TINESSE TILUS *v.* COMMISSIONER OF CORRECTION (AC 39275)

Lavine, Mullins and Beach, Js.

Syllabus

The petitioner sought a writ of habeas corpus, claiming that his right to conflict free counsel was violated and that his trial counsel provided ineffective assistance. The petitioner had been convicted of the crime of robbery in the first degree in connection with his alleged conduct in robbing a store with three accomplices, including B. During pretrial proceedings, both the petitioner and B were initially represented by the same public defender, S, who continued to represent the petitioner only during his criminal trial following an inquiry by the trial court concerning a potential conflict of interest. On direct appeal, the petitioner claimed that S's joint representation of the petitioner and B in the pretrial phase presented a conflict of interest and that, because the trial court's inquiry into the matter was not adequate to apprise him of the risks of continued representation by S, there was no valid waiver of the potential conflict, in violation of his constitutional right to conflict free representation. This court rejected the petitioner's claim and affirmed the judgment of the trial court. The Supreme Court dismissed the petitioner's appeal from this court's judgment. Thereafter, the habeas court rendered judgment denying the habeas petition, and the petitioner, on the granting of certification, appealed to this court from the habeas court's judgment. *Held*:

1. The petitioner could not prevail on his claim that his constitutional right to conflict free counsel was violated by S's representation of both the petitioner and B prior to the petitioner's criminal trial: the habeas court properly determined that no actual conflict of interest existed and that the petitioner had failed to prove a single, specific instance in which S's representation of him was compromised by the alleged conflict, as the record showed that both B and the petitioner told S the same version of events, there was no evidence that the petitioner ever said or did anything to suggest that he had information that would implicate B or that could have been used to secure for the petitioner a favorable plea deal from the state, and there was no impairment or compromise of the petitioner's interests for the benefit of B; moreover, the habeas court properly determined that the petitioner had failed to prove that he was prejudiced by any potential conflict created by the dual representation, as there was no evidence that the petitioner sought a plea agreement or knew anything that S could have used to negotiate an agreement for him, and it was not likely that the state would have benefited from the petitioner's cooperation.
2. The habeas court properly determined that the petitioner was not denied his constitutional right to the effective assistance of trial counsel,

because, although S's representation was deficient in that he failed to conduct a timely investigation into the charges against the petitioner, the petitioner was not prejudiced thereby; the habeas court correctly concluded that the failure to call A as a defense witness did not undermine the jury's verdict, as A's testimony would not have undermined the testimony of one of the state's witnesses, and the petitioner failed to demonstrate that he was prejudiced by S's introduction of J's testimony, because, even though J testified on cross-examination that he had a criminal record, his testimony on direct examination was consistent with the petitioner's theory of the crime.

Argued May 17—officially released August 8, 2017

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, geographical area number nineteen, and tried to the court, *Bright*, *J.*; judgment denying the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed*.

Vishal K. Garg, for the appellant (petitioner).

Emily D. Trudeau, assistant state's attorney, with whom, on the brief, was *John. C. Smriga*, state's attorney, for the appellee (respondent).

Opinion

LAVINE, J. The petitioner, Tinesse Tilus, appeals from the judgment of the habeas court denying his petition for a writ of habeas corpus. On appeal, the petitioner claims that the habeas court improperly concluded that his state and federal constitutional rights to (1) conflict free counsel and (2) the effective assistance of counsel were not violated. We affirm the judgment of the habeas court.

In 2012, following a jury trial, the petitioner was convicted of one count of robbery in the first degree, in violation of General Statutes § 53a-134 (a) (2), for his participation in the robbery of the Caribbean-American Grocery and Deli in Bridgeport on December 28, 2011.

State v. *Tilus*, 157 Conn. App. 453, 455, 117 A.3d 920 (2015), appeal dismissed, 323 Conn. 784, 151 A.3d 382 (2016). The trial court, *Kavanewsky, J.*, sentenced the petitioner to twelve years of incarceration, execution suspended after eight years, followed by four years of probation. Id., 460. The petitioner's conviction was affirmed by this court on direct appeal. Id., 489. On July 8, 2015, our Supreme Court granted the petitioner certification to appeal limited, in part, to the following issue: "Did the Appellate Court properly determine that the trial court secured a valid waiver of the [petitioner's] constitutional right to conflict free representation?" *State* v. *Tilus*, 317 Conn. 915, 117 A.3d 854 (2015). The Supreme Court subsequently dismissed the petitioner's direct appeal from the Appellate Court's judgment. *State* v. *Tilus*, supra, 323 Conn. 784.[1]

The following facts, as set forth by this court in resolving the petitioner's direct appeal, provide the context for the claims he raises in the present appeal.[2] At approximately 8 p.m. on December 28, 2011, Rene Aldof[3] and Ramon Tavares were tending Aldof's store

[1] Although our Supreme Court dismissed the petitioner's direct appeal prior to oral argument on the petitioner's habeas corpus appeal, neither party brought that fact to this court's attention.

[2] The petitioner raised four claims in his direct appeal, including a claim that "the trial court [*Devlin, J.*] violated his sixth amendment right to conflict free counsel by inadequately canvassing him as to his desire to proceed with retained counsel who had previously represented both him and one of his codefendants in the case . . . ." *State* v. *Tilus*, supra, 157 Conn. App. 455.

[3] We note that the name of the robbery victim has been spelled inconsistently, e.g., Rene Aldof and Rene Adolph. The indictment filed against the petitioner states in relevant part: "stole certain property from one RENE ADOLPH." In the transcript of the petitioner's criminal trial, the victim's name is denominated Rene Aldof, which is the denomination used by this court in its decision adjudicating the petitioner's direct appeal. See *State* v. *Tilus*, supra, 157 Conn. App. 455. In its memorandum of decision, the habeas court identified the victim as Rene Aldof. In this court's decision regarding the direct appeal of the petitioner's codefendant Jacques Louis, however, the robbery victim is identified as Rene Adolph. See *State* v. *Louis*, 163 Conn. App. 55, 134 A.3d 648, cert. denied, 320 Conn. 929, 133 A.3d 461

on Wood Avenue in Bridgeport, "when four men entered the store. One of the men was the [petitioner], whom Aldof recognized as 'Tinesse,' a regular customer of the store. Aldof also recognized a second man, Jean Barjon, but did not recognize either of the two other men. One of the unknown men pulled out a handgun and demanded that Aldof give him the money, while the other three men, including the [petitioner], 'encased' him in an effort to prevent his escape. Aldof was able to push past the men and exit the store, pursued by one of the men, who unsuccessfully attempted to restrain him by grabbing his coat. Aldof ran into a nearby laundromat, where he held the door shut to prevent his pursuer from coming in behind him." *State* v. *Tilus*, supra, 157 Conn. App. 455–56.

Tavares was stationed in a plexiglass booth with the cash register and remained there after Aldof left the store. Id., 456. A man pointing a gun at Tavares approached the booth and ordered him to open the door. Id. The man entered the booth when Tavares opened the door and turned Tavares to face the wall, held the gun to his head, and took Tavares' cell phone, wallet and the money in the cash register. Id.

Outside, Bridgeport Police Officer Elizabeth Santora was driving her police cruiser on Wood Avenue when Aldof exited the laundromat and flagged her down. Id. Aldof told Santora that he had been robbed at gunpoint and pointed to one of his assailants who was walking down Wood Avenue. Id., 456–57. Santora followed the suspect and saw him stop next to several trash cans on Sherwood Avenue. Id., 457. She exited her police cruiser, ordered the suspect to stop, apprehended him, and pulled him toward her cruiser. Id.

(2016). For consistency with respect to the petitioner's criminal trial, direct appeal, and habeas case, we denominate the victim of the robbery Rene Aldof.

"As Santora approached the cruiser with the suspect in tow, she observed a white Nissan Altima that had been parked on Sherwood Avenue begin 'pulling off' into the street. Aldof, then positioned on the corner of Wood and Sherwood Avenues, told Santora that the three men in the Altima had also been involved in the robbery. Santora flagged down the vehicle and told its driver to stop the car and give her the keys. The driver obeyed. The first suspect and the three men in the Altima were detained for questioning. The [four] men were later identified as Guillatemps Jean-Philippe, Jean Louis, Barjon, and the [petitioner]. Aldof confirmed that the detainees were the same four men who had robbed his store."[4] Id.

The petitioner was arrested and charged with conspiracy to commit robbery in the first degree and robbery in the first degree. Id., 458. He pleaded not guilty and testified at trial that on the night of the robbery, "his friend, Barjon, had come to his house at about 7 p.m. and asked him if he would like to take a ride to New Haven. When he agreed to do so, he got in Barjon's car, where Jean-Philippe and another man he did not know were seated in the rear passenger seat. The [petitioner] was told that Barjon had agreed to drive the two men to the train station in New Haven. Instead, however, Barjon drove to Aldof's store and parked his car on the corner of Wood and Sherwood Avenues. The [petitioner] testified that once they arrived at the store, Jean-Philippe, 'with no mention, nothing,' got out of the car and entered the store. The [petitioner] and the other two men remained in the parked car . . . ." Id., 458–59.

The following undisputed procedural history is relevant to the present appeal. At his arraignment on

[4] In this court's decision in *State* v. *Louis*, 163 Conn. App. 55, 134 A.3d 648, cert. denied, 320 Conn. 929, 133 A.3d 461 (2016), two of the robbery suspects were identified differently, namely, Jean Louis and Guillatemps Jean-Philippe were introduced as Jacques Louis and Guailletemps Jean-Philippe. See id., 57—58.

