STATE OF CONNECTICUT *v.* ANASTASIA SCHIMANSKI
(AC 41802)

Elgo, Bright and Moll, Js.*

Syllabus

Convicted, on a conditional plea of nolo contendere, of the crime of operating a motor vehicle with a suspended license, the defendant appealed to this court, challenging the trial court's denial of her motion to dismiss counts in the state's first substitute information. The defendant was arrested and charged with operating a motor vehicle while under the influence of alcohol, and her license was suspended for forty-five days pursuant to statute (§ 14-227b (i)) as a result of her refusal to take a chemical alcohol test. The defendant was subsequently ordered not to operate a vehicle that was not equipped with an ignition interlock device. Forty-seven days after the suspension began, the defendant operated a vehicle that did not have an ignition interlock device installed in it and allegedly struck another motor vehicle. Thereafter, she was charged with, inter alia, operating a motor vehicle while her license was under suspension in violation of the applicable statute (§ 14-215 (c) (1)) and operating a motor vehicle not equipped with an ignition interlock device in violation of the applicable statute (§ 14-227k (a) (2)). The defendant moved for a dismissal of these charges against her, claiming that the forty-five day suspension of her license had expired and that she had not yet been obligated to operate a motor vehicle with an ignition interlock device installed. The trial court denied the motion to dismiss. The state subsequently filed a second substitute information charging the defendant solely with operating a motor vehicle while her license was under suspension. From the judgment of conviction, the defendant appealed to this court. *Held*:

1. The trial court properly denied the defendant's motion to dismiss the count of the state's first substitute information charging her with operating a motor vehicle while her license was under suspension: the text of § 14-215 (c) (1) penalizes a person who operates a motor vehicle while, inter alia, her license is under suspension pursuant to § 14-227b, and the text of § 14-227b (i) (1) mandates the installation of an ignition interlock device in any motor vehicle operated by that individual before the restoration of her license, thus, the defendant's license remained suspended following the forty-five day statutory period until she installed an ignition interlock device, the defendant's reliance on case law that predated amendments to § 14-227b was unavailing, and this court declined to

* The listing of the judges reflects their seniority status on this court as of the date of oral argument.

apply the rule of lenity where the statutory text concerning the lack of restoration on the forty-five day period of suspension is not ambiguous; moreover, the defendant lacked standing to bring an equal protection claim because she was not aggrieved: although the defendant claimed that requiring the installation of an ignition interlock device before a license suspension can be lifted imposes undue burdens on indigent individuals who cannot afford the fees associated with the installation of such a device, the defendant paid the fees to install an ignition interlock device and to restore her license, she did not identify any specific personal and legal interest that had been specially and injuriously affected, and there was no basis on the record to find that the defendant was reasonably likely to incur future criminal liability relating to the ignition interlock device requirement.

2. The defendant's appeal was dismissed with respect to her claim challenging the trial court's denial of her motion to dismiss the charge against her of operating a motor vehicle not equipped with an ignition interlock device from the state's first substitute information: the defendant's claim was moot as a result of the state's decision not to charge the defendant with a violation of § 14-227k (a) (2) in its second substitute information; moreover, the defendant's claim that the state could not recharge her with a violation of § 14-227k (a) (2) was not justiciable because it was not ripe, as it might never transpire.

Argued June 19—officially released November 3, 2020

Procedural History

Substitute information charging the defendant with the crimes of operating a motor vehicle with a suspended license, avoidance of an interlock ignition device and evading responsibility in the operation of a motor vehicle, brought to the Superior Court in the judicial district of New Haven, geographical area number twenty-three, where the court, *Spader*, *J.*, denied the defendant's motion to dismiss the charges of operating a motor vehicle with a suspended license and avoidance of an interlock ignition device; thereafter, the state filed a second substitute information charging the defendant with the crime of operating a motor vehicle with a suspended license; subsequently, the defendant was presented to the court on a conditional plea of nolo contendere to the charge of operating a motor vehicle

with a suspended license; judgment of guilty in accordance with the plea, from which the defendant appealed to this court. *Appeal dismissed in part*; *affirmed*.

Aaron J. Levin, certified legal intern, with whom was *James B. Streeto*, senior assistant public defender, for the appellant (defendant).

Kathryn W. Bare, assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, state's attorney, and *Sean P. McGuinness*, assistant state's attorney, for the appellee (state).

Opinion

MOLL, J. The defendant, Anastasia Schimanski, appeals from the judgment of conviction rendered by the trial court following her conditional plea of nolo contendere to operating a motor vehicle while her license was suspended in violation of General Statutes § 14-215 (c) (1). On appeal, the defendant claims that the court erred in denying her motion to dismiss directed to (1) count one of the state's first substitute information charging her with a violation of § 14-215 (c) (1), and (2) count two of the state's first substitute information charging her with operating a motor vehicle not equipped with a functioning ignition interlock device (IID) in violation of General Statutes § 14-227k (a) (2). We conclude that (1) the court properly denied the defendant's motion to dismiss as to count one of the state's first substitute information, and (2) the defendant's claims directed to the denial of her motion to dismiss as to the second count of the first substitute information are either moot or not ripe. Accordingly, we dismiss the appeal as to the denial of the motion to dismiss the second count of the first substitute information for lack of subject matter jurisdiction, and we affirm the judgment of conviction.

The following procedural history and facts, as undisputed or made a part of the record at the time the defendant entered her plea, are relevant to our resolution of the defendant's claims. On September 18, 2017, the defendant was arrested and charged with operating a motor vehicle while under the influence in violation of General Statutes § 14-227a. Pursuant to General Statutes § 14-227b (i), the Department of Motor Vehicles (department) suspended the defendant's license for a period of forty-five days, beginning on October 18, 2017, and ending on December 2, 2017, as a result of the defendant's refusal to take a chemical alcohol test. On December 4, 2017, the trial court, *Spader*, *J.*, granted the defendant's application for the pretrial alcohol education program. See General Statutes § 54-56g. In connection with doing so, the court engaged in the following colloquy with the defendant:

"The Court: One of the key things about the alcohol education program is if you violate the [department's] interlock device program, that's a violation of the alcohol education program. So just—don't be operating a motor vehicle unless you have the interlock device attached to it.

"[The Defendant]: Yes. Sir—I'm sorry—I don't own a vehicle.

"The Court: No—yeah, well, the thing is, don't borrow a vehicle either that doesn't have an interlock device on it—you know—if there's—once your license is restored, once your privileges are restored, okay?

"[The Defendant]: Yes, sir."

That same day, shortly after leaving the courthouse following the hearing, the defendant operated a motor vehicle, which did not have an IID installed in it, and allegedly struck another motor vehicle. As a result of that incident, the defendant was issued a misdemeanor

summons and complaint, giving rise to the present case, charging her with operating a motor vehicle while her license was under suspension in violation of § 14-215, evasion of responsibility in the operation of a motor vehicle in violation of General Statutes § 14-224 (b), and following another motor vehicle too closely in violation of General Statutes § 14-240. On February 23, 2018, the state filed its first substitute information. In count one, the state charged the defendant with operating a motor vehicle while her license was under suspension in violation of § 14-215 (c) (1). In count two, the state charged the defendant with operating a motor vehicle not equipped with an IID in violation of § 14-227k (a) (2). In count three, the state charged the defendant with evasion of responsibility in the operation of a motor vehicle in violation of § 14-224 (b) (3).

