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ERICK BENNETT *v.* COMMISSIONER  
OF CORRECTION  
(AC 46491)

Moll, Clark and Seeley, Js.

*Syllabus*

The petitioner sought a writ of habeas corpus, alleging, inter alia, that he had been denied certain of his constitutional rights at his underlying criminal trial. The habeas court, following a trial, rendered judgment denying his petition for a writ of habeas corpus and the petitioner, on the granting of certification, appealed to this court. During the pendency of his appeal, the petitioner filed a motion to open or vacate the judgment, which the habeas court denied. The habeas court thereafter denied the petitioner's petition for certification to appeal. On the petitioner's appeal to this court, *held* that the petitioner was not entitled to appellate review of his claim that the habeas court improperly denied his motion to open or vacate the judgment denying his habeas petition, as he failed to brief the threshold issue of whether the habeas court abused its discretion in denying his petition for certification to appeal.

Argued November 16—officially released December 5, 2023

*Procedural History*

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Bhatt, J.*; judgment denying the petition; thereafter, the court, *Newson, J.*, denied the petitioner's motion to open or vacate the judgment; subsequently, the court, *Newson, J.*, denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

*Erick Bennett*, self-represented, the appellant (petitioner).

*Timothy F. Costello*, supervisory assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, *Craig P. Nowak*, supervisory assistant state's attorney, and *Adrienne Russo*, senior assistant state's attorney, for the appellee (respondent).

*Opinion*

PER CURIAM. The self-represented petitioner, Erick Bennett, appeals, following the denial of his petition for certification to appeal, from the judgment of the habeas court denying his motion to open and/or vacate the judgment denying his third amended petition for a writ of habeas corpus (motion to open). Although the petitioner challenges the merits of the habeas court's denial of his motion to open, he has failed to brief the threshold issue of whether the habeas court abused its discretion in denying his petition for certification to appeal. Accordingly, we dismiss the petitioner's appeal.

The following facts and procedural history are relevant to our resolution of this appeal. On September 28, 2018, the self-represented petitioner, a sentenced prisoner, filed his third amended petition for a writ of habeas corpus in which he asserted approximately eleven claims, including but not limited to: (1) ineffective assistance of trial and appellate counsel; (2) violations of *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); (3) judicial bias; (4) due process violations; and (5) actual innocence. On June 15, 2021, following a trial and the submission of posttrial briefs, the habeas court, *Bhatt, J.*, denied the petition. Upon the habeas court's grant of certification to appeal from the denial of his habeas petition, the petitioner filed an appeal on October 7, 2021 (prior habeas appeal). In a decision released on February 7, 2023, this court affirmed the judgment of the habeas court. See *Bennett v. Commissioner of Correction*, 217 Conn. App. 901, 287 A.3d 1157, cert. denied, 346 Conn. 1019, 292 A.3d 1255 (2023).

Meanwhile, during the pendency of the prior habeas appeal, on November 23, 2022, the petitioner filed his motion to open, which, after a hearing, the court, *Newson, J.*, denied on January 20, 2023. On March 30, 2023, the petitioner filed a petition for certification to appeal from the denial of the motion to open. The court ultimately denied the petition as untimely, and this appeal followed.

“Faced with a habeas court's denial of a petition for certification to appeal, a petitioner can obtain appellate review . . . only by satisfying the two-pronged test enunciated by our Supreme Court in *Simms v. Warden*, 229 Conn. 178, 640 A.2d 601 (1994), and adopted in *Simms v. Warden*, 230 Conn. 608, 612, 646 A.2d 126 (1994). First, he must demonstrate that the denial of his petition for certification constituted an abuse of discretion. . . . Second, if the petitioner can show an abuse of discretion, he must then prove that the decision of the habeas court should be reversed on its merits. . . .

“To prove an abuse of discretion, the petitioner must demonstrate that the [resolution of the underlying claim

involves issues that] are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further. . . . If this burden is not satisfied, then the claim that the judgment of the habeas court should be reversed does not qualify for consideration by this court.” (Citation omitted; internal quotation marks omitted.) *Logan v. Commissioner of Correction*, 125 Conn. App. 744, 750–51, 9 A.3d 776 (2010), cert. denied, 300 Conn. 918, 14 A.3d 333 (2011).

In his briefing to this court, the petitioner has failed to “expressly allege and explain in his brief how the habeas court abused its discretion in denying certification.” *Goguen v. Commissioner of Correction*, 341 Conn. 508, 512–13, 267 A.3d 831 (2021). Under these circumstances, this court repeatedly has concluded, and our Supreme Court has agreed, that a petitioner who has failed to brief this threshold issue is not entitled to appellate review. See *Goguen v. Commissioner of Correction*, 195 Conn. App. 502, 505, 225 A.3d 977 (2020), aff’d, 341 Conn. 508, 267 A.3d 831 (2021); see also *Stanley v. Commissioner of Correction*, 217 Conn. App. 805, 808, 290 A.3d 437, cert. denied, 346 Conn. 919, 291 A.3d 607 (2023); *Simonoff v. Commissioner of Correction*, 216 Conn. App. 824, 826–27, 286 A.3d 500 (2022); *Cordero v. Commissioner of Correction*, 193 Conn. App. 902, 902–903, 215 A.3d 1282, cert. denied, 333 Conn. 944, 219 A.3d 374 (2019); *Thorpe v. Commissioner of Correction*, 165 Conn. App. 731, 733, 140 A.3d 319, cert. denied, 323 Conn. 903, 150 A.3d 681 (2016); *Mitchell v. Commissioner of Correction*, 68 Conn. App. 1, 8, 790 A.2d 463, cert. denied, 260 Conn. 903, 793 A.2d 1089 (2002); *Reddick v. Commissioner of Correction*, 51 Conn. App. 474, 477, 722 A.2d 286 (1999). Although we acknowledge that self-represented litigants like the petitioner are afforded some latitude with respect to a court’s construction of their pleadings, such accommodation is not permitted where a fundamental issue is neither raised nor briefed, as is the case here. See, e.g., *Oliphant v. Commissioner of Correction*, 274 Conn. 563, 570, 877 A.2d 761 (2005) (“[a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law” (internal quotation marks omitted)). As stated by our Supreme Court, “there is no exception to the requirement that a habeas petitioner must expressly allege that the habeas court abused its discretion in denying the petition for certification to appeal when the petitioner is self-represented.” *Goguen v. Commissioner of Correction*, supra, 341 Conn. 524.

Because the petitioner has failed to meet the first prong of *Simms v. Warden*, supra, 230 Conn. 612, by demonstrating that the denial of his petition for certification to appeal constituted an abuse of discretion, we decline to review his claims on appeal.

The appeal is dismissed.

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