December 29, 2011, the petitioner was represented by a public defender. Id., 460–61. Barjon also was arraigned that day, and he, too, was represented by a public defender. Id., 461. On January 31, 2012, Eroll Skyers, an attorney, filed an appearance on behalf of the petitioner and Barjon. Id. On February 7, 2012, the petitioner entered a plea of not guilty before the court, *Devlin, J.* Id. Skyers informed Judge Devlin that he represented both the petitioner and Barjon. Id. On April 9, 2012, the petitioner and Skyers appeared before Judge Devlin. Id. The petitioner rejected the state's plea offer, and the case was placed on the trial list. Id.

On October 2, 2012, Skyers and Barjon appeared before Judge Devlin. Id. Skyers represented to the court that Barjon intended to plead guilty under the *Alford* doctrine[5] to the charge of conspiracy to commit robbery in the first degree. Id. "Barjon failed his plea canvass, however, and thus the court vacated his guilty plea. Because, at that time, it was clear that both Barjon and the [petitioner] intended to proceed to trial, [Judge Devlin] raised with Skyers the potential conflict of interest presented by his continued representation of both men. In this regard, the court focused initially on problems associated with Skyers' continued representation of Barjon. Skyers responded by stating for the record that when Barjon and the [petitioner] first came to him seeking joint representation, he had informed them that there could be a potential conflict if both cases proceeded to trial. Although both men persisted in their desire to have him represent them, they agreed that Barjon would retain other counsel if his case was not resolved by entering a guilty plea." (Footnote omitted.) Id., 461–62. The prosecutor questioned whether, given the circumstances, Skyers' continued representation of the petitioner was advisable and identified scenarios

[5] See *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

that presented a potential conflict of interest. Id., 462. Judge Devlin asked Skyers whether he had discussed the matter with the petitioner. Id. The petitioner was in the courtroom and came forward to answer questions from Judge Devlin. Id. The court explained the attorney-client privilege to the petitioner and potential conflict that could arise as a result of Skyers' having represented both the petitioner and Barjon. Id., 463. The following colloquy occurred.

"The Court: So . . . I don't know what Mr. Barjon [is] going to do. I assume he's going to hire his own lawyer, and whatever happens with that case, happens with that case. I'm more concerned with yours because I think I'm going to let Mr. Skyers out of Mr. Barjon's case. But with respect to you, do you still wish to have Mr. Skyers as your lawyer under those circumstances?

"[The Petitioner]: Yes.

"The Court: Would you like to consult with another lawyer, a different lawyer about this, you know, before we go forward with your case?

"[The Petitioner]: No. . . .

"The Court: Okay. All right. And, Attorney Skyers, from your point of view, have I correctly framed the issue as far as—is there more that should be put on the record here?

"[Skyers]: Absolutely have, Your Honor. Yes." (Internal quotation marks omitted.) Id., 464.

On direct appeal, the petitioner claimed that Judge Devlin's "failure to secure a valid waiver violated his constitutional right to conflict free representation." Id., 460. He argued that "Skyers' joint representation of [him] and Barjon in the pretrial phase of the proceedings gave rise to a conflict of interest which jeopardized the [petitioner's] sixth and fourteenth amendment right to

counsel. He further argue[d] that [Judge Devlin's] inquiry into the matter was not adequate to apprise him of the risks of continued representation by Skyers and, thus, no valid waiver was obtained." Id., 464. This court disagreed; id., 460; stating that "the record shows that the court explored the potential conflict of interest when the issue was raised by the prosecutor. The court heard from Skyers and the [petitioner]. Skyers represented to the court that he had discussed the potential conflict of interest with the [petitioner]. The court then informed the [petitioner] of the risks attendant to Skyers' representation of him, namely, Skyers' continuing obligations to Barjon and the ethical barrier to using any information that he had acquired as a result of representing Barjon. The [petitioner] confirmed that he was aware of Skyers' obligations to Barjon, and he expressed his desire to proceed with his retained counsel." Id., 467–68.

This court observed that "[i]n any case involving a possible conflict of interest, the court must be mindful of the defendant's constitutional right to the counsel of his choice . . . when making a determination as to the soundness of the defendant's determination to move forward with his present counsel despite the potential risks. [O]ur chosen system of criminal justice is built on a truly equal and adversarial presentation of the case, and upon the trust that can exist only when counsel is independent of the [g]overnment. Without the right, reasonably exercised, to counsel of choice, the effectiveness of that system is imperiled." (Citation omitted; internal quotation marks omitted.) Id., 471–72.

This court concluded that the petitioner "persisted in his desire to proceed to trial with the assistance of [Skyers,] his chosen counsel. In light of the fact that the only anticipated impediment to Skyers' continued representation of the [petitioner] was the possibility that Barjon would choose to testify on the [petitioner's]

behalf, which the court correctly deemed unlikely given Barjon's decision to proceed to trial, it properly deferred to the [petitioner's] expressed desire to proceed, notwithstanding the potential conflict." Id., 472. This court rejected the petitioner's remaining claims and affirmed the petitioner's judgment of conviction. Id., 489. The petitioner filed a petition for certification to appeal, which was granted.[6]

While his direct appeal was pending in this court, the self-represented petitioner filed a petition for a writ of habeas corpus in January, 2014. On March 19, 2015, the petitioner's appointed habeas counsel filed an amended petition for a writ of habeas corpus, alleging that the petitioner's right to conflict free counsel was violated (count one) and that he received ineffective assistance of trial counsel (count two). The respondent, Commissioner of Correction, denied the material allegations of the amended petition and asserted a special defense that count one of the petition was not ripe for adjudication, as the claim regarding the claim of waiver as to conflict free counsel was still pending and therefore not ripe for adjudication. In the alternative, the respondent alleged that once this court had adjudicated the waiver claim, the issue would be res judicata and barred from further litigation. The petitioner replied to the respondent's return, alleging that count one was ripe pursuant to the prudential ripeness doctrine, that he had suffered actual injury due to his trial counsel's conflict of interest, and that his claim was not contingent on this court's resolution of his direct appeal. Moreover, the petitioner alleged that even if this court concluded that count one

[6] Our Supreme Court certified two issues for appeal, but only the issue "(1) Did the Appellate Court properly determine that the trial court secured a valid waiver of the [petitioner's] constitutional right to conflict free representation"; *State* v. *Tilus*, supra, 317 Conn. 915; is relevant in this appeal. Our Supreme Court eventually dismissed the petitioner's appeal entirely. See *State* v. *Tilus*, supra, 323 Conn. 785.

required factual development, the claim was not barred by the doctrine of res judicata.

This court affirmed the petitioner's conviction on May 26, 2015, concluding in relevant part that Judge Devlin did not violate the petitioner's constitutional right to conflict free counsel by failing to secure a valid waiver of that right. Id., 460. Our Supreme Court granted certification to appeal. The parties appeared before the habeas court for trial on July 20 and 21, 2015. The habeas court asked the parties to brief the impact of the pending certified appeal on the petitioner's claim of conflict free counsel.

The habeas court issued a memorandum of decision on January 11, 2016, in which it concluded that the doctrine of prudential ripeness warranted dismissal of count one while the question of whether the petitioner validly had waived his right to conflict free representation was pending in our Supreme Court.[7] With respect to count two, the habeas court found that Skyers' representation was deficient in that he failed to timely and adequately investigate the charges against the petitioner. The court concluded, however, that the petitioner failed to prove that he was prejudiced by Skyers' deficient performance. See *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (to prevail, deficient performance must result in prejudice). The court dismissed without prejudice count one of the amended petition and denied the claims in count two.

On January 15, 2016, the petitioner filed a motion to reargue the habeas court's decision to dismiss count one on the ground of prudential ripeness. The habeas

[7] The habeas court reasoned that having our Supreme Court decide the certified claim of waiver "will increase the chance that the proper law is applied to the petitioner's claim . . . promote judicial economy by not having this court and the Appellate Court in the probable appeal from this court's decision address a claim that may turn out to be unnecessary, and the petitioner will not be harmed by a dismissal without prejudice."

court granted the motion to reargue, and the parties appeared before the court for further argument on February 23, 2016. As a consequence of the parties' arguments,[8] on May 9, 2016, the court issued an amended memorandum of decision in which it denied count one, after it concluded that the petitioner failed to prove that any potential conflict created by Skyers' having represented both the petitioner and Barjon was prejudicial to him.[9] Thereafter, the court granted the petitioner's petition for certification to appeal from the denial of his petition for a writ of habeas corpus. The petitioner appealed to this court. Additional facts will be set forth as needed.

I

The petitioner claims that his constitutional right to conflict free counsel, as provided by the sixth and fourteenth amendments to the United States constitution and article first, §§ 8 and 9, of the constitution of Connecticut, was violated by Skyers' having represented both the petitioner and Barjon prior to the petitioner's criminal trial. We disagree.

"The sixth amendment to the United States constitution as applied to the states through the fourteenth amendment, and article first, § 8, of the Connecticut constitution, guarantee to a criminal defendant the right to effective assistance of counsel. . . . Where a constitutional right to counsel exists, our [s]ixth [a]mendment cases hold that there is a correlative right to representation that is free from conflicts of interest." (Citations omitted; footnote omitted; internal quotation marks

[8] At the hearing on the motion to reargue, the petitioner conceded that any conflict before Judge Devlin could only be prospective. The habeas court concluded that the petitioner's prewaiver claim of conflict that affected Skyers' representation is outside the scope of any such waiver and was not addressed by this court and was not before our Supreme Court.

[9] The habeas court did not amend its decision with respect to count two, in which the petitioner alleged the ineffective assistance of trial counsel.

omitted.) *State* v. *Crespo*, 246 Conn. 665, 685, 718 A.2d 925 (1998), cert. denied, 525 U.S. 1125, 119 S. Ct. 911, 142 L. Ed. 2d 909 (1999).