On March 5, 2018, the defendant filed a motion to dismiss counts one and two of the first substitute information. With respect to count one, the defendant argued that she could not properly be charged with having committed a violation of § 14-215 (c) (1) on December 4, 2017, because at such time, her license was not under suspension on account of § 14-227b (i) (1). According to the defendant, the forty-five day suspension of her license pursuant to § 14-227b (i) (1) had expired on December 2, 2017. With respect to count two, the defendant argued that she was not obligated on December 4, 2017, either by direction of the department or by order of the trial court, to operate a motor vehicle with an IID installed, and, thus, she could not properly be charged with having violated § 14-227k (a) (2) on that date.[1]

On March 19, 2018, after having heard argument on March 9, 2018, the trial court issued a memorandum of

[1] Notwithstanding the language in the suspension notice, during oral argument before the trial court, the state conceded that the defendant was not restricted by the department to operate a motor vehicle with an IID installed.

decision denying the defendant's motion to dismiss in its entirety. As to count one charging the defendant with a violation of § 14-215 (c) (1), the court determined that, pursuant to §§ 14-227a and 14-227b, the installation of an IID is a "mandatory statutory requirement implemented by the state legislature that must be fulfilled to 'unsuspend' a suspended license." The court further determined that the defendant did not have an IID installed on December 4, 2017, and that the department did not lift her suspension and restore her privilege to operate a motor vehicle until January 2, 2018, by which time the defendant had installed an IID. In addition, the court addressed and rejected the merits of a claim raised by the defendant during oral argument that requiring the installation of an IID in order to lift the suspension of a person's license would violate the equal protection clause of the United States constitution by imposing undue burdens on indigent individuals. In light of the foregoing, with respect to count one, the court concluded that the state could prosecute the defendant for a violation of § 14-215 (c) (1). With respect to count two, the court determined that during the hearing held on December 4, 2017, it unequivocally and directly had ordered the defendant not to operate any motor vehicle without an IID installed. Thus, the court concluded, the state could prosecute the defendant for a violation of § 14-227k (a) (2).

On May 9, 2018, the state filed a second substitute information charging the defendant solely with operating a motor vehicle while her license was under suspension in violation of § 14-215 (c) (1). On May 25, 2018, pursuant to General Statutes § 54-94a, the defendant entered a plea of nolo contendere to that charge, conditioned on her right to take an appeal from her conviction on the basis of the court's denial of her motion to dismiss. After a canvass, the court accepted the conditional plea, entered a finding of guilty, and sentenced

the defendant to a term of one year of incarceration, execution suspended, with one year of probation.[2] This appeal followed.[3] Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the trial court erred in denying her motion to dismiss count one of the state's first substitute information charging her with operating a motor vehicle while her license was under suspension in violation of § 14-215 (c) (1). Specifically, the defendant contends that, as a matter of statutory interpretation, her failure to have installed an IID did not extend the suspension of her license under § 14-227b (i) (1) beyond the forty-five day period, which expired on December2, 2017, and, as a result, she could not have been charged with having committed a violation of § 14-215 (c) (1) on December 4, 2017. Additionally, the defendant contends that interpreting the statutory requirements in §§ 14-215 (c), 14-227a, and 14-227b to mandate the installation of an IID as a condition to lift the suspension of a person's license violates the equal protection clause of the United States constitution. These contentions, which we address in turn, are unavailing.

A

The defendant first contends that the trial court should have dismissed the charge under § 14-215 (c) (1) because, pursuant to §§ 14-215 (c) (1), 14-227a, and 14-227b, the suspension of her license expired on December 2, 2017, and was not extended to December 4, 2017, as a result of her failure to install an IID. We disagree.

[2] The thirty day mandatory minimum term of imprisonment was suspended in light of mitigating circumstances determined by the court. See General Statutes § 14-215 (c) (1).

[3] The trial court stayed the execution of the defendant's sentence until the resolution of this appeal.

At the outset, we set forth the standard of review and legal principles that apply to the defendant's claim. "Because a motion to dismiss effectively challenges the jurisdiction of the court, asserting that the state, as a matter of law and fact, cannot state a proper cause of action against the defendant . . . review of the court's legal conclusions and resulting denial of the defendant's motion to dismiss is de novo." (Internal quotation marks omitted.) *State* v. *Kallberg*, 326 Conn. 1, 12, 160 A.3d 1034 (2017).

Resolving the defendant's claim requires us to interpret various provisions in our motor vehicle statutes. "Because statutory interpretation is a question of law, our review is de novo. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language . . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to [the broader statutory scheme]. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *State* v. *Pond*, 315 Conn. 451, 466–67, 108 A.3d 1083 (2015).

We begin with the text of § 14-215 (c) (1), pursuant to which the defendant was convicted, which provides: "*Any person who operates any motor vehicle during the period such person's operator's license or right to operate a motor vehicle in this state is under suspension or revocation* on account of a violation of section 14-227a or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n or section 53a-56b or 53a-60d or *pursuant to section 14-227b*, or in violation of a restriction or limitation placed on such person's operator's license or right to operate a motor vehicle in this state by the Commissioner of Motor Vehicles pursuant to subsection (i) of section 14-227a or pursuant to an order of the court under subsection (b) of section 14-227j, shall be fined not less than five hundred dollars or more than one thousand dollars and imprisoned not more than one year, and, in the absence of any mitigating circumstances as determined by the court, thirty consecutive days of the sentence imposed may not be suspended or reduced in any manner." (Emphasis added.)

Because the state has prosecuted the § 14-215 (c) (1) charge against the defendant at all times on the basis that the defendant's license was suspended on December 4, 2017, pursuant to § 14-227b (i) (1), we next turn to the text thereof.[4] Section 14-227b (i) (1) provides:

[4] It is unclear, but irrelevant to our analysis, why the state did not posit before the trial court that the defendant could be charged with § 14-215 (c) on the separate ground that she was operating a motor vehicle in violation of a restriction placed on her driver's license pursuant to an order of the court pursuant to General Statutes § 14-227j (b), which is another enumerated basis set forth in § 14-215 (c) (1). See General Statutes § 14-227j (b) ("Any person who has been arrested for a violation of section 14-227a or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n or section 53a-56b or 53a-60d, may be ordered by the court not to operate any motor vehicle unless such motor vehicle is equipped with an ignition interlock device. Any such order may be made as a condition of such person's release on bail, as a condition of probation or as a condition of granting such person's application for participation in the pretrial alcohol education program under section 54-56g and may include any other terms and conditions as to duration, use, proof of installation or any other matter that the court determines to be appropriate or necessary."). In light of the condition attached to the

"The commissioner [of motor vehicles] shall suspend the operator's license or nonresident operating privilege of a person who did not contact the department to schedule a hearing, who failed to appear at a hearing, or against whom a decision was issued, after a hearing, pursuant to subsection (h) of this section, as of the effective date contained in the suspension notice, for a period of forty-five days. As a condition for the restoration of such operator's license or nonresident operating privilege, such person shall be required to install an ignition interlock device on each motor vehicle owned or operated by such person and, upon such restoration, be prohibited from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j, for the longer of either (A) the period prescribed in subdivision (2) of this subsection for the present arrest and suspension, or (B) the period prescribed in subdivision (1), (2) or (3) of subsection (g) of section 14-227a . . . for the present arrest and conviction, if any."[5]

The state argues, and we agree, that § 14-227b (i) (1) speaks to *two* periods of time, namely, the period of

defendant's plea of nolo contendere, we limit our analysis to the parties' arguments in connection with the defendant's motion to dismiss, which exclusively focused on the defendant's suspension pursuant to § 14-227b. See General Statutes § 54-94a ("[t]he issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied . . . the motion to dismiss").

