first- and second-degree manslaughter, and second-degree criminal possession of a weapon.<sup>91</sup> She pled not guilty to all of the charges, and her jury trial began in March 2019.<sup>92</sup> The prosecution disputed Addimando's claim that she had killed Grover in self-defense; instead, they argued, Addimando had killed Grover in his sleep.<sup>93</sup> To support their conclusion, the prosecution called a medical examiner who testified that "an autopsy could not determine whether Grover was asleep at the time of death but that he was most likely lying down when he was killed."<sup>94</sup> Grover's phone also had internet searches made hours before his death, which asked "what will happen if someone was asleep and then someone shot them in the head" and "Will police know if [she] was asleep when I shoot her?"<sup>95</sup> In the prosecution's theory of the case, Addimando was the one who had conducted

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* (alteration in original).

<sup>87</sup> *See id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

those searches on Grover's phone.<sup>96</sup> Addimando, in the eyes of the prosecution, was a "master manipulator."<sup>97</sup>

Both the prosecution and defense agreed that Addimando had "sustained significant injuries" over the years, but disagreed over the source of the abuse.<sup>98</sup> The prosecution alternatively argued that Addimando was self-injuring (despite the fact that many of the injuries were in places she could not reach) and that the abuse had come from a different man, who had sexually assaulted her early in her relationship with Grover.<sup>99</sup> Addimando herself was not always clear whether she was conflating memories of her earlier abuse with the abuse she received from Grover; of course, memory lapses commonly result from sexual assault and abuse.<sup>100</sup> Nevertheless, the forensic psychologist who testified for the prosecution stated that Addimando's "different accounts at different times to different people" cast her claims of abuse into doubt.<sup>101</sup> Moreover, he argued without proof that the Pornhub videos could have been at least "partly consensual" and stated that Grover's willingness to let Addimando move around with "relative freedom" was inconsistent with "the profile of an abuser."<sup>102</sup> "If he's a batterer, . . . he's putting her on a really long leash," he stated.<sup>103</sup>

In another attempt to cast doubt on Grover's abusive nature, the prosecution read text message exchanges between Grover and Addimando, in which Addimando texted "Are you this stupid?" and "WTF is wrong with you? I think you might have some sort of mental disorder" in response to Grover's questions about how to care for Faye, who had a fever at the time.<sup>104</sup> The prosecution asked why Addimando would dare challenge Grover like that if he was so dangerous; Addimando responded, "I definitely fought back with my words. And I was asking for it, I guess, because he punished me for it."<sup>105</sup>

On April 12, 2019, after three days of deliberation, the jury found Addimando guilty of second-degree murder and second-degree criminal possession of a handgun.<sup>106</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> Nina Schutzman, *Nicole Addimando Found Guilty of Murder in Boyfriend's Shooting Death*, POUGHKEEPSIE J. (Apr. 12, 2019, 2:37 PM), <https://www.poughkeepsiejournal.com/story/news/crime/2019/04/12/nicole-addimando-found-guilty-murder-boyfriends-shooting-death/3380383002/>.

<sup>98</sup> Snyder, *supra* note 2

<sup>99</sup> *Id.*

<sup>100</sup> See, e.g., James Hopper & David Lisak, *Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories*, TIME (Dec. 9, 2014, 1:33 PM), <https://time.com/3625414/rape-trauma-brain-memory/> [<https://perma.cc/Q6RB-Z2AD>].

<sup>101</sup> Snyder, *supra* note 2.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

C. *The Sentence*

Under general sentencing guidelines for her convicted crimes, Addimando faced twenty-five years to life in prison.<sup>107</sup> However, under the DVSJA, the judge could reduce her sentence to between five and fifteen years.<sup>108</sup>

Addimando's DVSJA hearing took place in September 2019.<sup>109</sup> Judge Edward McLoughlin informed the court at the outset that Addimando's eligibility for sentencing under the DVSJA must be proved by a preponderance of the evidence.<sup>110</sup> Both Caprioli and Nason testified about the severe abuse that Addimando reported to them over the years, and they produced their notes and other evidence.<sup>111</sup> Caprioli testified that Addimando "packed her bags and left Grover multiple times, but ended up going back to him"; she was "afraid her family would not believe her, and fearful that she would lose custody of her children."<sup>112</sup> Addimando provided medical documentation of her injuries—many of which were impossible to self-inflict—that solely named Grover as her attacker, and "[d]ozens of individuals corroborated seeing bruises, burns, and her arm in a sling."<sup>113</sup> Forensic psychologist Dr. Dawn Hughes testified that Addimando was at extreme risk of homicide by Grover and that there are a panoply of reasons why it is extremely difficult for survivors to leave an abusive home.<sup>114</sup>