Conflicts of interest usually arise when counsel undertakes to represent multiple codefendants "where the attorney adduces evidence or advances arguments on behalf of one defendant that are damaging to the interests of the other defendant." (Internal quotation marks omitted.) *State* v. *Cruz*, 41 Conn. App. 809, 812, 678 A.2d 506, cert. denied, 239 Conn. 908, 682 A.2d 1008 (1996). "A conflict of interest also arises if trial counsel simultaneously represents the defendant and another individual associated with the incident and that representation inhibits counsel's ability to represent the defendant." Id.

"Whether the circumstances of pretrial counsel's representation, as found by the habeas court, amount to an actual conflict of interest is a question of law of which our review is plenary." *Shefelbine* v. *Commissioner of Correction*, 150 Conn. App. 182, 193, 90 A.3d 987 (2014).

In count one of his amended petition for a writ of habeas corpus, the petitioner alleged, in relevant part, that Skyers simultaneously represented Barjon and him for approximately ten months between January, 2012, and October, 2012. The charges against the petitioner and Barjon arose from a single incident in which they allegedly were both involved, and therefore the petitioner's case and Barjon's case were factually related. The petitioner also alleged that Skyers had an actual conflict of interest that adversely affected his representation of the petitioner because Skyers made no attempt to negotiate a plea offer that would have allowed the petitioner to receive a favorable sentence in his case in exchange for his testifying against Barjon. At the hearing on his motion to reargue, the petitioner emphasized

that his claim centered on how Skyers' alleged conflict of interest negatively impeded his ability to negotiate a plea agreement in exchange for a favorable disposition of the charges against him.[10]

The habeas court found the following facts relevant to the adjudication of the petitioner's claim. From his first meeting with Skyers through his criminal trial, the petitioner's version of the events that took place on December 28, 2011, remained unchanged. The petitioner told Skyers that he knew Barjon and merely agreed to take a ride with Barjon, who was driving the other two men to the train station in New Haven. He did not know the other men in the car when Barjon picked him up. Instead of going to the train station, Barjon drove to Aldof's store and parked. The petitioner and Barjon remained in Barjon's car when Jean-Philippe got out of the car and went into the store. The petitioner did not know of a plan to rob the store or Aldof. The petitioner stated to Skyers that Barjon would corroborate his version of the events and was willing to sign a statement consistent with what the petitioner had told Skyers.

Two or three weeks after the petitioner had retained him, Skyers met with Barjon, who confirmed the petitioner's version of events. Skyers believed that both the petitioner and Barjon were in the same position and agreed to represent Barjon as well. Although he intended to have the petitioner and Barjon sign waivers of any potential conflicts, he failed to do so. The petitioner and Barjon knew that Skyers was representing them simultaneously.

[10] We note that a plea agreement between a defendant and the state is not binding on the judicial authority that sentences a defendant who has pleaded guilty pursuant to a negotiated plea agreement. See, e.g., *Alexander* v. *Commissioner of Correction*, 103 Conn. App. 629, 638, 930 A.2d 58, cert. denied, 284 Conn. 939, 937 A.2d 695 (2007); *State* v. *McCulloch*, 24 Conn. App. 146, 148, 585 A.2d 1271 (1991).

Before the petitioner's case went to trial, Barjon agreed to plead guilty under the *Alford* doctrine. See footnote 4 of this opinion. Although he disputed the state's version of his involvement in the underlying crime, Barjon was willing to accept legal responsibility for his part in the robbery and to testify at the petitioner's trial that the petitioner was not involved in the robbery. When it came time for Barjon to enter his guilty plea, however, he changed his mind. Skyers withdrew from representing Barjon. Judge Devlin then canvassed the petitioner about the fact that Skyers may have a conflict in representing him at trial because he could not be adverse to Barjon either in questioning or by using confidential information Skyers had received from Barjon.

"In a case of a claimed conflict of interest . . . in order to establish a violation of the sixth amendment the defendant has a two-pronged task. He must establish (1) that counsel actively represented conflicting interests and (2) that an *actual conflict of interest* adversely affected his lawyer's performance. . . . Where there is an actual conflict of interest, prejudice is presumed because counsel [has] breach[ed] the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. . . . Accordingly, an ineffectiveness claim predicated on an actual conflict of interest is unlike other ineffectiveness claims in that the petitioner need not establish actual prejudice. . . .

"*An actual conflict of interest is more than a theoretical conflict.* The United States Supreme Court has cautioned that the possibility of conflict is insufficient to impugn a criminal conviction. . . . A conflict is merely a potential conflict of interest if the interests of the defendant may place the attorney under inconsistent duties at some time in the future. . . . To demonstrate

an actual conflict of interest, the petitioner must be able to *point to specific instances in the record which suggest impairment or compromise of his interests for the benefit of another party*. . . . A mere theoretical division of loyalties is not enough. . . . If a petitioner fails to meet that standard, for example, where only a potential conflict of interest has been established, prejudice will not be presumed and the familiar *Strickland* prongs will apply." (Citations omitted; emphasis altered; internal quotation marks omitted.) *Anderson* v. *Commissioner of Correction*, 127 Conn. App. 538, 549–50, 15 A.3d 658 (2011), aff'd, 308 Conn. 456, 64 A.3d 325 (2013).

In the present case, the habeas court determined that there was no actual conflict of interest between the petitioner and Barjon.[11] The court found that both Barjon and the petitioner told Skyers the same version of events, i.e., that they remained in the car and did not go into the store, and that they had nothing to do with the robbery. The court also found that there was no evidence that the petitioner ever said or did anything to suggest that he had information that would implicate Barjon, which might be used to secure a favorable plea deal from the state. The court found it ironic that it was Barjon who agreed to implicate himself and to plead guilty so that he could then testify in support of the petitioner's defense. Even at the time of his unsuccessful *Alford* plea, Barjon insisted that he and the petitioner never went into the store, but remained in the car. Before Skyers withdrew from representing Barjon, he had negotiated a plea for Barjon that would have required him to plead guilty to one count of conspiracy to commit robbery in the first degree, and after

[11] We are mindful that the right to be represented by counsel of one's choosing is a constitutional right. See *Powell* v. *Alabama*, 287 U.S. 45, 53, 53 S. Ct. 55, 77 L. Ed. 158 (1932); *State* v. *Peeler*, 265 Conn. 460, 470, 828 A.2d 1216 (2003), cert. denied, 541 U.S. 1029, 124 S. Ct. 2094, 158 L. Ed. 2d 710 (2004).

pleading guilty, to assist in the petitioner's defense. There was no impairment or compromise of the petitioner's interests for the benefit of Barjon or any of the other codefendants.

The habeas court found that the petitioner had failed to prove a single, specific instance in which Skyers' representation of him was compromised by the alleged conflict. The petitioner's hypotheses of what might have happened in plea negotiations had Skyers not also represented Barjon are theoretical and speculative. At most, the petitioner demonstrated that Skyers had a potential conflict of interest and, therefore, the petitioner had to meet both prongs of *Strickland* to prevail. "To prevail on a claim of ineffective assistance of counsel, a habeas petitioner generally must show that counsel's performance was deficient and that the deficient performance prejudiced the defense. See *Strickland* v. *Washington*, [supra, 466 U.S. 687]." *Ortiz* v. *Commissioner of Correction*, 92 Conn. App. 242, 244, 884 A.2d 441, cert. denied, 276 Conn. 931, 889 A.2d 817 (2005).

The habeas court did not address the performance prong of *Strickland* because the petitioner failed to prove any prejudice due to a potential conflict of interest. The court found no evidence that the petitioner was ever interested in a plea agreement. Moreover, the evidence established that it is likely that the state would have seen little value in any cooperation from the petitioner. Aldof told the police, and later testified, that four men entered the store and participated in the robbery. He specifically identified the petitioner, whom he knew, as being in the store and part of the robbery. The petitioner's version of events, in which he remained in the car while Jean-Philippe went into the store, was inconsistent with Aldof's version, and would have been of little use to the state in a trial against Barjon. The only testimony that the petitioner could have given that would have been of use to the state was testimony

that corroborated Aldof's, but the petitioner was never willing to incriminate himself. The court also found that the petitioner's story of events never changed from when he was arrested, to his criminal trial, to his habeas trial. There was no evidence that the petitioner knew anything that Skyers could have used to negotiate a favorable plea agreement for him. The habeas court, therefore, concluded that the petitioner failed to prove that any potential conflict created by Skyers' joint representation of the petitioner and Barjon prejudiced him.[12]

On the basis of our review of the briefs of the parties and their oral arguments in this court, we conclude that the habeas court properly determined, in a detailed and well reasoned decision, that no actual conflict of interest between the petitioner and Barjon existed and that the petitioner had failed to prove that he was prejudiced by any potential conflict created by Skyers' joint representation of him and Barjon.

II

The petitioner's second claim is that the habeas court improperly determined that his constitutional right to

[12] The habeas court's revised memorandum of decision contains the following footnote. "[S]ubsequent to [the] original memorandum of decision, but prior to this revised memorandum of decision, the Appellate Court released its decision in another of the codefendant's direct appeals. See *State* v. *Louis*, 163 Conn. App. 55, [134 A.3d 648, cert. denied, 320 Conn. 929, 133 A.3d 461] (2016). The facts as found by the jury in that trial, conducted subsequent to the petitioner's and in which Jean Louis and Barjon were tried together, are consistent with those from the petitioner's jury trial. . . . Louis' theory of defense was that he was merely present at the time of the robbery and that [Adolf's] testimony was not believable. Barjon also claimed that he merely was present at the time of the robbery, that [Adolf] was not credible, and that Jean-Philippe acted alone in order to collect an unpaid debt from [Adolf], who allegedly ran an illegal lottery from the market. . . . The Appellate Court in a footnote noted that [t]he jury found Barjon guilty of all four charges against him. In a separate trial, a jury found [the petitioner] guilty of robbery in the first degree. . . . Prior to [Louis'] trial, Jean-Philippe pleaded guilty to both robbery in the first degree and conspiracy to commit robbery in the first degree." (Citations omitted; internal quotation marks omitted.)

the effective assistance of counsel pursuant to the sixth and fourteenth amendments to the federal constitution and article first, §§ 8 and 9 of the constitution of Connecticut, was not violated. We do not agree.