[5] General Statutes § 14-227a (g), which contains similar suspension and restoration language applicable to an individual convicted of a violation of § 14-227a (a), provides in relevant part: "Penalties for operation while under the influence. Any person who violates any provision of subsection (a) of this section shall: (1) For conviction of a first violation . . . (C) *have such person's motor vehicle operator's license or nonresident operating privilege suspended for forty-five days and, as a condition for the restoration of such license, be required to install an ignition interlock device on each motor vehicle owned or operated by such person* and, upon such restoration, be prohibited for the one-year period following such restoration from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device. . . ." (Emphasis added.)

suspension and the period following restoration of the operator's license (or nonresident operating privilege). By using the prefatory language, "[a]s a condition for the restoration of such operator's license or nonresident operating privilege," the legislature clearly and unambiguously created a statutorily mandated condition—i.e., the installation of an IID in any motor vehicle owned or operated by the individual—that must be satisfied before an individual may have his or her license restored and thereupon legally operate a motor vehicle. Stated differently, § 14-227b (i) (1) does not contemplate an interim period between suspension and restoration, whereby an individual whose license or operating privilege has been suspended thereunder could operate a motor vehicle, while escaping the responsibility of installing an IID (and thereupon operating only a motor vehicle equipped with a functioning, approved IID) and avoiding exposure to criminal liability under, inter alia, § 14-215 (c). Applying the foregoing analysis to the present case, we conclude that the defendant's license remained suspended on December 4, 2017, pursuant to § 14-227b (i) (1), because she had not yet installed an IID and had her license restored by that date.

The defendant argues, in contrast, that § 14-227b (i) (1) effectively contains such an interim period, during which an individual who has not restored his or her license and installed an IID can avoid exposure to liability under § 14-215 (c) and is subject only to a lesser penalty. As a textual matter, the defendant contends that the forty-five day period of suspension is fixed and cannot be extended by the lack of restoration. We reject the interpretation advanced by the defendant, however, because it would incentivize an individual, whose license or operating privilege has been suspended pursuant to § 14-227b (i) (1), *not* to install an IID and

complete the restoration process. In this connection, we conclude such interpretation would yield an absurd result and not one intended by the legislature.

The defendant also relies on *State* v. *Jacobson*, 31 Conn. App. 797, 627 A.2d 474 (1993), aff'd, 229 Conn. 824, 644 A.2d 331 (1994), and *State* v. *Cook*, 36 Conn. App. 710, 653 A.2d 829 (1995), in support of her claim. As the state correctly points out, this reliance is misplaced. In *Jacobson*, the defendant's license was suspended for one year after he was convicted of operating a motor vehicle under the influence of alcohol in violation of General Statutes (Rev. to 1991) § 14-227a.[6] *State* v. *Jacobson*, supra, 799. After the one year period had expired, the defendant was eligible for restoration of his license by presenting proof of financial responsibility to the Commissioner of Motor Vehicles pursuant to General Statutes (Rev. to 1991) § 14-112. Id. The defendant failed to complete this administrative step and was subsequently arrested and convicted of operating a motor vehicle while his license was under suspension in violation of General Statutes (Rev. to 1991) § 14-215 (c). Id. On appeal, this court concluded that the financial responsibility requirement was merely administrative and contained in General Statutes (Rev. to 1991) § 14-112, a separate statute, such that "[n]othing in the statutory scheme . . . indefinitely extends the period of suspension, pursuant to [General Statutes (Rev. to

[6] General Statutes (Rev. to 1991) § 14-227a (h) provides in relevant part: "Any person who violates any provision of subsection (a) of this section shall: (1) For conviction of a first violation, (A) be fined not less than five hundred dollars nor more than one thousand dollars and (B) be (i) imprisoned not more than six months, forty-eight consecutive hours of which may not be suspended or reduced in any manner or (ii) imprisoned not more than six months, with the execution of such sentence of imprisonment suspended entirely and a period of probation imposed requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) *have his motor vehicle operator's license or nonresident operating privilege suspended for one year* . . . ." (Emphasis added.)

1991)] § 14-227a, past one year." Id., 804; see also *State* v. *Cook*, supra, 714 ("[In *Jacobson*] [w]e reviewed the language of [General Statutes (Rev. to 1991)] § 14-227a and determined that the suspension provision provided therein was limited to the one year period enumerated. . . . The statute does not require the suspension to continue in effect after the statutory period has expired until the violator has taken the necessary administrative steps to restore his privileges." (Citations omitted.)).

In *State* v. *Cook*, supra, 36 Conn. App. 710, the defendant's nonresident operator's privileges were suspended for six months based on his refusal to take a blood alcohol test pursuant to General Statutes (Rev. to 1991) § 14-227b.[7] Id., 711. After the six month period had expired, the defendant was arrested and convicted of driving while his license was under suspension in violation of General Statutes (Rev. to 1991) § 14-215 (c). Id., 712. On appeal, following the reasoning in *Jacobson*, this court concluded that General Statutes (Rev. to 1991) § 14-227b was "unambiguous" in "subject[ing] a driver to the suspension of his license or operation privileges for a period of six months. It does not require that the suspension continue beyond the six month period until such time that the driver's privileges are formally restored. Therefore, upon completion of the

[7] General Statutes (Rev. to 1991) § 14-227b (h) provides in relevant part: "The commissioner [of motor vehicles] shall suspend the operator's license or nonresident operating privilege, and revoke the temporary operator's license or nonresident operating privilege issued pursuant to subsection (c) of this section, of a person who did not contact the department to schedule a hearing, who failed to appear at a hearing or against whom, after a hearing, the commissioner held pursuant to subsection (g) of this section, as of the effective date contained in the suspension notice or the date the commissioner renders his decision, whichever is later, for a period of: (1) (A) Ninety days, if such person submitted to a test or analysis and the results of such test or analysis indicated that at the time of the alleged offense the ratio of alcohol in the blood of such person was ten-hundredths of one per cent or more of alcohol, by weight, or (B) *six months if such person refused to submit to such test or analysis* . . . ." (Emphasis added.)

six month period, a driver's license or operating privileges are no longer suspended on account of a violation of [General Statutes (Rev. to 1991)] § 14-227b and the driver may not be subjected to the enhanced penalties of [General Statutes (Rev. to 1991)] § 14-215 (c)." Id., 714–15.

In deciding *Jacobson* and *Cook*, this court analyzed prior revisions of §§ 14-227a and 14-227b. As the trial court in the present case observed in its memorandum of decision, although *Jacobson* and *Cook* have not been overruled, §§ 14-227a and 14-227b have been amended since those decisions were published. The 1991 revision of § 14-227a at issue in *Jacobson* specified a fixed one year license suspension without statutorily mandated conditions for restoration, and the 1991 revision of § 14-227b at issue in *Cook* contained a fixed six month license suspension, also without statutorily mandated conditions for restoration. Sections 14-227a and 14-227b were amended in 2014, effective in 2015, to shorten the mandatory license suspension period to forty-five days *and* to add the IID requirement in connection with restoration.[8] Accordingly, *Jacobson* and *Cook* are inapplicable to the present case.

Finally, the defendant argues that we should strictly construe the relevant statutes in her favor; in doing so, she presses the application of the rule of lenity. Because the text of § 14-227b (i) (1) concerning the effect of the lack of restoration on the forty-five day period of suspension thereunder is not ambiguous after engaging in the statutory interpretation required by § 1-2z, we decline to apply the rule of lenity. See, e.g., *State* v. *Lutters*, 270 Conn. 198, 219, 853 A.2d 434 (2004) ("courts do not apply the rule of lenity unless a reasonable doubt persists about a statute's intended scope *even after*

[8] See Public Acts 2014, No. 14-228, §§ 5 and 6.

resort to the language and structure, legislative history, and motivating policies of the statute" (emphasis in original; internal quotation marks omitted)).

In sum, we conclude that, pursuant to § 14-227b (i) (1), the suspension of the defendant's license remained in effect until the defendant had installed an IID and restored her license. Thus, the defendant's license remained suspended on December 4, 2017, the date of her violation of § 14-215 (c) (1). Accordingly, the trial court properly denied the defendant's motion to dismiss as to count one of the state's first substitute information charging the defendant with operating a motor vehicle while her license was under suspension in violation of § 14-215 (c) (1).