On February 5, 2020, Judge McLoughlin declined to sentence Addimando under the DVSJA, stating that "[t]he questions and inconsistencies that remain regarding the defendant's alleged abuse and abusers[] do not amount to sufficient proof that the alleged abuse was a significant contributing factor in the defendant's act of murder."<sup>115</sup> "[A]ccording to the defendant's own testimony, [she] had the opportunity to safely leave her alleged abuser before September

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Katelyn Cordero, *Nicole Addimando Hearing: Therapists Describe Alleged Abuse, Staying with Grover*, POUGHKEEPSIE J. (Sept. 10, 2019, 7:55 PM), <https://www.poughkeepsiejournal.com/story/news/local/2019/09/10/nicole-addimando-hearing-therapists-describe-alleged-abuse/2278811001/>.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Nikki's Story and the DVSJA*, WE STAND WITH NIKKI, <https://westandwithnikki.com/herstory> [<https://perma.cc/FC98-87GA>] (last visited August 2, 2020).

<sup>114</sup> *Id.*

<sup>115</sup> *People v. Addimando*, 120 N.Y.S.3d 596, 619 (Cty. Ct. 2020); Geoffrey Wilson, *Nicole Addimando 'Had the Opportunity to Safely Leave,' Denied Lenient Sentencing: Judge*, POUGHKEEPSIE J. (Feb. 5, 2020, 1:02 PM), <https://www.poughkeepsiejournal.com/story/news/local/2020/02/05/nicole-addimando-denied-judgement-under-domestic-violence-act/4668274002/>.



27th,” the judge wrote in his decision.<sup>116</sup> “[She] had the opportunity to safely leave early in the evening of September 27th before she shot Christopher Grover. [She] had the opportunity to safely leave her home the moment before she shot Christopher Grover. She did not choose these options.”<sup>117</sup> Furthermore, Judge McLoughlin adopted the deeply problematic “other abuser” theory pushed by the prosecution, stating, “[I]t is not clear whether the abuse was carried out by Christopher Grover in part or in whole, and to what degree.”<sup>118</sup>

On February 11, 2020, Judge McLoughlin sentenced Addimando to nineteen years to life in prison.<sup>119</sup> Before delivering the sentence, McLoughlin stated that “no punishment ‘would be more severe than explaining to your children someday what happened and why.’”<sup>120</sup> “Someone who made the choices you did is a broken person,” he continued.<sup>121</sup> In a statement to the court, Addimando said, “I wish more than anything it had ended any other way, I was afraid to stay, I was afraid to leave, that no one would believe me. This is why women don’t leave. . . . So often we end up dead or are alive but still not free.”<sup>122</sup>

### III. A MISCARRIAGE OF JUSTICE

By any metric, Judge McLoughlin’s decision to deny Addimando’s request for sentencing under the DVSJA is a blatant miscarriage of justice. The judge clearly misapplied the preponderance standard that he purported to employ in making this decision and impermissibly conflated Addimando’s self-defense claim at trial with her victim status at the DVSJA determination stage. Moreover, it is undeniably clear (A) that Addimando was a victim of substantial domestic abuse at the time the crime was committed, (B) that her abuse played a significant factor in the crimes for which she was convicted, and (C) that a sentence of nineteen years to life is unduly harsh.

#### A. *Addimando Was a Victim of Substantial Domestic Violence at the Time of the Offense*

At her DVSJA eligibility hearing, Addimando clearly established that she was a victim of Grover’s substantial domestic violence at the time that she killed him.<sup>123</sup> She introduced a rich panoply of evidence: medical examination reports that explicitly named Grover as her abuser, the testimony of social workers to whom Addimando gave firsthand accounts of her abuse, individuals who corroborated the visibility of her injuries, and a psychologist’s testimony that

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<sup>116</sup> *Addimando*, 120 N.Y.S.3d at 621.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 619.

<sup>119</sup> Wilson, *supra* note 3.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Law, *supra* note 4 (alteration in original).

<sup>123</sup> See *supra* Section I.B.1.

she was at an extremely high risk for homicide.<sup>124</sup> To meet a preponderance standard, Addimando needed to only show that it was more likely than not that she was being substantially abused by Grover at the time of his death. In the face of such undisputed evidence, Addimando far surpassed that low bar.