"In a habeas appeal, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, but our review of whether the facts as found by the habeas court constituted a violation of the petitioner's constitutional right to effective assistance of counsel is plenary. . . . To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*, [supra, 466 U.S. 687]." (Citation omitted; internal quotation marks omitted.) *Mukhtaar* v. *Commissioner of Correction*, 158 Conn. App. 431, 437, 119 A.3d 607 (2015). "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the [petitioner] must overcome the presumption that, under the circumstances, the challenged action must be considered sound trial strategy." (Internal quotation marks omitted.) Id., 438.

In his amended petition for a writ of habeas corpus, the petitioner alleged ten ways in which Skyers' representation was deficient. The habeas court, however, found that the petitioner abandoned five of them by failing to brief them and by presenting little or no evidence as to them.[13] Consequently, the habeas court addressed only the claims alleging that Skyers' representation was deficient in that he failed to conduct

[13] The habeas court found that the petitioner abandoned his claims that Skyers failed to cross-examine or otherwise challenge adequately Aldof's testimony, failed to cross-examine or otherwise challenge adequately Tavares' testimony, failed to obtain and present exculpatory video surveillance evidence, prepared a defense that relied on the testimony of a witness who would invoke his right not to testify; and, during sentencing, failed to inform the trial court of the sentence imposed on a codefendant who was more culpable than the petitioner.

an adequate and timely investigation, failed to present evidence that a firearm recovered near the scene of the robbery was not connected to the petitioner and his codefendants, failed to present evidence that the amount of money recovered from the petitioner and his codefendants was inconsistent with the amount of money alleged to have been taken,[14] presented the testimony of Jean-Philippe, which he knew, or should have known, would be damaging to the petitioner's defense, and failed to present the testimony of Margarita Azcalt. The habeas court grouped the petitioner's claims for purposes of analysis.

The petitioner alleged that Skyers' representation was deficient because he failed to conduct a timely investigation, which resulted in Skyers' (1) failing to have Azcalt testify for the defense and (2) having Jean-Philippe testify for the defense. The court agreed that Skyers' representation was deficient for failing to conduct a timely investigation, but that the petitioner was not prejudiced by Skyers' deficient performance.

A

The habeas court made the following additional findings of fact. The petitioner was arrested on or about December 28, 2011, and after posting bond, met with Skyers on or about December 31, 2011. The petitioner then spoke with Barjon, a friend and codefendant, who was willing to speak with Skyers and provide a supporting statement for the petitioner. As discussed previously, Skyers also undertook to represent Barjon. On the basis of what the petitioner and Barjon told him, Skyers viewed their defenses as the same and not to be in conflict. In part because Barjon was willing to give a statement on the petitioner's behalf, Skyers negotiated a plea arrangement for Barjon. When Barjon and

[14] The petitioner abandoned this claim on appeal.

Skyers appeared before Judge Devlin, Barjon's plea canvass failed and his case was placed on the trial list. Skyers withdrew as Barjon's counsel, and Barjon obtained different counsel. Contrary to their original plan, Barjon exercised his right under the fifth amendment and would not testify at the petitioner's trial.

Jury selection in the petitioner's criminal case was to begin in early October, 2012. Skyers only began to discuss the defense investigation with Joseph Marchio, then with JBM Private Investigations and Security, LLC (JBM firm), during jury selection. By October 4, 2012, six jurors and a number of alternates had been selected for the petitioner's case. Judge Kavanewsky advised Skyers that he should be prepared to present defense witnesses at 10 a.m. on October 17, 2012, and the matter was continued to October 16, 2012, for the presentation of the state's case.

On October 10, 2012, Skyers hired the JBM firm to investigate the petitioner's case. Julio Ortiz, an investigator with the JBM firm, prepared a memorandum detailing his investigation efforts from October 10 through October 18, 2012. Ortiz did not provide portions of his report to Skyers while he was conducting his investigation, but did provide Skyers with the entire report on October 18, 2012. The court found that by October 18, 2012, it was too late. The state had presented its case from October 16, 2012, into the next day, and Skyers presented defense witnesses from October 17, 2012, into the next day. Both the state and Skyers had rested and presented their closing arguments on October 18, 2012, before Skyers ever saw Ortiz' report.

Skyers' focus for both the petitioner and Barjon was the pretrial phase, which included efforts to resolve both of his clients' cases via plea agreement. His strategy was to have Barjon plead guilty and then testify on

behalf of the petitioner. That strategy unraveled when Judge Devlin vacated Barjon's guilty plea, and Barjon obtained substitute counsel and declined to testify in support of the petitioner's defense. Although Skyers reviewed police reports, statements, and other related documents, and spoke to potential witnesses the petitioner identified, the court found no evidence that he conducted any other investigation prior to October 10, 2012.

According to Skyers, his practice with regard to pretrial investigations is case dependent. In some cases he waits to the onset of trial to begin investigating. The short notice that is given when a case is called for trial is a factor that affects the timing of an investigation. Other factors that affect his investigations are the severity of the criminal charges and the likelihood the matter will be settled by a plea agreement. In the petitioner's case, Skyers thought the investigation would be relatively simple. Although he thought it important to have the results of the investigation before he presented the petitioner's case, he did not receive the results of the investigation until after he had made his final argument. Aside from the jury's rendering its verdict, the trial was over.

The court found that because the petitioner and Barjon were in similar positions and their defenses were essentially identical, Skyers never considered that an investigation might uncover information that was helpful to one of his clients but not the other. He ignored that possibility despite the fact that the petitioner never indicated any interest in resolving the matter by way of a plea agreement. The petitioner intended to go to trial, which Skyers knew from the beginning of his representation of the petitioner. Nevertheless, Skyers acted as if his primary duty was to resolve the criminal case by means of a plea agreement because he thought that was in the petitioner's best interest.

The court was familiar with the standards applicable to claims that counsel rendered ineffective assistance for failing to conduct an adequate investigation. "[I]t is well established that [a] criminal defendant is constitutionally entitled to adequate and effective assistance of counsel at all critical stages of criminal proceedings." (Internal quotation marks omitted.) *Gaines* v. *Commissioner of Correction*, 306 Conn. 664, 677, 51 A.3d 948 (2012), quoting *Strickland* v. *Washington*, supra, 466 U.S. 686. "To establish ineffective assistance of counsel under the *Strickland* standard, the claim must be supported by evidence establishing that (1) counsel's representation fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defense because there was a reasonable probability that the outcome of the proceedings would have been different had it not been for the deficient performance." (Internal quotation marks omitted.) *Taft* v. *Commissioner of Correction*, 159 Conn. App. 537, 544, 124 A.3d 1, cert. denied, 320 Conn. 910, 128 A.3d 954 (2015).

"Inadequate pretrial investigation can amount to deficient performance, satisfying prong one of *Strickland*, as [c]onstitutionally adequate assistance of counsel includes competent pretrial investigation. . . . Although [courts] acknowledge that counsel need not track down each and every lead or personally investigate every evidentiary possibility before choosing a defense and developing it . . . [e]ffective assistance of counsel imposes an obligation [on] the attorney to investigate all surrounding circumstances of the case and to explore all avenues that may potentially lead to facts relevant to the defense of the case. . . . In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision to make particular investigations unnecessary." (Citations omitted; internal quotation marks omitted.) Id., 546–47.

The habeas court applied the foregoing factors to the petitioner's claims against Skyers for failing to timely and adequately investigate the petitioner's case, and concluded that Skyers' representation was deficient. From the outset, the petitioner claimed that he was innocent and that he wanted to go to trial. Although such a claim of innocence could eventually result in a guilty plea, a reasonably competent criminal defense attorney would have conducted an investigation into the defense well before trial. The benefit of an investigation could have been used in attorney-client discussions, plea negotiations, and trial preparation. Had Skyers investigated earlier, he may have garnered information that the petitioner's and Barjon's defenses were not as aligned as he initially thought. The same duty that Skyers thought obligated him to pursue plea negotiations should also have compelled him to investigate the matter earlier in his representation of the petitioner. The court found no reasonable strategic reason for Skyers to have delayed investigating and no reasonable decision that made the investigation unnecessary. The court, therefore, found that the petitioner had met the first prong of *Strickland*.

B

The court then analyzed the second, or prejudice, prong of *Strickland*. The petitioner alleged that he was prejudiced because Skyers (1) did not call Azcalt to testify at the criminal trial and (2) presented damaging testimony from Jean-Philippe. The court found, however, that the petitioner failed to demonstrate that he was prejudiced by Skyers' alleged deficient performance. "To prove prejudice, a petitioner must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland* v. *Washington*, supra, 466 U.S.

694. In a habeas corpus proceeding, the petitioner's burden of proving that a fundamental unfairness had been done is not met by speculation . . . but by demonstrable realities." (Internal quotation marks omitted.) *Taft* v. *Commissioner of Correction*, supra, 159 Conn. App. 553–54.

1

The petitioner claims that he was prejudiced by Skyers' failure to call Azcalt as a witness for the defense. We agree with the habeas court that the failure to call Azcalt did not undermine the jury's verdict.

The court found the following facts. Azcalt was working in the laundromat where Aldof ran when he left the store and she saw him bar the door to the man who was chasing him. As to his investigation, Ortiz met with Azcalt at 7 p.m., on October 18, 2012, while the jury was deliberating, and stated that she was working in the laundromat and monitoring the surveillance camera. She noticed Aldof walking on the sidewalk when he ran into the laundromat and held the door shut to prevent a single black man from entering. Aldof asked her to call the police because he was being robbed. Azcalt only saw one man trying to get into the laundromat and did not see a weapon. Azcalt did not testify at the habeas corpus proceeding, and therefore the only evidence the petitioner presented of what she may have testified to was in Ortiz' summary.