B

The defendant also claims that interpreting the relevant motor vehicle statutes to require the installation of an IID before lifting the suspension of a person's license would result in a violation of the equal protection clause of the United States constitution. More specifically, the defendant claims that such an interpretation has a prejudicial effect on indigent individuals who cannot afford the fees associated with the installation of an IID. The state argues, inter alia, that the defendant lacks standing to raise this argument. We agree with the state.

We begin by reviewing certain well established principles of standing. A party's lack of standing to bring a claim implicates the court's subject matter jurisdiction. See *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 511, 518, 970 A.2d 583 (2009). "Generally, standing is inherently intertwined with a court's subject matter jurisdiction. . . . We have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law,

our review is plenary. . . . In addition, because standing implicates the court's subject matter jurisdiction, the issue of standing is not subject to waiver and may be raised at any time." (Internal quotation marks omitted.) *State* v. *Brito*, 170 Conn. App. 269, 285, 154 A.3d 535, cert. denied, 324 Conn. 925, 155 A.3d 755 (2017).

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . .

"Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a [well settled] twofold determination: [F]irst, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *State* v. *Long*, 268 Conn. 508, 531–32, 847 A.2d 862, cert. denied, 543 U.S. 969, 125 S. Ct. 424, 160 L. Ed. 2d 340 (2004).

In the present case, the defendant lacks standing to raise an equal protection claim relating to the IID

requirement because she is not aggrieved. As the defendant readily concedes, immediately following the December 4, 2017 hearing in which her application for the alcohol education program was granted, she paid the necessary fees to install an IID and to restore her license. Moreover, she has not identified any specific personal and legal interest that has been specially and injuriously affected. Accordingly, the defendant lacks standing to raise her equal protection claim.

The defendant argues that she has standing pursuant to *State* v. *Bradley*, 195 Conn. App. 36, 223 A.3d 62 (2019), cert. granted, 334 Conn. 925, 223 A.3d 379 (2020). The defendant relies on language in *Bradley* stating that "[our Supreme Court] previously [has] concluded that a genuine likelihood of criminal liability or civil incarceration is sufficient to confer standing. . . . Consequently, because the defendant risks actual prospective deprivation of his liberty interest under the challenged statute, we conclude that he is classically aggrieved, and has standing to challenge the statute." Id., 46–47. The court later clarified that "although a party has only individual standing to challenge alleged violations of his own constitutional rights, such challenges are not necessarily limited to ongoing violations of those rights, but may be directed to future violations of such rights that are reasonably likely to occur." Id., 47.

The defendant does not fall within the carve out discussed in *Bradley*. In order to qualify for standing under *Bradley*, "future violations of [her] rights [must be] reasonably likely to occur." Id. There simply is no basis on this record to find that the defendant is reasonably likely to incur future criminal liability relating to the IID requirement. Therefore, the defendant lacks standing to bring her equal protection claim.[9]

[9] We also observe that General Statutes § 14-227o, which was effective on October 1, 2018, provides in relevant part: "Notwithstanding any provision of the general statutes requiring a person subject to an order to install and

II

The defendant next claims that the trial court erred in denying her motion to dismiss count two of the state's first substitute information charging her with operating a motor vehicle not equipped with an IID in violation of § 14-227k (a) (2). Recognizing that, following the denial of her motion to dismiss, the state filed a second substitute information charging her solely with a violation of § 14-215 (c) (1), the defendant asserts that she is raising this claim "in anticipation of an attempt by the state to resurrect the [violation of § 14-227k (a) (2) charge], or to argue for its consideration as an alternative ground for affirmance." The defendant contends that (1) the state cannot recharge her for violating § 14-227k (a) (2) because the state dropped that charge when it filed the second substitute information solely charging her with a violation of § 14-215 (c) (1), or (2) alternatively, if this court reaches the merits of the trial court's denial of her motion to dismiss count two, then the trial court improperly concluded that it had issued an unequivocal order on December 4, 2017, prohibiting her from operating a motor vehicle without an IID installed. The state counters, inter alia, that (1) because it did not charge the defendant in its second substitute information with violating § 14-227k (a) (2), the defendant's challenge to the denial of her motion to dismiss as to count two of the first substitute information is moot, and (2) to the extent that the defendant is seeking to litigate any future attempt by the state to recharge her with violating § 12-227k (a) (2), the defendant's claim is not ripe. We agree with the state.

maintain an ignition interlock device to bear all costs associated with such installation and maintenance, any provider of ignition interlock device services, including installation, maintenance and removal of such devices, may include in a lease agreement with a person required to install such device pursuant to section . . . 14-227a [or] 14-227b . . . a reduction to or an elimination of the charge for such services if such person is indigent. . . ."

A

We first address whether the defendant's claim challenging the merits of the trial court's denial of her motion to dismiss count two of the state's first substitute information is moot as a result of the state's decision not to charge the defendant with a violation of § 14-227k (a) (2) in its second substitute information. We conclude that the defendant's claim is moot.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [a] court's subject matter jurisdiction . . . . A case is considered moot if [the] court cannot grant . . . any practical relief through its disposition of the merits . . . ." (Internal quotation marks omitted.) *Glastonbury* v. *Metropolitan District Commission*, 328 Conn. 326, 333, 179 A.3d 201 (2018). "For a case to be justiciable, it is required, among other things, that there be an actual controversy between or among the parties to the dispute . . . . [T]he requirement of an actual controversy . . . is premised upon the notion that courts are called upon to determine existing controversies, and thus may not be used as a vehicle to obtain advisory judicial opinions on points of law. . . . Moreover, [a]n actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal." (Citation omitted; internal quotation marks omitted.) *State* v. *T.D.*, 286 Conn. 353, 361, 944 A.2d 288 (2008). Because mootness implicates a court's subject matter jurisdiction, it presents a question of law over which we exercise plenary review. See *State* v. *Milner*, 309 Conn. 744, 751, 72 A.3d 1068 (2013).

By way of review, following the trial court's denial of the defendant's motion to dismiss counts one and two of the first substitute information, the state filed a second substitute information charging the defendant solely with a violation of § 14-215 (c) (1). Thereafter,

the defendant entered a conditional plea of nolo contendere to the charge of § 14-215 (c) (1), the only charge pending against her. Thus, there is no practical relief that we can afford the defendant with regard to count two of the first substitute information, and, therefore, the issue of whether the trial court improperly denied the defendant's motion to dismiss count two thereof is moot.

B

To the extent that the defendant claims that the state cannot recharge her with violating § 14-227k (a) (1) as a result of the incident that occurred on December 4, 2017, we consider whether the defendant's claim is ripe. We conclude that this issue is not justiciable because it is not ripe.

"[J]usticiability comprises several related doctrines, namely, standing, *ripeness*, mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter." (Emphasis added; footnote omitted.) *Office of the Governor* v. *Select Committee of Inquiry*, 271 Conn. 540, 569, 858 A.2d 709 (2004). "A case that is nonjusticiable must be dismissed for lack of subject matter jurisdiction." *Mayer* v. *Biafore*, *Florek & O'Neill*, 245 Conn. 88, 91, 713 A.2d 1267 (1998). "[B]ecause an issue regarding justiciability raises a question of law, our appellate review [of the defendant's ripeness claim] is plenary." *Office of the Governor* v. *Select Committee of Inquiry*, supra, 569.

The defendant's claim regarding the state's ability to recharge her with violating § 14-227k (a) (2) is not ripe because it "may never transpire." (Internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 87, 952 A.2d 1 (2008). At oral argument, the state indicated that, although it maintains the right to charge the defendant for a violation of § 14-227k (a)

(2), it has no intent to do so. Thus, the issue is not ripe, and, therefore, we decline to address it.

