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JOSE AYUSO *v.* COMMISSIONER OF CORRECTION
(AC 44171)

Prescott, Seeley and Sheldon, Js.

Syllabus

The petitioner sought a writ of habeas corpus, alleging that the respondent Commissioner of Correction had provided him with inadequate treatment for certain medical conditions that constituted deliberate indifference to his medical needs in violation of the eighth amendment to the United States constitution. The habeas court rendered judgment denying the habeas petition and, thereafter, denied the petitioner certification to appeal, and the petitioner appealed to this court. *Held* that the petitioner failed to demonstrate that the habeas court abused its discretion by denying his petition for certification to appeal, as the court expressly credited the testimony of the respondent's medical expert, who opined to a reasonable degree of medical certainty that the petitioner had received adequate medical treatment, as well that of the petitioner's treating physician, in finding that the petitioner had received medically appropriate treatment, and this court, on appeal, would not second-guess those credibility determinations.

Argued September 19—officially released October 25, 2022

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the petition was withdrawn in part; thereafter, the case was tried to the court, *Chaplin, J.*; judgment denying the petition; subsequently, the court denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Jose Ayuso, self-represented, the appellant (petitioner).

Lisamaria T. Proscino, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, *Clare Kindall*, solicitor general, and *Robert S. Dearington*, former assistant attorney general, for the appellee (respondent).

Opinion

PER CURIAM. The petitioner, Jose Ayuso, appeals following the denial of his petition for certification to appeal from the judgment of the habeas court denying his amended petition for a writ of habeas corpus in which he alleged deliberate indifference to his medical needs in violation of the eighth amendment to the United States constitution. The gravamen of the petitioner's deliberate indifference claim is that the respondent, the Commissioner of Correction, is providing inadequate medical treatment for the petitioner's back pain and for a lump on his inner thigh, including by not providing the petitioner with a magnetic resonance imaging (MRI) scan and back surgery.

In its memorandum of decision, the habeas court expressly credited the testimony of the respondent's medical expert, who opined to a reasonable degree of medical certainty that the petitioner has received adequate medical treatment and that there was no medical indication for either surgery or an MRI scan. On the basis of that expert testimony as well as that of the petitioner's treating physician, the habeas court ultimately found that "the petitioner received medically appropriate treatment for [his leg] [and] for his back pain." The petitioner's arguments on appeal are limited to attacking the credibility determinations of the habeas court, which, as we have repeatedly indicated, we will not second-guess on appeal. See, e.g., *Noze v. Commissioner of Correction*, 177 Conn. App. 874, 887, 173 A.3d 525 (2017) ("[i]t is simply not the role of this court on appeal to second-guess credibility determinations made by the habeas court"); *Jolley v. Commissioner of Correction*, 98 Conn. App. 597, 599, 910 A.2d 982 (2006) ("[W]e must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude. . . . The habeas judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony." (Internal quotation marks omitted.)), cert. denied, 282 Conn. 904, 920 A.2d 308 (2007). We conclude, on the basis of our review of the record, the briefs, and the arguments of the parties, that the petitioner has failed to demonstrate, in accordance with *Simms v. Warden*, 230 Conn. 608, 612, 646 A.2d 126 (1994), that the court abused its discretion by denying his petition for certification to appeal.

The appeal is dismissed.