Azcalt's statement to Ortiz was consistent with Aldof's testimony that he fled to the laundromat and held the door closed to prevent one man from entering. Notably, Aldof did *not* testify that the four men in the store followed him. Santora testified that she saw only one man fleeing on foot when Aldof flagged her down. Azcalt's testimony, therefore, would not have undermined Aldof's testimony about what happened in the

store, a place she had never been. Skyers was concerned, however, about the statement Azcalt gave to the police in which she stated that she saw three men outside the laundromat, which conflicted with the petitioner's and Barjon's version of events that they remained in the car. The court concluded that even if Skyers had called Azcalt to testify at the criminal trial, and she testified in accord with the statement she gave Ortiz, she would not have undermined Aldof's testimony regarding the events that took place in his store. The court therefore concluded that the petitioner failed to prove prejudice. Having undertaken a plenary review of the petitioner's claim, we agree with the court's well reasoned analysis.

2

The petitioner also claims that the habeas court improperly concluded that he was not prejudiced by Skyers' calling Jean-Philippe as a defense witness at trial. We disagree.

The court found that Skyers was obtaining authorization for Ortiz to interview Jean-Philippe on October 12, 2012. Ortiz met with Jean-Philippe on October 15, 2012, at which time Jean-Philippe gave him a written statement. In his statement, Jean-Philippe stated that he entered the store alone and unarmed to collect money he had won on a bet. On October 17, 2012, Jean-Philippe testified at the petitioner's criminal trial that he got out of the car alone and went into the store to collect his winnings, and that the petitioner remained in the car, which was consistent with the petitioner's version of events. The damaging part of Jean-Philippe's testimony occurred on cross-examination when he testified that he was from New Jersey and that he had a criminal record.[15] The court found that the petitioner exaggerated the harm he attributes to Jean-Philippe's testimony. The jury obviously credited Aldof's version of

[15] The state presented evidence that the firearm that was recovered near the scene was connected to an earlier crime in New Jersey. The statement

the robbery that four men entered his store and that he identified the petitioner, whom he knew, as one of those men.

The court found that Jean-Philippe's testimony did not undermine its confidence in the outcome of the criminal trial. It therefore concluded that the petitioner had failed to demonstrate that he had been prejudiced by Jean-Philippe's testifying as a result of the untimely investigation Skyers initiated. The petitioner therefore failed to meet the second prong of *Strickland*. We have reviewed the record, including Jean-Philippe's statement and his testimony at the petitioner's criminal trial, and agree with the habeas court's conclusion. Although Jean-Philippe testified on cross-examination that he was from New Jersey and that he had a criminal record, which was not helpful to the petitioner,[16] he testified that he alone entered the store, which was consistent with the petitioner's version of events. Counsel was faced with a difficult problem given Aldof's testimony that he recognized the petitioner as one of the four men who entered the store. We agree with the habeas court that the petitioner was not prejudiced by Skyers presenting Jean-Philippe's testimony because he knew or should have known it would have been damaging to the petitioner. Jean-Philippe testified in accordance with the petitioner's theory of the crime.

The judgment is affirmed.

In this opinion the other judges concurred.

Ortiz obtained did not indicate that Jean-Philippe was from New Jersey or that he had a criminal history.

[16] The petitioner also claims that Jean-Philippe's testimony was harmful because it disclosed that the firearm was traced to New Jersey. That evidence, however, was presented in the state's case-in-chief. "A nine millimeter pistol was discovered on the ground in the vicinity of the trash cans where Santora had apprehended the fleeing suspect. The pistol was taken into evidence and later sent to the firearm and toll mark division of the state forensic science laboratory for testing and analysis. The pistol was examined, test fired and found to be operable. A search of a national database revealed that the pistol had been used in a recent incident in New Jersey." *State* v. *Tilus*, supra, 157 Conn. App. 457–58.

TOWN OF STRATFORD *v.* WAYNE N. LEBLANC ET AL. (AC 39179)

Lavine, Alvord and Beach, Js.

Syllabus

The plaintiff town brought two actions seeking to foreclose municipal tax liens on two parcels of real property owned by the defendant L. After L was defaulted for failure to appear in both actions, the trial court granted in part the town's motions for judgments of strict foreclosure and rendered judgments of foreclosure by sale. Thereafter, L filed an appearance in both actions and motions to open the judgments, claiming, inter alia, that he did not remember receiving service of process. The trial court effectively denied the motions to open, but extended the sale date, and L appealed to this court, claiming that the trial court improperly failed to open the judgments on the merits. Specifically, L claimed, as required by the statute (§ 52-212 [a]) governing the opening of a judgment rendered on a default, both that a good defense existed at the time that the judgments were rendered, and that he was prevented by mistake, accident or other reasonable cause from presenting a defense because his business records had been destroyed by a fire, which affected his ability to gather records necessary to file appearances, and because he was under the mistaken belief that the town had abandoned the foreclosure actions. *Held* that the trial court did not abuse its discretion in denying the motions to open, L having failed to provide the court with any sufficient reason for not filing appearances until years after the entry of the defaults; the court reasonably could have found that L's failure to appear in the actions until two months after the judgments were rendered resulted from his own negligence, not as a result of accident, mistake or other reasonable cause, as L did not file his appearances until more than four years after a fire destroyed his business records, the fire did not occur until approximately five months after service and after the defaults had entered, and, thus, the court reasonably could have concluded that even if L had been under the impression that the town was not pursuing the foreclosure actions during a period of time after the defaults had entered, L did not have reasonable cause to fail to file appearances prior to the defaults; moreover, this court having concluded that L failed to demonstrate that he was prevented by mistake, accident or other reasonable cause from presenting a defense, it was not necessary to address his claim that a good defense existed at the time that the judgments were rendered, as a party seeking to open a default judgment must make both required showings pursuant to § 52-212 (a), and the failure to satisfy either requirement is fatal to a motion to open.

Argued March 8—officially released August 8, 2017

Procedural History

Actions to foreclose municipal tax liens on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the named defendant et al. were defaulted; thereafter, the court, *Hon. Alfred J. Jennings*, judge trial referee, granted the plaintiff's motions for judgments of strict foreclosure and rendered judgments of foreclosure by sale; subsequently, the court, *Hon. William B. Rush*, judge trial referee, denied the named defendant's motions to open the judgments and rendered judgments of foreclosure by sale; thereafter, the court, *Hon. William B. Rush*, judge trial referee, denied the named defendant's motions for alteration or clarification, and the named defendant appealed to this court. *Affirmed.*

Steven A. Colarossi, for the appellant (named defendant).

Richard C. Buturla, for the appellee (plaintiff).

Opinion

BEACH, J. The defendant, Wayne N. LeBlanc,[1] appeals from the judgments of the trial court denying his motions to open the judgments of foreclosure by sale. He claims that the court erred in denying the relief sought in his motions to open. We affirm the judgments of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. In July, 2011, the plaintiff, the town of Stratford, commenced a municipal tax lien foreclosure action against the defendant in an effort to collect payment of outstanding real estate

[1] Nicholas Kramer, Jr., Gerald DiFlorio, Fairfield County Bank, Southport Secured Lending Fund, LLC, Estate and Heirs of Nicholas J. Kramer, Jr., were also named as defendants in the foreclosure actions. Because LeBlanc filed the present appeal, we will refer to LeBlanc only as the defendant.

taxes levied on the defendant's property on Sunset Avenue in Stratford. The plaintiff also brought a municipal tax lien foreclosure action against the defendant, seeking to collect outstanding real estate taxes and sewer use charges for the defendant's property on Old South Avenue in Stratford. The actions have similar procedural histories. In both actions, the marshal's returns of service, dated July 19, 2011, indicated that she had served the defendant in hand.

On November 8, 2011, the plaintiff filed motions for default for failure to appear against the defendant in the foreclosure actions. The court granted the motions on November 23, 2011. On November 19, 2015, the plaintiff filed motions for judgments of strict foreclosure, stating a tax arrearage of $43,538.02 on the Sunset Avenue property and $82,581.73 on the Old South Avenue property. On November 25, 2015, Southport Secured Lending Fund, LLC, another defendant in the actions; see footnote 1 of this opinion; moved for judgments of foreclosure by sale instead of judgments of strict foreclosure. On December 7, 2015, the court rendered judgments of foreclosure by sale with a sale date of March 5, 2016.

In February, 2016, the defendant filed an appearance in both actions. The defendant filed motions to open the judgments in February, 2016. In the defendant's motions to open, he stated that, although he did not dispute that the foreclosure actions were commenced in 2011, he did not remember receiving service of process. He further stated in his motions to open that he operated a salvage yard under the name Kramer's Recycling Used Auto Parts & Auto Body, Inc. (Kramer's), on two contiguous parcels in Stratford, one of which is the Sunset Avenue property, and that a fire occurred at Kramer's some time after November 23, 2011. He further stated in his motions to open that an escrow agreement had been entered into between him,

the plaintiff, and other parties, in October, 2013, wherein the defendant would pay, from the insurance proceeds received as a result of the fire, $40,000 to the plaintiff for past taxes due. The escrow agreement that was attached to the motions to open specified that "[t]he payments to each party are not intended to represent a complete satisfaction of debts owed to each party . . . ." The defendant and his counsel both filed affidavits in support of the motions to open in which they attested to the occurrence of the fire, and the defendant's affidavit further specified that the fire occurred in December, 2011.