The appeal is dismissed with respect to the denial of the defendant's motion to dismiss the second count of the state's first substitute information; the judgment is affirmed.

In this opinion the other judges concurred.

IN RE MADISON C. ET AL.*
(AC 43721)

Bright, C. J., and Suarez and Lavery, Js.

Syllabus

The respondent mother appealed from the judgments of the trial court terminating her parental rights with respect to her three minor children. She claimed that the trial court deprived her of her substantive due process rights under the United States constitution because termination of her parental rights was not the least restrictive means necessary to ensure the state's compelling interest in protecting the best interests of the children, and that the record disclosed that narrower means were available to protect the children from harm and afford them statutory permanency. *Held* that this court declined to review the respondent's unpreserved constitutional claim because the inadequate record failed to satisfy the requirement of the first prong of *State* v. *Golding* (213 Conn. 233); the evidence at trial supported the decision of the petitioner, the Commissioner of Children and Families, to pursue termination of the respondent's parental rights, the respondent did not propose any alternative permanency plans, and, after the trial court granted the termination petitions, the respondent did not attempt to raise her claim by filing a motion to reargue or reconsider, nor did she ask the court to articulate whether it had considered other options, and the respondent's

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

failure to pursue any of these avenues left the record devoid of evidence and findings necessary to review her constitutional claim.

Argued September 9—officially released October 29, 2020**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of New Britain, Juvenile Matters, where the petitions were withdrawn as to the respondent father; thereafter, the matter was tried to the court, *Aaron, J.*; judgments terminating the respondent mother's parental rights, from which the respondent mother appealed to this court. *Affirmed.*

Albert J. Oneto IV, assigned counsel, for the appellant (respondent mother).

Alina Bricklin-Goldstein, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Benjamin Zivyon*, assistant attorney general, for the appellee (petitioner).

Opinion

SUAREZ, J. The respondent mother, Patricia K., appeals from the judgments of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights with respect to each of her three minor children on the ground that the respondent failed to achieve a sufficient degree of personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (i).[1] On appeal, the respondent claims that the court deprived her of her substantive due process rights as guaranteed by the fourteenth amendment to the United States constitution because

** October 29, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] Counsel for the three minor children have each adopted the brief filed by the petitioner.

termination of her parental rights was not the least restrictive means necessary to ensure the state's compelling interest in protecting the best interests of the children. As part of her claim, the respondent further asserts that the record disclosed that narrower means other than termination were available to protect the children from harm and afford them statutory permanency. We conclude that the record was inadequate to review the respondent's constitutional claim, and, accordingly, we affirm the judgments of the trial court.

The following facts, as found by the court, and procedural history are relevant to the claim raised on appeal. Madison, Ryan, and Andrew were born to the respondent and their father, Chester C. The Department of Children and Families (department) became involved with the family in November, 2013, when Madison tested positive for marijuana and methadone upon her birth. Upon discharge from the hospital, Madison was released into the care of her parents. In December, 2015, the respondent gave birth to Ryan, who also tested positive for marijuana and methadone. Ryan subsequently was released from the hospital to the care of his parents.

On April 25, 2017, the Plymouth Police Department responded to reports of a domestic dispute between the respondent and Chester C. The Plymouth police found the couple's home in deplorable condition and located drug paraphernalia inside the home. On May 2, 2017, Madison and Ryan were removed from their parents' home, pursuant to an order of temporary custody filed by the petitioner and granted by the court. The children were placed in a licensed, nonrelative foster home. The petitioner also filed a neglect petition alleging that the children were being permitted to live under conditions, circumstances, or associations injurious to their well-being. The order of temporary custody was sustained by agreement of the parties on May 12, 2017.

In November, 2017, the respondent gave birth to Andrew, who tested positive for marijuana, methadone, and cocaine. On November 20, 2017, the court granted an order of temporary custody as to Andrew, and he was placed in his current, nonrelative foster family upon discharge from the hospital. On the same date, the petitioner filed a neglect petition as to Andrew on the basis of predictive neglect.

The neglect petitions with respect to all three children were consolidated on November 30, 2017. The court adjudicated the children neglected and committed the children to the care and custody of the petitioner until further order by the court. On the same date, the court ordered specific steps with which the parents were required to comply.

On February 1, 2019, the petitioner filed termination of parental rights petitions with respect to the parental rights of the respondent and Chester C. as to their three children on the grounds that the court in the prior proceeding found the children to have been neglected, and they had failed to achieve the degree of personal rehabilitation that would encourage the belief that, within a reasonable time and considering the ages and needs of the children, they could assume a responsible position in their children's lives.

The respondent has a long history of substance abuse, specifically with heroin, and has been on methadone maintenance intermittently since 2012. The department reported that "[h]er success in treatment has oscillated, with periods of sobriety interrupted by intense relapses."

The respondent's substance abuse issues have led to numerous interactions with the criminal justice system. In April, 2017, the respondent was arrested and charged with risk of injury to a child in connection with the incident that led to the removal of Madison and Ryan. In July, 2018, the respondent was arrested for stealing

a generator from Home Depot and later charged with fifth degree larceny. On July 17, 2018, she was arrested and later charged with driving with a suspended license and other motor vehicle charges. On October 18, 2018, due to possessing hypodermic needles and crack pipes, the respondent was arrested and later charged with, inter alia, possession of drug paraphernalia, possession of cocaine and five bags of heroin, and operating a motor vehicle with a suspended license. On March 10, 2019, the respondent was arrested and charged with breach of the peace. She also has a history of not appearing in court and has resultant failure to appear charges. During the underlying termination of parental rights trial, the respondent was incarcerated as a result of the April, 2017 arrest for risk of injury to a minor, having been sentenced on April 17, 2019, to seven years of incarceration, execution suspended after eighteen months, and three years of probation.

A trial was held on August 5, 6, 7, and 16, 2019. The petitioner called three witnesses and entered seventeen exhibits into evidence. The respondent did not call any witnesses and did not introduce any exhibits. On August 16, the petitioner withdrew its termination petitions as to Chester C.

On November 8, 2019, the court, in a thorough memorandum of decision, granted the termination petitions as to the respondent. In the adjudicatory phase of the trial, the court found, by clear and convincing evidence, that the department made reasonable efforts to reunify the respondent with the children pursuant to § 17a-112 (j) (1), and that she remained unwilling or unable to benefit from services. The court based its decision on the respondent's failure to follow through with the specific steps that were agreed upon and ordered by the court, along with her unwillingness or inability to maintain her sobriety.

The court further found, by clear and convincing evidence, that the respondent had not and will not achieve the degree of personal rehabilitation that would encourage the belief that within a reasonable time, considering the ages and needs of all three children, she could assume a responsible position in their lives. The court stated that the petitioner remained unable to be an appropriate caretaker for the children and that there was no evidence or reason to believe that she would be able to assume a responsible position in the children's lives within a reasonable time.

In the dispositional phase, the court made findings on the seven criteria set out in § 17a-112 (k) as to the best interests of the children. The court examined the relevant factors related to the children's development, mental and emotional health, safety, long-term stability, their relationship with their respective foster parents, and their relationship with the petitioner. The court noted that the respondent had not successfully taken advantage of or complied with the services provided by the department and had not shown a willingness or ability to provide a safe and nurturing environment in which she appropriately could parent the children. Additionally, the court found that there was credible evidence to suggest that the "toxic relationship between the parents and [the] respondent's overbearing and manipulative behavior toward [Chester C.] is an impediment to [Chester C.'s] effective parenting of the children." This appeal followed. Additional facts and procedural history will be set forth as necessary.