Nevertheless, Judge McLoughlin peddled the prosecution's unsubstantiated theories that Addimando was abused by another individual or that her injuries were self-inflicted.<sup>125</sup> This may have been sufficient to cast doubt on Addimando's self-defense claim at trial, but the evidence the prosecution presented is not nearly strong enough to rebut the strong likelihood that Grover was Addimando's abuser to a preponderance of the evidence. Essentially, McLoughlin completely discounted the evidence that Addimando presented on the theory that someone else could have committed *some* of the abuse.

McLoughlin also incorrectly centered his analysis for this point on the premise that Addimando "had the opportunity to safely leave."<sup>126</sup> Again, this may be relevant to show whether or not Addimando acted in self-defense, but it is irrelevant to show whether she was being abused at the time the crime occurred. In order to prove that Addimando was guilty of second-degree murder, the prosecution had to prove that Addimando did not act in self-defense. Therefore, Judge McLoughlin cannot consider that Addimando may not have acted in self-defense to determine that she is ineligible for sentencing under the DVSJA. If he could, then it would render every individual convicted of second-degree murder ineligible for DVSJA sentencing. Tellingly, the statutory text does not mention self-defense at all.<sup>127</sup>

Moreover, McLoughlin's declaration that Addimando could have safely left the situation is deeply misguided. As Snyder writes in her article (and as Dr. Hughes stated in her testimony at Addimando's DVSJA hearing):

The most common question asked of a domestic-violence victim—and the prosecution asked it repeatedly during Addimando's trial—is why she doesn't just leave. There are many answers. She may fear retaliatory violence from her abuser. She may be afraid of losing custody of her children. . . . She may be financially dependent on her abuser. She may love and care about her abuser.<sup>128</sup>

More importantly, "[d]ecades of research . . . shows that the most dangerous time for a victim is when she is leaving the relationship."<sup>129</sup> Even if Addimando believed that she could have walked out of the door without shooting Grover, she had good reason—well-founded by psychological evidence—to believe that her life was in immediate mortal peril.

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<sup>124</sup> See *supra* Section II.C.

<sup>125</sup> *People v. Addimando*, 120 N.Y.S.3d 596, 620 (Ct. Ct. 2020).

<sup>126</sup> *Id.* at 621.

<sup>127</sup> See S. 1077, 2019-2020 Reg. Sess. (N.Y. 2019).

<sup>128</sup> Snyder, *supra* note 2.

<sup>129</sup> *Id.*

Addimando's abuse, viewed through a panoramic lens, was both substantial and ongoing at the time the offense took place.<sup>130</sup> Both the prosecution and the defense agreed that Addimando had "sustained significant injuries" throughout the course of her relationship with Grover.<sup>131</sup> Moreover, the abuse was "[o]f such a nature that" it "affect[ed] [Addimando's] decision-making."<sup>132</sup> Addimando introduced testimony from mental health professionals at her hearing that, on several occasions, she had been too afraid to leave the relationship despite the severe injuries Grover inflicted upon her.<sup>133</sup> When evaluating the case to a preponderance of the evidence, a reasonable factfinder could easily infer that those same dynamics had been at play at the time of Grover's death. Accordingly, Judge McLoughlin clearly erred in determining that Addimando was not a victim of substantial domestic violence at the time of the offense.

B. *Domestic Violence Was a Significant Contributing Factor to Addimando's Participation in the Offense*

Judge McLoughlin's conclusion that Addimando did not show that domestic violence was a significant contributing factor to Grover's death is also fatally flawed. Grover's abuse of Addimando, when compared to other potential factors that may have contributed to the offense, clearly had an outsized influence on the outcome.<sup>134</sup> The evidence is undisputed that the last two days between Addimando and Grover were absolutely fraught with tension. When CPS called about allegations of abuse and then interviewed both of them in their apartment, Grover was clearly on the verge of being publicly exposed as Addimando's abuser, and all of Addimando's fears of retaliatory violence and Grover taking her children away were coming to the surface.<sup>135</sup> Based on the documented evidence presented at trial, Grover often answered what he perceived to be disobedient behavior by Addimando with extreme bouts of violence—the danger was certainly "not insignificant, trivial or minimal."<sup>136</sup> It is entirely reasonable, and indeed extremely likely, that the situation arose because Grover responded to the CPS visit—an external intrusion outside of his control—with threats and behavior that indicated that he intended to kill Addimando. Even if one concedes that there were other abusers that were harming Addimando, there is no realistic explanation that anyone other than Grover could have provoked this particular instance of violence. Given the timing and the circumstances, there is truly no other plausible rationale offered by the prosecution or the defense for Addimando to shoot Grover than fear of escalating domestic

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<sup>130</sup> See *supra* Section I.B.1.