On March 1, 2016, the court held a hearing on the motions to open. The court stated at the hearing that it denied the motions to open,[2] but it extended the sale date to May 7, 2016. This appeal followed.[3]

The defendant claims that the court erred in denying the relief sought in his motions to open, which was the opening of the judgments on the merits.[4] He argues that

[2] The case detail portion of the electronic record in these cases indicates that the motions to open were granted and that a new sale date was ordered. The court stated at the March 1, 2016 hearing on the motions to open that it was not granting the relief sought in the motions to open, but was extending the sale date to help the defendant to "work out all these other problems." The court effectively denied the motions to open for the purpose of revisiting the merits of the actions and, thus, we will treat the court's ruling on the motions as a denial.

[3] The plaintiff argues that the defendant's appeal is untimely because he filed the appeal more than twenty days following the notice of the judgments from which he appealed. See Practice Book § 63-1 (a) ("an appeal must be filed within twenty days of the date notice of the judgment or decision is given"). Because the plaintiff failed to file a motion to dismiss the appeal as untimely within ten days of the defendant's filing of the appeal, as required by Practice Book § 66-8, the plaintiff waived its ability to seek dismissal of the appeal as untimely. See *Connecticut Commercial Lenders, LLC* v. *Teague*, 105 Conn. App. 806, 809, 940 A.2d 831 (2008).

[4] The defendant also contends that the trial court lacked in rem jurisdiction over the properties because the plaintiff was unable to prove the element of its tax foreclosure actions in Practice Book § 10-70 (a) (4) as a result of his $40,000 payment to the plaintiff in 2013. Section 10-70 (a) (4) provides that a plaintiff seeking to foreclose a tax lien must allege and prove that

the first statutory requirement of General Statutes § 52-212 (a)[5] was satisfied because a good defense existed at the time that the judgments were rendered. He further contends that the second statutory requirement was satisfied because he was prevented by "mistake, accident or other reasonable cause" from presenting a defense due to (1) the fact that he had little time to gather records necessary to file appearances before a fire destroyed his business records and (2) a mistaken belief that the plaintiff had abandoned the foreclosure actions as a result of having accepted $40,000 and engaging in ongoing discussions with the defendant regarding payment terms.

"Pursuant to . . . § 52-212 (a), a trial court may set aside a default judgment within four months of the date it was rendered provided that the aggrieved party shows

no portion of the tax assessment in question has been paid. In the present case, insurance proceeds from the fire were placed in escrow for partial payment of taxes while the cases were pending in the trial court.

"If a court's jurisdiction is based on its authority over the defendant's person, the action and judgment are denominated 'in personam' and can impose a personal obligation on the defendant in favor of the plaintiff. If jurisdiction is based on the court's power over property within its territory, the action is called 'in rem' or 'quasi in rem.' The effect of a judgment in such a case is limited to the property that supports jurisdiction and does not impose a personal liability on the property owner, since he is not before the court." *Shaffer* v. *Heitner*, 433 U.S. 186, 199, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977). The defendant has not explained how the concept of in rem jurisdiction pertains to these actions, nor has he provided us with any authority, and we are not aware of any, stating that a trial court lacks jurisdiction if a question arises over whether the plaintiff can satisfy all the elements of a cause of action.

[5] General Statutes § 52-212 (a) provides: "Any judgment rendered or decree passed upon a default or nonsuit in the Superior Court may be set aside, within four months following the date on which it was rendered or passed, and the case reinstated on the docket, on such terms in respect to costs as the court deems reasonable, upon the complaint or written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of the judgment or the passage of the decree, and that the plaintiff or defendant was prevented by mistake, accident or other reasonable cause from prosecuting the action or making the defense."

reasonable cause or that a good cause of action or defense existed at the time the judgment was entered. The aggrieved party must additionally demonstrate that he was prevented by mistake, accident or other reasonable cause from prosecuting or defending the original action. General Statutes § 52-212 (a) . . . see also Practice Book § 17-43 (a).

"It is well established that the action of the trial court, in either granting or denying a motion to open a default judgment, lies within its sound discretion. A trial court's conclusions are not erroneous unless they violate law, logic, or reason or are inconsistent with the subordinate facts in the finding. . . . Once the trial court has refused to open a judgment, the action of the court will not be disturbed on appeal unless it has acted unreasonably and in clear abuse of its discretion." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Priest* v. *Edmonds*, 295 Conn. 132, 137, 989 A.2d 588 (2010).

We conclude that the court did not abuse its discretion. At the March 1, 2016 hearing on the motions to dismiss, the court extended the sale date and denied the motions to open. In the absence of a record showing the reasoning of the trial court, we presume that the court applied the law correctly; we read the record with an eye to support rather than to undermine the judgments. See *Blumenthal* v. *Kimber Mfg., Inc.*, 265 Conn. 1, 9, 826 A.2d 1088 (2003). The defendant did not provide the trial court with any sufficient reason for not filing appearances until years after the entry of the defaults. The court reasonably could have found that the defendant's failure to appear in the actions until approximately two months after the judgments were rendered resulted from his own negligence; therefore, he failed to satisfy the "accident, mistake or other reasonable cause" prong of § 52-212. The defendant stated in his affidavit in support of his motions to open that

the fire occurred in December, 2011. The defendant was served with notices of the foreclosure actions on July 19, 2011,[6] but failed to appear. On November 8, 2011, the plaintiff filed its motions for default against the defendant for failure to appear. On November 23, 2011, the court issued notices of default as to the defendant for failure to appear. The defendant did not file appearances in the actions until February, 2016. Although the fire and the alleged resulting loss of business records perhaps presented challenges in defending the foreclosure actions, the defendant failed to appear for more than four years after the fire, and the fire did not occur until approximately five months after service of process, and after the defaults had entered. The court reasonably could have concluded that even if the defendant may have been under the impression that the plaintiff was not pursuing the foreclosure actions during a period of time after the defaults entered, he did not have reasonable cause to fail to file appearances prior to the defaults.

"The burden of demonstrating reasonable cause for the nonappearance is on the defaulted party, and [t]he judgment should not ordinarily be opened if his failure to appear . . . resulted from his own negligence." (Internal quotation marks omitted.) *People's Bank* v. *Horesco*, 205 Conn. 319, 323, 533 A.2d 850 (1987). "A court should not open a default judgment in cases where the defendants admit they received actual notice and simply chose to ignore the court's authority. . . . Negligence of a party or his counsel is insufficient for purposes of § 52-212 to set aside a default judgment."

[6] The defendant stated in his affidavit in support of his motions to open: "I do not recall being served with the summons and complaint which started this action and the related tax foreclosure action. I understand that there is a return of service filed in this case and I have no reason to doubt the veracity of the state marshal who signed it." The marshal's returns of service were dated July 19, 2011, and they indicated that the defendant had been served in hand.

(Citations omitted.) *State* v. *Ritz Realty Corp.*, 63 Conn. App. 544, 548–49, 776 A.2d 1195 (2001). Because the failure to satisfy either prong of § 52-212 is fatal, and the defendant failed to satisfy the reasonable cause prong, we need not address the good defense prong. See *Weinstein & Wisser, P.C.* v. *Cornelius*, 151 Conn. App. 174, 180, 94 A.3d 700 (2014) (movant must satisfy both prongs of § 52-212; failure to meet either prong is fatal). Accordingly, we conclude that the court did not abuse its discretion in denying the defendant's motions to open.

The judgments are affirmed and the cases are remanded for the purpose of setting new sale dates.

In this opinion the other judges concurred.

TOWN OF STRATFORD *v.* HAWLEY ENTERPRISES, INC., ET AL.
(AC 38554)

Sheldon, Beach and Harper, Js.

Syllabus

The defendant I Co., which held a first mortgage on certain real property that was taken by eminent domain by the plaintiff town, appealed to this court from the judgment of the trial court awarding it damages for the taking. I Co. claimed that the trial court improperly determined that the town was entitled to recover back taxes owed to it on the parcel from the condemnation award. Specifically, I Co. claimed that the town was not entitled to recover the back taxes because it had failed to claim an interest in the condemnation award in the statement of compensation, as required by the statute (§ 8-129 [a] [3] and [b]) that requires a town to file a statement of compensation containing the names of all persons having an interest in the subject property, and to give notice to owners and holders of any mortgage, lien, assessment or other encumbrance on such property. *Held* that the trial court properly determined that the town was entitled to recover the back taxes from the condemnation award: the purpose of the notice provisions of § 8-129, which is to protect the interests of encumbrancers and landowners so that they may have an opportunity to be heard regarding the amount of the award, was satisfied, as the town, which filed the statement of compensation,

had notice of it and was present at the condemnation hearing, any lack of formal notice to the town did not prejudice I Co., as it did not specify any way in which it had been harmed by the statement of compensation, and, under the circumstances of the present case, there was no merit to I Co.'s claim that a condemnee may not properly know whether to file for judicial review of the statement of compensation unless the condemnee knows, by virtue of the names listed in the statement of compensation, whether any encumbrancers may claim a portion of the condemnation award, as judicial review was sought in the present case; moreover, I Co. failed to provide any authority precluding a trial court in a condemnation action from awarding compensation from the condemnation award to a town for back taxes, and it was not improper for the trial court to have cited foreclosure law, by analogy, for the purpose of determining the priority of the town's tax lien.

Argued February 8—officially released August 8, 2017

Procedural History

Notice of condemnation of certain real property owned by the named defendant, brought to the Superior Court in the judicial district of Fairfield, where the named defendant filed an application for the reassessment of damages; thereafter, IP Media Products, LLC, was substituted as a defendant; subsequently, the matter was tried to the court, *Hon. William B. Rush*, judge trial referee; judgment increasing the amount of compensation; thereafter, the court issued certain orders regarding the payment of back taxes on the property, and the substitute defendant appealed to this court. *Affirmed.*

John R. Bryk, for the appellant (substitute defendant).

Sean R. Plumb, for the appellee (plaintiff).