On appeal, the respondent does not challenge the trial court's adjudicatory findings. Rather, she claims that the court deprived her of her substantive due process rights as guaranteed by the fourteenth amendment to the United States constitution because termination of her parental rights was not the least restrictive means necessary to ensure the state's compelling interests in

protecting the best interests of the children. The respondent argues that narrower means, other than termination, were available to protect the children from harm and afford them statutory permanency. She concedes that this claim of constitutional error was not presented at trial. Accordingly, she seeks review under the bypass doctrine codified in *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). The petitioner responds that the record is inadequate for review of the claim. We agree with the petitioner.

"Under *Golding*, a [party] can prevail on a claim of constitutional error not preserved at trial only if the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the [party] of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the [party's] claim will fail. The appellate tribunal is free, therefore, to respond to the [party's] claim by focusing on whichever condition is most relevant in the particular circumstances." (Internal quotation marks omitted.) *In re Adelina A.*, 169 Conn. App. 111, 119, 148 A.3d 621, cert. denied, 323 Conn. 949, 169 A.3d 792 (2016).

"In assessing whether the first prong of *Golding* has been satisfied, it is well recognized that [t]he [respondent] bears the responsibility for providing a record that is adequate for review of [her] claim of constitutional error. If the facts revealed by the record are insufficient, unclear or ambiguous as to whether a constitutional violation has occurred, we will not attempt to supplement or reconstruct the record, or to make

factual determinations, in order to decide the [respondent's] claim. . . . The reason for this requirement demands no great elaboration: in the absence of a sufficient record, there is no way to know whether a violation of constitutional magnitude in fact has occurred." (Citations omitted; internal quotation marks omitted.) *In re Anthony L.*, 194 Conn. App. 111, 114–15, 219 A.3d 979 (2019), cert. denied, 334 Conn. 914, 221 A.3d 447 (2020).

In the present appeal, the crux of the respondent's argument is that there were less restrictive alternatives to the termination of her parental rights and that the court violated her substantive due process rights by failing to consider these alternatives. She argues that when the petitioner withdrew the termination petitions as to Chester C., the state's plan was no longer to place the children for adoption but to reunify them with him. The respondent argues that after this decision was made, termination of her parental rights was no longer necessary. The respondent asserts that alternatives to termination were appropriate because the court did not base its decision on a finding that she posed a physical threat to the safety of the children or that she would abuse her parental status in ways that could harm the children if the children were reunified with Chester C. Rather, she argues, the court based its decision to terminate on its concern that she was "an impediment to [the] father's effective parenting of the children." She contends that the trial court's concerns about the potential for her to undermine Chester C.'s parenting could have been addressed through further orders limiting her guardianship, rather than by terminating her parental rights. Her brief, however, lacks specificity as to how she believes the trial court should have addressed its concerns.

In *In re Azareon Y.*, 309 Conn. 626, 72 A.3d 1074 (2013), our Supreme Court addressed a similar claim.

On appeal, the respondent in *In re Azareon Y.* sought review under *Golding* of a claim that she previously had not advanced, "namely, that the trial court's application of § 17a-112 to her was unconstitutional because substantive due process required the trial court to find by clear and convincing evidence that termination of her parental rights was the least restrictive means necessary to ensure the state's compelling interest in protecting the children's safety and well-being (best interests), and no such finding was made." Id., 630. At trial, the respondent did not request the court to consider any alternatives to the petitioner's permanency plan. Id., 632. The trial court's memorandum of decision did not indicate whether the court considered a permanency plan other than the one advocated by the petitioner, and the respondent did not ask the court to articulate whether it had considered other options. Id., 632–33. In determining that the record was inadequate for review under *Golding*'s first prong, our Supreme Court stated that the respondent was attempting to "characterize her claim as a mere question of law lacking factual predicates beyond those she has cited." Id., 637. The court declined to reach the merits of the claim. See id., 638.

More recently, this court considered an appeal in which a respondent mother claimed that the trial court had violated her substantive due process rights during its best interest analysis by failing to conduct a factual inquiry into the petitioner's permanency plans, which called for the termination of her parental rights and adoption. *In re Anthony L.*, supra, 194 Conn. App. 112–13. The respondent in *In re Anthony L.* claimed that, "because adoption was not going to occur immediately, due process required the court to determine whether the permanency plans secured a more permanent and stable life for each of the children compared to that

which she could provide if she were given time to rehabilitate herself." Id., 113. She did not raise or pursue this claim at trial, however, nor did she make the trial court and the petitioner aware that she would assert this claim on appeal. Id. This court stated that "the respondent's claim mirrors that of the respondent in *In re Azareon Y.*," and we went on to apply the same reasoning as our Supreme Court in that case. Id., 118. Accordingly, this court determined that the record contained insufficient evidence and declined to review the respondent's request for *Golding* review in light of an inadequate record. Id., 120.

Here, the facts are analogous to both *In re Anthony L.* and *In re Azareon Y.* At trial, the petitioner called three witnesses to testify. Each witness' testimony provided support for the petitioner's decision to pursue termination of the respondent's parental rights. Derek A. Franklin, a licensed clinical psychologist and the court-appointed evaluator, testified that it was unlikely that the respondent would be able to achieve a degree of rehabilitation that is sustainable. He stated that the respondent had co-opted Chester C. and that they had a pathological, one-sided relationship. He further opined that any consideration of the children's reunification with Chester C. would be contingent upon Chester C.'s distancing himself from the respondent because, otherwise, reunification would serve as a conduit for the respondent to have access to the children. On cross-examination by counsel for Chester C., Franklin testified that Chester C. appeared to be unduly influenced by the respondent such that, even if he followed through with all of the other steps for rehabilitation, reunification may not be viable.

Chanel Cranford, a social worker for the department, testified that at the time the department received the case, its plan was to pursue reunification. This plan changed, however, when the department determined

that Chester C. still lacked insight into how the respondent's substance abuse and untreated mental health issues would affect the children. This decision was further influenced by the department's findings that the respondent was not participating in the substance abuse and mental health treatment programs that the department provided for her.

Rachelle Chevalier-Jackson, the owner of Ahava Family Services (Ahava), testified about the parent education program and supervised visitation services in which the respondent participated. After participating in Ahava's parent education program for several weeks, the respondent withdrew from the program and indicated that she no longer wanted to take direction from its staff. Chevalier-Jackson also testified that there were instances in which the respondent was argumentative with staff members. When staff members relayed concerns about the respondent's behavior to Chester C., he decided to start visiting the children separately.

At trial, the respondent did not propose any alternative permanency plans. In fact, the only possible reference to an alternative plan came, not during the presentation of evidence, but during closing arguments when the respondent's counsel stated: "If your plan is to reunify with the father and not free these children for adoption, I submit that my client's parental rights should not be terminated in this matter."

After the trial court granted the termination petitions, the respondent did not attempt to raise this claim by filing a motion to reargue or reconsider, nor did she ask the court to articulate whether it had considered other options. The respondent's failure to pursue any of these avenues left the record devoid of evidence and findings necessary to review her constitutional claim.

The respondent attempts to rely on our Supreme Court's decision in *In re Brayden E.-H.*, 309 Conn.

642, 72 A.3d 1083 (2013). In that case, the trial court terminated a respondent mother's parental rights on the basis of evidence of substance abuse and mental health issues, a "chronic history of relapses and failed substance abuse treatment," and numerous interactions with the criminal justice system. (Internal quotation marks omitted.) Id., 647–49. The trial court granted permanent legal guardianship to the children's paternal great-aunt and her husband, and declined to terminate the father's parental rights. Id., 644 and n.1. After the trial court issued its decision, the respondent filed a motion to reargue in which she asserted that the substantive due process clauses of the state and federal constitutions required the petitioner to prove that termination was the least restrictive permanency plan available to secure the best interests of the children. Id., 653–54. She presented less restrictive alternatives to termination, including "severely circumscrib[ing] visitation rights with her children," which would have addressed the court's concerns while allowing her to maintain a legal relationship with her children. (Internal quotation marks omitted.) Id., 654.