<sup>131</sup> Snyder, *supra* note 2.

<sup>132</sup> See *supra* note 39.

<sup>133</sup> See Cordero, *supra* note 109.

<sup>134</sup> See *supra* Section I.B.2.

<sup>135</sup> See *supra* Section II.A.

<sup>136</sup> 2.1.5.2 *Significant Contributing Factor*, *supra* note 46; see also *supra* Section II.A.

violence. Therefore, Judge McLoughlin again erred by determining that domestic violence was not a significant contributing factor to Addimando's commission of the crime.

C. *Addimando's Sentence Under the Current Law Is Unduly Harsh*

Finally, Judge McLoughlin's sentence of nineteen years to life is unduly harsh. Even the most damning depiction of Addimando's character—as argued by the prosecution—portrays her as a deeply damaged individual who has suffered abuse by multiple abusers. Indeed, at Addimando's sentencing hearing, Judge McLoughlin referred to her as a “broken person.”<sup>137</sup> Her actions do not indicate a likelihood to commit crime again, and her motives reflect an individual who was deeply afraid of her abuser and was trying desperately to escape a cycle of severe abuse. Her case is therefore consistent with the legislative purpose of the DVSJA, which was enacted to provide “assistance and compassion” to individuals who “deserve support and the ability to rebuild their lives, instead of being unfairly incarcerated.”<sup>138</sup> It is hard to think of any person that fits that description better than Addimando. Almost every decision that Addimando made during her relationship with Grover was to keep her children safely in her custody. She was afraid of what would happen if Grover had them taken away from her, and she was afraid that no one would believe her for speaking out. Now, she faces the prospect of not seeing her children until they are (at least) in their twenties. Addimando has been subjected to horrific and pervasive abuse for years and was forced to make an impossible decision to stay alive. As Governor Cuomo said in his statement upon signing the DVSJA, Addimando should be “empower[ed],” not “just put[] behind bars.”<sup>139</sup> Judge McLoughlin's sentence is unfair and unjust.

CONCLUSION

Judge McLoughlin's failure to fairly sentence Addimando under the DVSJA is not only an egregious wrong that must be rectified; it is also a symptom of an even larger problem. Addimando is not the only domestic violence survivor to be found ineligible under the DVSJA. In a manslaughter case last year, a judge refused to apply the DVSJA to Taylor Partlow and sentenced her to eight years in prison for stabbing her boyfriend to death.<sup>140</sup> The judge in that case acknowledged that Partlow was abused, but held nonetheless that her abuse did not rise to a “substantial” level that would necessitate her sentencing under the DVSJA.<sup>141</sup> As in Addimando's case, multiple witnesses testified to the severity

<sup>137</sup> Wilson, *supra* note 3.

<sup>138</sup> See *supra* Section I.A.

<sup>139</sup> Press Release, *supra* note 1.

<sup>140</sup> Snyder, *supra* note 2.

<sup>141</sup> *Id.*

of the abuse Partlow suffered; “one of them, who saw her immediately after she killed her boyfriend, said Partlow was naked and had a fresh black eye.”<sup>142</sup>

In light of the COVID-19 pandemic, proper judicial application of the DVSJA is now more important than ever. As New York rapidly became the global epicenter of the COVID-19 outbreak, strict stay-at-home orders forced domestic violence survivors into claustrophobic isolation with their abusers.<sup>143</sup> Survivor advocacy groups have “seen signs of escalating conditions as scores of people [have been] forced out of work and into their homes, where several forms of violence, from the physical to the psychological, have festered in mass isolation.”<sup>144</sup> Governor Cuomo reported that the “COVID-19 pandemic has led to a drastic increase in the number of reported domestic violence cases in the state”—a 33% increase in April 2020 as compared to the previous year.<sup>145</sup> “[W]ithout access to help or resources,” an increasing number of survivors will likely need to resort to drastic measures to protect themselves from their abusers.<sup>146</sup> New York’s legal infrastructure must be prepared to provide support and to meet this new reality.