Opinion

BEACH. J. The defendant IP Media Products, LLC,[1] appeals from the judgment of the trial court awarding

[1] Other parties were named as defendants in this action and failed to file appearances. They include: Millionair Club, Inc.; City Streets, Inc.; Cell Phone Club, Inc.; Outlaw Boxing Kats, Inc.; Regensburger Enterprises, Inc.; Red Buff Rita, Inc.; Payphones Plus, LLC; 3044 Main, LLC; Albina Pires; Gus Curcio, Jr.; Robin Cummings; Joseph Regensburger; Faye Kish; Richard Urban; Dahill Donofrio; and Dominique Worth. Hawley Enterprises, Inc.,

damages to it for the taking of certain real property by the plaintiff, the town of Stratford (town). The defendant claims that the court erred in concluding that the town was entitled to recover back taxes from the condemnation award. We affirm the judgment of the trial court.

The following facts, as found by the court or apparent from the file, are relevant to our resolution of this appeal. The town took a 22.44 acre parcel in Stratford by eminent domain for use as open space. In October, 2014, pursuant to General Statutes § 8-129 (a) (3), the town filed an amended statement of compensation for the taking of the property, which set the value of the property at $247,500. The town deposited that sum with the clerk of the Superior Court. The defendant held the first mortgage on the property and the debt owed to it was approximately $360,000. It appeared in court in response to the notice of a condemnation hearing. By agreement of the parties, $190,000 was distributed to the defendant, and the remaining $57,500 was retained by the clerk's office.

Pursuant to General Statutes § 8-132 (a), the property owner[2] filed an appeal to the Superior Court and an application for review of the development condemnation award. Following an evidentiary hearing, the court issued a memorandum of decision on August 21, 2015. The court determined that the fair market value of the property was $330,000 and awarded interest at a rate of 2 percent per annum on the difference between the taking price of $247,500 and the evaluation by the court until the date of payment.

was also named in this action, but is not involved in this appeal. We will refer to IP Media Products, LLC, only as the defendant.

[2] The property owner, Hawley Enterprises, Inc. (Hawley), filed the application. Hawley and Dade Realty Company I, LLC, for which IP Media Products, LLC, was later substituted, were the only defendants to file appearances and present evidence at trial.

The property owner filed a motion to reargue in which it requested the court to address the issue of whether the town was entitled to recover back taxes owed on the parcel from the condemnation award. In a memorandum of decision entitled "Priority of Funds on Deposit in the Clerk's Office," the court determined that the debt owed to the defendant exceeded the amount deposited with the clerk's office. The town, however, had claimed that the amount of $53,988.46 should be withheld from the amount paid to the defendant and should instead be remitted to the town for payment of unpaid taxes on the property. The defendant claimed that it was entitled to all of the funds deposited with the clerk's office. The court concluded that the town was entitled to receive for payment of back taxes the amount of $53,988.46 from the condemnation award. This appeal followed.

The defendant claims that the court erred in concluding that the town was entitled to recover back taxes from the condemnation award. The defendant advances several arguments in support of his claim, none of which persuades us.

First, the defendant argues that the town was not entitled to recover back taxes because the town failed to claim an interest in the condemnation award in the statement of compensation as required by § 8-129 (a) (3), which provides that the town shall file with the clerk of the Superior Court a statement of compensation containing "the names of all persons having a record interest therein"; and by § 8-129 (b), which provides that upon the filing of its statement of compensation, the town shall "give notice . . . to each person appearing of record as an owner of property affected thereby and to each person appearing of record as a holder of any mortgage, lien, assessment or other encumbrance on such property or interest therein."

"Statutory interpretation presents a question of law for the court. . . . Our review is, therefore, plenary." (Internal quotation marks omitted.) *Atlantic Mortgage & Investment Corp.* v. *Stephenson*, 86 Conn. App. 126, 131–32, 860 A.2d 751 (2004).

A basic tenet of statutory construction is that "[s]tatutes must be interpreted to give meaning to their plain language and to provide a unified body of law." (Internal quotation marks omitted.) *Reid & Riege, P.C.* v. *Bulakites*, 132 Conn. App. 209, 213, 31 A.3d 406 (2011), cert. denied, 303 Conn. 926, 35 A.3d 1076 (2012).

The purpose of the notice provisions of § 8-129 is to protect the interests of encumbrancers and landowners so that they may have an opportunity to be heard regarding the amount of the condemnation award. See *Palo* v. *Rogers*, 116 Conn. 601, 604–605, 165 A. 803 (1933). "The single objective of an eminent domain proceeding is to ensure that the property owner shall receive, and that the state shall only be required to pay, the just compensation which the fundamental law promises the owner for the property which the state has seen fit to take for public use." (Internal quotation marks omitted.) *Russo* v. *East Hartford*, 4 Conn. App. 271, 274, 493 A.2d 914 (1985).[3]

The purpose of the notice provisions of § 8-129 was satisfied here.[4] The town, of course, knew of the filing of the statement of compensation by virtue of the fact that the town itself had filed it, and the town was present

[3] The priorities of the parties may be determined by motion to the Superior Court pursuant to General Statutes § 8-132a (a).

[4] The defendant's reliance on *New Haven Redevelopment Agency* v. *Estate of Costello*, 1 Conn. App. 20, 467 A.2d 924 (1983), is misplaced. There, the city of New Haven specified in its statement of compensation that the property was subject to taxes in its favor. That fact does not necessarily mean that the converse is true, that a municipality is precluded from recovering back taxes if it does not include itself in the notice. This court did not address that issue in *New Haven Redevelopment Agency*.

at the condemnation hearing. Further, in *Palo* v. *Rogers*, supra, 116 Conn. 605, our Supreme Court, interpreting a predecessor statute to the current § 8-129, held that lack of notice of the condemnation effectively could be waived by a party entitled to such notice.

Critically, any lack of formal notice to the town did not prejudice the defendant. At oral argument before this court, the defendant was unable to specify any way in which it had been harmed by the statement of compensation. The defendant posited that a condemnee may not properly know whether to file for judicial review of the statement of compensation pursuant to § 8-132 unless that condemnee knows, by virtue of the names listed in the statement of compensation, whether any encumbrancers may claim a portion of the condemnation award. Even if there were some conceivable merit to that position in another set of circumstances, there is no merit on the facts of this case, in which judicial review was sought.[5]

The defendant claims as well that the court erred in awarding the town back taxes in the absence of statutory authority or case law specifically permitting such recovery. Municipal real property tax liens have absolute priority over "all transfers and encumbrances in any manner affecting such interest in such item, or any

[5] The defendant also argues that it, rather than the town, filed the application for payment of moneys deposited pursuant to § 8-132a, and therefore the town cannot recover back taxes from the condemnation award. Section 8-132a does not impose such a requirement. It provides that upon motion, the trial court may decide the equity owed to each claimant. The trial court here performed that task. See General Statutes § 8-132a (a) ("[a]ny person making application for payment of moneys deposited in court . . . or claiming an interest in the compensation . . . may make a motion to the superior court . . . for a determination of the equity of the parties having an interest in such moneys").

The defendant argues as well, on general principle, that condemnation ought not be sanctioned unless there is perfect compliance with every statutory requirement, whether or not the alleged shortcoming has any effect in a particular factual situation. There is no authority for this proposition.

part of it." General Statutes § 12-172. The defendant has not directed us to any authority, nor are we aware of any, that precludes the court in a condemnation action from awarding compensation from the condemnation proceeds to a town for back taxes. We conclude that the court properly awarded the town back taxes from the condemnation award.

The defendant finally claims that the court erred in applying foreclosure law when concluding that the town was entitled to recover back taxes from the condemnation award. The court cited foreclosure law, plainly by analogy, for the purpose of determining the priority of the town's tax lien. It was not improper for the court to do so. "[T]he trial court is presumed to have applied the law correctly"; (internal quotation marks omitted) *Blumenthal* v. *Kimber Mfg., Inc.*, 265 Conn. 1, 9, 826 A.2d 1088 (2003); and the defendant has not shown otherwise.

The judgment is affirmed.

In this opinion the other judges concurred.

RICHARD BUEHLER *v.* LILACH BUEHLER
(AC 38740)

Alvord, Prescott and Mullins, Js.

Syllabus

The defendant, whose marriage to the plaintiff previously had been dissolved, appealed to this court from the postjudgment order of the trial court denying in part her motion to hold the plaintiff in contempt. The trial court reasoned that the defendant failed to prove by clear and convincing evidence that the plaintiff had wilfully and intentionally violated a clear and unambiguous order regarding payment for their minor children's extracurricular activities. On appeal, the defendant claimed that the trial court, in denying in part the contempt motion, improperly determined that the extracurricular expenses were unreasonable under the facts and circumstances of the case because there had been no meaningful discussion between the parties prior to the incurrence of

those costs. *Held* that the record was inadequate for review of the defendant's claim that the trial court improperly determined that the extracurricular expenses were unreasonable; this court was provided with transcripts for only three of the four days of the hearing on the contempt motion, the issue of what expenses were reasonable under the circumstances involved an issue of fact, the trial court's decision provided no further explanation of what facts and circumstances the court relied on in reaching its conclusion, and, in light of the missing transcript, this court did not know the full extent of what may have been discussed by the parties regarding those expenses and would not speculate as to the substance of the defendant's testimony concerning the issue, which was included in the omitted transcript.

Argued April 19—officially released August 8, 2017

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the matter was transferred to the Regional Family Trial Docket at Middletown, and tried to the court, *Gordon, J.*; judgment dissolving the marriage and granting certain other relief; thereafter, the court granted the defendant's motion for contempt and entered certain postjudgment orders, and the plaintiff appealed to this court, which reversed in part the trial court's judgment and remanded the case for further proceedings; on remand, the court, *Shay, J.*, entered certain orders in accordance with the parties' stipulation; subsequently, the court, *Colin, J.*, granted in part the defendant's motion for contempt, and the defendant appealed to this court. *Affirmed.*

Lilach Buehler, self-represented, the appellant (defendant).