Our Supreme Court found that the respondent preserved this constitutional claim by filing a motion to reargue but it declined to address the constitutional question, in part, because the record made it "readily apparent" that the respondent was not entitled to the relief she sought. Id., 656–57. The court also noted that, even if it was to assume that such a right existed; id., 657; the trial court's decision revealed that the standard was met because it concluded that "*any* avenue that would permit the respondent to exert *any* further control or influence over the children would undermine the guardians' relationship with the children and would be contrary to the children's best interests." (Emphasis in original.) Id., 661–62.

Unlike the respondent in *In re Brayden E.-H.*, the respondent here never proposed a plan that would have addressed the court's concerns while allowing her to maintain a legal relationship with the children. In the absence of such a proposal, the court had no factual predicates upon which to make a finding.

"Our role is not to guess at possibilities, but to review claims based on a complete factual record developed by the trial court. . . . Without the necessary factual and legal conclusions furnished by the trial court . . . any decision made by us respecting [the respondent's claims] would be entirely speculative." (Internal quotation marks omitted.) *In re Anthony L.*, supra, 194 Conn. App. 119–20. Accordingly, we decline to review the respondent's unpreserved constitutional claim because the inadequate record fails to satisfy the requirement of *Golding*'s first prong.

The judgments are affirmed.

In this opinion the other judges concurred.

COREY TURNER *v.* COMMISSIONER OF CORRECTION (AC 42437)

Lavine, Moll and Suarez, Js.

Syllabus

The petitioner, who previously had been convicted of the crimes of murder and assault in the first degree in connection with the shooting death of the victim, sought a writ of habeas corpus, claiming, inter alia, that the respondent Commissioner of Correction violated his due process rights by eliciting perjured testimony from his criminal trial counsel at his first habeas trial. The habeas court rendered judgment dismissing in part and denying in part the habeas petition. Thereafter, the habeas court denied his petition for certification to appeal, and the petitioner appealed to this court. Subsequently, the petitioner filed a motion to open the judgment and to disqualify the judicial authority, which the court denied and the petitioner amended his appeal. *Held*:

1. The habeas court did not abuse its discretion in denying the petition for certification to appeal; the habeas court reasonably determined that the petitioner's claims were frivolous and not debatable among jurists of reason.
2. The habeas court properly dismissed as nonjusticiable that count of the petition that alleged that the petitioner's due process rights had been violated due to newly discovered evidence that the respondent's counsel elicited perjured testimony from his criminal trial counsel at his first habeas trial: the court lacked authority to open the judgment rendered in the first habeas action and, therefore, the court could provide no practical relief to the petitioner on his claim, rendering the case moot; moreover, the petitioner's allegations regarding his criminal trial counsel's testimony at the first habeas trial did not constitute a constitutional violation of the petitioner's liberty and, therefore, the court did not have subject matter jurisdiction.
3. The habeas court did not improperly deny those counts of the petitioner's petition alleging suppression of and failure to preserve evidence of K-9 tracking of the alleged perpetrator during the police investigation of the murder: the court concluded that evidence of K-9 tracking had not been proven to exist, and the petitioner failed to demonstrate that there was evidence of the K-9 track that the state suppressed or the police failed to preserve; moreover, the court's decision was predicated in part on its determination that the testimony of a patrol sergeant, that if he had performed a K-9 track, he would have written a report, and that he could not recall using a K-9, was credible, and it is not the role of appellate courts to second-guess credibility determinations.
4. This court declined to review the petitioner's claim that the habeas court abused its discretion in denying his postjudgment motion to open the judgment and disqualify the judicial authority because the record was inadequate; the petitioner failed to follow the procedures required for disqualification, as the petitioner's affidavit and good faith certificate failed to comport with legal standards, the motion was not timely filed, there was no opportunity for a hearing to be held on the motion to disqualify to create a factual record for review and the petitioner failed to demonstrate good cause for failing to comply with the rules of practice.

Argued September 14—officially released November 3, 2020

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Westbrook*, *J.*; judgment dismissing the petition in part and denying the petition in part; thereafter, the court denied the petition for certification to appeal, and the plaintiff appealed to this court; subsequently, the court, *Westbrook*, *J.*, denied

the petitioner's motion to open the judgment and to disqualify the judicial authority, and the petitioner filed an amended appeal. *Appeal dismissed.*

Corey Turner, self-represented, the appellant (petitioner).

Melissa L. Streeto, senior assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, former state's attorney, and *JoAnne Sulik*, senior assistant state's attorney, for the appellee (respondent).

Opinion

LAVINE, J. The self-represented petitioner, Corey Turner, appeals from the judgment of the habeas court, *Westbrook, J.*, denying his petition for certification to appeal from the court's judgment dismissing in part and denying in part his second amended fifth petition for a writ of habeas corpus. On appeal, the petitioner claims that the habeas court abused its discretion by (1) denying his petition for certification to appeal, (2) dismissing his claim that he was deprived of a fair trial during his first habeas trial, (3) denying his claims that the prosecuting authority violated his state and federal constitutional rights by failing (a) to disclose exculpatory evidence and (b) to preserve the exculpatory evidence, and (4) denying his motion to open the judgment and disqualify the judicial authority. We dismiss the appeal.

The following procedural summary provides context for the petitioner's present appeal. In 1997, the jury found the petitioner guilty of murder in violation of General Statutes § 53a-54a and assault in the first degree in violation of General Statutes § 53a-59 for fatally shooting Richard Woods in Hartford in 1995. See *State* v. *Turner*, 252 Conn. 714, 716–17, 751 A.2d 372 (2000).[1]

[1] The jury reasonably could have found the following facts. On the evening of August 11, 1995, the petitioner and Woods had an argument in front of a house at 141 Homestead Avenue in Hartford. *State* v. *Turner*, supra, 252 Conn. 717. At approximately 11 p.m., a group of people were standing in front of the house when the petitioner and his brother, Charles Turner, drove by the house in a tan Oldsmobile. Id., 717–18. Shortly thereafter,

The trial court, *Koletsky*, *J.*, sentenced the petitioner to a total effective term of sixty years of incarceration. *Turner* v. *Commissioner of Correction*, 86 Conn. App. 341, 342, 861 A.2d 522 (2004), cert. denied, 272 Conn. 914, 866 A.2d 1286 (2005). Our Supreme Court upheld the petitioner's conviction on direct appeal. *State* v. *Turner*, supra, 750. The petitioner subsequently filed a succession of state and federal petitions for a writ of habeas corpus, as well as, a writ of error coram nobis, motions to open and set aside judgments, and a statutory petition for a new trial.[2] None of the petitioner's

Charles Turner, alone in the car, drove back and parked the car. Id., 718. Charles Turner got out of the car and approached the group standing in front of the house and began "dancing around." Id., 718. Meanwhile, the petitioner "wearing a mask and dark clothing, approached the group and shot at Woods with a handgun. . . . Woods shouted 'Boku shot me. Boku did it.' 'Boku' is [the petitioner's] street name." Id. Darius Powell and Kendrick Hampton recognized the petitioner as the assailant. Id. The petitioner escaped by running behind 141 Homestead Avenue and through the yards of other houses on the street. Id. "Charles Turner, who had jumped back into the tan Oldsmobile when the shooting began, drove down Homestead Avenue and picked up [the petitioner] four houses away." Id.