To avoid unjust sentencing outcomes in the future, judges must be presented with specific guidelines and training to supplement the vague contours of the DVSJA’s eligibility requirements.<sup>147</sup> A 2009 ABA study of racial and gender diversity in state courts found that only 20% of New York state judges are women and only 20.5% of New York state judges are from minority populations.<sup>148</sup> That means, unsurprisingly, that the vast majority of New York state judges are white men. Although a judge’s identity as a white straight cisgender male does not inevitably mean that he will rule against more lenient sentencing for survivors of domestic violence and sexual assault, his life experience will likely be far different than the defendant on trial<sup>149</sup>—survivors

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<sup>142</sup> *Id.*

<sup>143</sup> See Alisha Haridasani Gupta & Aviva Stahl, *For Abused Women, A Pandemic Lockdown Holds Dangers of Its Own*, N.Y. TIMES, Apr. 12, 2020, at F12.

<sup>144</sup> Michelle Bocanegra, *Domestic Violence Groups, Survivors Say New York’s Pandemic Exacerbated Abuse*, POLITICO (June 21, 2020, 2:07 PM), <https://www.politico.com/states/new-york/albany/story/2020/06/21/domestic-violence-groups-survivors-say-new-yorks-pandemic-exacerbated-abuse-1293894> [<https://perma.cc/25JA-6LC6>].

<sup>145</sup> Robert Brodsky, *NY Task Force Aims to Aid Pandemic-Related Domestic Violence Victims*, NEWSDAY (June 11, 2020, 5:30 PM), <https://www.newsday.com/news/health/coronavirus/domestic-violence-task-force-1.45603487>.

<sup>146</sup> *Id.*

<sup>147</sup> See Cynthia Feathers, *Domestic Violence Survivor Defendants: New Hope for Humane and Just Outcomes*, N.Y. ST. B. ASS’N J., Mar. 2020, at 15, 20 (highlighting “need for training judges about the DVSJA”).

<sup>148</sup> Malia Reddick, Michael J. Nelson & Rachel Paine Caufield, *Racial and Gender Diversity on State Courts*, JUDGES’ J., Summer 2009, at 28, 30 tbl.1.

<sup>149</sup> Feathers, *supra* note 147, at 20 (“Trauma-informed sentencing is not a familiar concept to many criminal judges.” (quoting retired New York state judge Marcy L. Kahn)).

of domestic violence are disproportionately women, individuals of color, and members of the LGBTQ+ community.<sup>150</sup> Therefore, a judge's potentially narrow conception of what constitutes a "significant contributing factor" for the purposes of domestic-violence-related crimes would benefit from a more specific list of circumstances to consider. For instance, in 2012 Canada rewrote its self-defense law to account for the "'size, age, gender, and physical capabilities of the parties to the incident' and evidence of an abusive history between the parties, which serves to 'contextualize the accused's experience so as to allow their actions to be viewed and understood as objectively "reasonable" in the circumstances.'"<sup>151</sup> Those factors, including a detailed explanation of why victims of domestic violence feel that they cannot escape their cycle of abuse, will be extremely useful in helping judges make thoughtful and reasoned decisions when applying the DVSJA. Sample guidelines, therefore, will be critical in assisting judges with considering how to implement the DVSJA in a manner consistent with what we know about how domestic violence operates and how victims respond. Detailed considerations of the DVSJA's elements, such as those discussed above, will be helpful in formulating these guidelines.

Nikki Addimando did what she absolutely needed to do to escape her own cycle of abuse, and she was punished by the state for fighting for her life. New York state judges have a responsibility and an obligation to right the wrongs that Addimando is suffering and to make sure that such an outcome never happens to another survivor again.

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<sup>150</sup> See, e.g., NAT'L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, NISVS: AN OVERVIEW OF 2010 FINDINGS ON VICTIMIZATION BY SEXUAL ORIENTATION 1 (2010), [https://www.cdc.gov/violenceprevention/pdf/cdc\\_nisvs\\_victimization\\_final-a.pdf](https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_victimization_final-a.pdf) [<https://perma.cc/F3XU-SBXM>]; WOMEN OF COLOR NETWORK, FACTS & STATS: DOMESTIC VIOLENCE IN COMMUNITIES OF COLOR 2 (2006), [https://www.doj.state.or.us/wp-content/uploads/2017/08/women\\_of\\_color\\_network\\_facts\\_domestic\\_violence\\_2006.pdf](https://www.doj.state.or.us/wp-content/uploads/2017/08/women_of_color_network_facts_domestic_violence_2006.pdf) [<https://perma.cc/GJV8-YJFV>].

<sup>151</sup> Snyder, *supra* note 2.