Jon T. Kukucka, with whom, on the brief, were *Campbell D. Barrett* and *Johanna S. Katz*, for the appellee (plaintiff).

Opinion

PER CURIAM. The defendant, Lilach Buehler, appeals from the postjudgment order of the trial court

denying in part her motion for contempt against the plaintiff, Richard Buehler, after concluding that she had failed to prove by clear and convincing evidence that the plaintiff had wilfully and intentionally violated a clear and unambiguous order regarding payment for their children's extracurricular activities. On appeal, the defendant claims that the court improperly determined that the extracurricular expenses were unreasonable because there had been no meaningful discussion between the parties prior to the incurrence of those costs.[1] We conclude that the record is inadequate for our review, and, accordingly, we decline to review this claim and affirm the judgment of the trial court.

The record contains the following relevant facts and procedural history. The court, *Gordon*, *J.*, dissolved the parties' ten year marriage on June 4, 2008. At the time of the dissolution, the parties had three minor children, aged nine, six, and two. Following a contested trial, the court rendered its judgment orally and entered orders

[1] We also note that, to the extent the defendant has attempted to raise a legal question as to whether the language of the order at issue can be construed to require consultation before extracurricular expenses can be incurred, we decline to review such claim because it was inadequately briefed. The defendant failed to provide this court with an analysis as to the meaning and construction of the order in the dissolution judgment, including citations to relevant case law regarding interpretation of a court's judgment.

"It is well settled that [w]e are not required to review claims that are inadequately briefed. . . . We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. We do not reverse the judgment of a trial court on the basis of challenges to its rulings that have not been adequately briefed. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited. . . . [A]ssignments of error which are merely mentioned but not briefed beyond a statement of the claim will be deemed abandoned and will not be reviewed by this court." (Internal quotation marks omitted.) *Pryor* v. *Pryor*, 162 Conn. App. 451, 458, 133 A.3d 463 (2016).

with respect to custody, visitation, child support, alimony, and the division of real and personal property. The order at issue in this appeal provides in relevant part as follows: "The parties shall share equally in the cost of all extracurricular summer camp and lessons for the children, which are not to be unreasonably incurred. . . ."

The parties have filed several postjudgment motions in the years following the dissolution of their marriage, including motions for contempt and motions for modification. On October 7, 2014, the defendant filed the motion for contempt that is the subject of the present appeal. In her motion for contempt, the defendant alleged, inter alia, that the plaintiff wilfully and deliberately failed to pay his one-half share of the children's extracurricular expenses. The defendant requested that the court find the plaintiff in contempt, that the court order him to immediately pay $7135.62 as his "share of the children's activities," and that the court punish him for his contempt, "including incarceration."

The court, *Colin*, *J.*, scheduled a hearing on the defendant's motion for contempt. It is undisputed that the court heard testimony and admitted exhibits over a four day hearing that commenced on April 22, 2015.[2] The hearing concluded on November 4, 2015, and the court issued its memorandum of decision on November 5,

[2] On July 8, 2015, the second day of the hearing, the court stated: "So this is a continuation that started on April 22, 2015, on the defendant's motion for contempt, motion number 409. We started the hearing. I stopped the hearing and ordered some documentation to be provided and exchanged to hopefully make this a more efficient process."

On September 9, 2015, the third day of the hearing, the court stated: "By my notes, this is the third day of a hearing on the defendant's motion for contempt, motion number 409, which was dated October 7, 2014. The first day was April 22, and the second day was July 8."

On November 4, 2015, the final day of the hearing, the court stated: "So this is day four of our hearing on motion number 409, the defendant's motion for contempt, which started on April 22, then to July 8, then to September 9."

2015. The relevant portions of the court's decision provide as follows: "The defendant has failed to prove by clear and convincing evidence that the plaintiff wilfully and intentionally violated a clear and unambiguous court order regarding the payment of the children's extracurricular activities and uninsured medical and dental expenses. . . . As for the defendant's claim for nonpayment of extracurricular activity costs, the defendant's incurrence of these costs without a meaningful prior discussion between the parties leads this court to conclude that the expenses were not reasonably incurred under the facts and circumstances of this case." (Citation omitted.)

The defendant, a self-represented party, filed this appeal from the postjudgment ruling on December 14, 2015, and she challenges the court's determination that the extracurricular expenses were unreasonably incurred. The trial court file reflects that the transcript order for the appeal, signed by the defendant on December 14, 2015, placed an order for "[the] [e]ntire transcript for 7/8/15, 7/29/15, 9/9/15, 11/4/15." The court reporter's acknowledgement of the transcript order, filed with this court on February 8, 2016, provides a total page estimate for three days of hearings of 445 pages. The box for an estimated number of pages for July 29, 2015, was left blank. On August 15, 2016, the defendant filed three transcripts for the proceedings that had occurred on July 8, 2015, September 9, 2015, and November 4, 2015. No transcript was filed for April 22, 2015, the first day of the hearing on the defendant's motion for contempt.

The defendant filed her appellate brief with this court on August 15, 2016. The plaintiff filed his brief on November 14, 2016, and, as his first argument, stated that this court should decline to review the defendant's claim because she failed to provide an adequate record. Specifically, the plaintiff claimed that there were four

days of hearings and that this court had been provided with only three of the four necessary transcripts. The plaintiff identified the missing transcript as being the transcript from the April 22, 2015 hearing. The defendant did not file a reply brief addressing that first argument.

We have thoroughly reviewed the file, which contains more than 400 filings, to determine whether the court or the parties ever ordered a transcript of the April 22, 2015 proceedings, the first day of the hearing on the defendant's motion for contempt. At the July 8, 2015 hearing, the court stated that it had the April 22, 2015 transcript. The transcript in the file, however, is merely an excerpt from the April 22, 2015 hearing that sets forth the court's interim orders: "I'm going to stop the hearing and enter the following interim orders. *I'll order a transcript of these orders. The hearing is not concluded. These are only interim orders* that are being entered pursuant to the court's inherent authority to control its docket and to manage its proceedings. And the purpose of this order is to give me the information that I need to appropriately decide the motion for contempt." (Emphasis added.)

Following a discussion of preliminary matters on July 8, 2015, the parties were ready to proceed with their evidence. The court stated: "We left off with [the defendant] on the witness stand I believe. They're in cross-examination if I'm not mistaken. Is that correct?" The parties confirmed that the plaintiff's counsel had been cross-examining the defendant at the time the hearing had been stopped. Neither the excerpt from the April 22, 2015 hearing nor the transcript of the July 8, 2015 hearing discloses at what point the court stopped the hearing and entered interim orders. We do know that the defendant already had completed her direct testimony and was being cross-examined, and the list of

exhibits shows that a few exhibits had been admitted by the court on April 22, 2015.

The lack of a full transcript from the April 22, 2015 hearing precludes our review of the defendant's claim on appeal. In its memorandum of decision, the trial court stated: "As for the defendant's claim for nonpayment of extracurricular activity costs, the defendant's incurrence of these costs without a meaningful prior discussion between the parties leads this court to conclude that the *expenses were not reasonably incurred under the facts and circumstances of this case*." (Emphasis added.) What is reasonable under the circumstances is clearly an issue of fact. The court's decision provides no further explanation of what facts and circumstances the court relied on in reaching its conclusion. We do not have the defendant's testimony on direct examination or cross-examination from the April 22, 2015 hearing.

Judge Gordon's June 4, 2008 dissolution order, at issue in this case, also had been the subject of several prior disagreements and motions by the parties. It is possible that, in connection with the present motion for contempt, there had been testimony as to previous interactions between the parties relative to the children's extracurricular expenses. There may have been testimony as to how the parties had been interpreting the language "extracurricular summer camp and lessons" in the June 4, 2008 order.[3] Simply put, we do not know what was discussed, and we will not speculate as to the substance of the defendant's testimony.

Practice Book § 61-10 (a) provides: "It is the responsibility of the appellant to provide an adequate record

[3] At oral argument before this court, the defendant stated that the order related to all of the children's extracurricular activities. The plaintiff argued it applied solely to expenses for summer camp and lessons. It appears that Judge Gordon's order may not have been clear and unambiguous to the parties.

for review. The appellant shall determine whether the entire record is complete, correct and otherwise perfected for presentation on appeal." "The general purpose of [the relevant] rules of practice . . . [requiring the appellant to provide a sufficient record] is to ensure that there is a trial court record that is adequate for an informed appellate review of the various claims presented by the parties." (Internal quotation marks omitted.) *State* v. *Donald*, 325 Conn. 346, 353–54, 157 A.3d 1134 (2017).

In *Crelan* v. *Crelan*, 124 Conn. App. 567, 571–72, 5 A.3d 572 (2010), this court determined that the plaintiff had provided an inadequate record for review because she had filed a transcript of the court's oral ruling and nothing else. In that case, the plaintiff only provided a transcript of the court's oral judgment rendered on the day following the trial, and never requested or provided a transcript of the prior day's proceedings. Id., 571. We concluded: "Under these circumstances, [w]e, therefore, are left to surmise or speculate as to the existence of a factual predicate for the trial court's rulings. Our role is not to guess at possibilities, but to review claims based on a *complete factual record* developed by a trial court. . . . Without the necessary factual and legal conclusions furnished by the trial court, any decision made by us respecting the plaintiff's claims would be entirely speculative. . . . As it is not the function of this court to find facts, we decline to review this claim." (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 571–72.

So too, in the present case, we are lacking a complete record of the trial court proceedings. The hearing was held over four days, but the defendant has provided only three days of transcripts. Accordingly, we decline to review the defendant's claim on appeal.

The judgment is affirmed.