[2] See *Turner* v. *Commissioner of Correction*, supra, 86 Conn. App. 341 (appeal from denial of petition alleging ineffective assistance of trial and appellate counsel); *Turner* v. *Commissioner of Correction*, 97 Conn. App. 15, 902 A.2d 716 (appeal from dismissal of petition alleging ineffective assistance of trial counsel), cert. denied, 280 Conn. 922, 908 A.2d 546 (2006); *Turner* v. *Dzurenda*, 596 F. Supp. 2d 525 (D. Conn. 2009) (petition alleging state habeas court unreasonably applied *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 672 (1984)), aff'd, 381 Fed. Appx. 41 (2d Cir.), cert. denied, 562 U.S. 1032, 131 S. Ct. 574, 178 L. Ed. 2d 419 (2010); *Turner* v. *Commissioner of Correction*, 118 Conn. App. 565, 984 A.2d 793 (2009) (appeal from denial of petition alleging ineffective assistance of first habeas appellate counsel), cert. denied, 296 Conn. 901, 991 A.2d 1104 (2010); *Turner* v. *Commissioner of Correction*, 134 Conn. App. 906, 40 A.3d 345 (appeal from denial of writ of error coram nobis), cert. denied, 307 Conn. 904, 53 A.3d 219 (2012); *Turner* v. *Commissioner of Correction*, 139 Conn. App. 906, 55 A.3d 626 (appeal from denial of motion to set aside judgment of conviction), cert. denied, 308 Conn. 946, 67 A.3d 289 (2012); *Turner* v. *Warden*, Superior Court, judicial district of Tolland, CV-11-4003901-S (July 9, 2013); *Turner* v. *Commissioner of Correction*, 163 Conn. App. 556, 134 A.3d 1253 (appeal from denial of motion to open first habeas judgment), cert. denied, 323 Conn. 909, 149 A.3d 1253 (2016); *Turner* v. *State*, 172 Conn. App. 352, 1604 A.2d 398 (2017) (appeal from denial of petition for new trial).

myriad efforts for postconviction relief has been successful.

The issues in the present appeal are related to the denials of the petitioner's first petition for a writ of habeas corpus and his motion to open the first habeas court judgment. The relevant procedural history was summarized comprehensively by this court in *Turner* v. *Commissioner of Correction*, 163 Conn. App. 556, 134 A.3d 1253, cert. denied, 323 Conn. 909, 149 A.3d 1253 (2016), in which the petitioner appealed from the judgment of the habeas court, *Cobb*, *J.*, claiming in part that Judge Cobb improperly determined that the petitioner's motion to open and set aside the judgment rendered by the first habeas court, *White*, *J.*, was time barred. Id., 558.

"The petitioner's first petition for writ of habeas corpus . . . was adjudicated in 2002. In that case, [Judge White] denied the petitioner's writ of habeas corpus alleging claims of ineffective assistance of counsel both in his underlying criminal trial and on his direct appeal. This court dismissed the petitioner's appeal. *Turner* v. *Commissioner of Correction*, 86 Conn. App. 341, 861 A.2d 522 (2004), cert. denied, 272 Conn. 914, 866 A.2d 1286 (2005).

"During [the first] habeas trial, the petitioner alleged that his criminal trial counsel had been ineffective for failing to convince the criminal trial court to admit evidence that supported his defense of alibi. The petitioner had testified, during his criminal trial, that he was with [Fonda Williams, the mother of his child] at the time of the murder. He called [Williams] to testify and she repeated the same story. During cross-examina-

In addition, the petitioner has filed an appeal from the denial of his sixth petition for a writ of habeas corpus, which currently is pending in this court. *Turner* v. *Commissioner of Correction*, Connecticut Appellate Court, Docket No. AC 43401 (appeal filed September 16, 2019).

tion of the petitioner, the state questioned him about a recorded prison [telephone] call between the petitioner and [Williams], suggesting that he had fabricated the story. In an attempt to refute the state's rebuttal evidence, the petitioner's criminal trial counsel [Leon Kaatz] attempted to admit into evidence the recording of the [telephone] call between the petitioner and [Williams], but the trial court sustained the state's objection.[3]

"In his first habeas trial, the petitioner called [Kaatz] as a witness in an effort to elicit testimony that would show that he had been ineffective by failing to have the recorded [telephone] call admitted as evidence in the criminal trial. On cross-examination, [Kaatz] testified that the petitioner presented him with two witnesses who would testify to an alibi, in addition to and separate from [Williams]. [Kaatz] testified that initially during the trial, he interviewed one of the two additional witnesses and found that she was not credible and thus did not present their testimony in the petitioner's defense. The petitioner, representing himself at the habeas trial, attempted to impeach [Kaatz] through use of a prior inconsistent statement concerning the additional witnesses. The petitioner sought to admit as evidence [Kaatz'] written response to a 1997 grievance that was filed against him by the petitioner. The petitioner claimed that the written response proved that the petitioner provided [Kaatz] with only [Williams] in regard to his alibi, contra-

[3] On direct appeal, the petitioner claimed that the trial court abused its discretion by sustaining the state's objection to the tape recording of the petitioner's conversation with Williams. *State* v. *Turner*, supra, 252 Conn. 724. Our Supreme Court concluded that the trial court did not abuse its discretion, reasoning that the petitioner "did not point to anything in the offered tape that would have been helpful to his case with regard to the state's rebuttal evidence. Rather, he argued that the offered tape would substantiate his testimony on cross-examination concerning his conversation with Williams. Bolstering of defense evidence is not permitted on surrebuttal." Id.

dicting [Kaatz'] habeas testimony.[4] However, [Judge White] sustained the objection of the respondent . . . to the introduction of this extrinsic evidence because the habeas court concluded that the statement would be cumulative and involved a collateral matter. The next day, the petitioner moved for a mistrial because he claimed that [Kaatz] had perjured himself and the court denied him the opportunity to present evidence that would have supported that claim. The court denied the motion. Ultimately, [Judge White] denied the petitioner's writ of habeas corpus. The petitioner appealed from [Judge White's judgment], but he did not argue that the court had erred by sustaining the [respondent's] objection to his admission of the grievance response into evidence. This court dismissed the appeal. *Turner* v. *Commissioner of Correction*, supra, 86 Conn. App. 343 . . . .

"On July 27, 2011, the petitioner filed a motion to open and set aside the . . . judgment [rendered by Judge White] on his first petition for writ of habeas corpus. The petitioner claimed that the judgment resulted from a fraud committed upon the court through the col-

[4] In deciding the appeal, this court carefully reviewed the grievance response and concluded that it did not reveal a clear discrepancy between the response and Kaatz' testimony at the criminal trial. "In the 1997 grievance, [Kaatz] was writing in response to the petitioner's specific claims that he did not interview the witness who supported his alibi: 'On Friday, July 25, at the end of the first week of evidence in the trial, Petitioner did, for the first time, reveal to me the identity of his alibi witness, her name was Fonda Williams.' The state argues that any discrepancy was explained by [Kaatz] in his response to a second grievance filed by the petitioner. The statement was made in a grievance response dated March 21, 2003; a document that the petitioner included in his pretrial brief to the habeas court supporting his motion to open and vacate the judgment. [Kaatz] stated: 'My dialogue with these women took place 7 years ago and my recollection of precisely what was said may be sketchy. I do recall, however, that at no time did either of these women tell me they were acting on their own. Further . . . in future dialogues I had with [the petitioner] about these women, [the petitioner] never stated or even suggested that the two women were acting on their own without his knowledge.' " *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 560 n.3.

lusion of [Kaatz] and the respondent's counsel [Angela Macchiarulo] in the first habeas action. Specifically, the petitioner claimed that [Kaatz] had perjured himself in testimony before [Judge White] and that [Macchiarulo] had intentionally elicited this testimony even though she knew that it was false. During [Judge Cobb's] hearing on the motion, the petitioner argued that [Kaatz'] statement regarding multiple alibis had undermined his petition for writ of habeas corpus because it supported the respondent's contention that [Williams'] testimony as to the petitioner's alibi had been fabricated. [Judge Cobb] denied the petitioner's motion to open and set aside the judgment based on his failure to satisfy any of the factors set out in *Varley* v. *Varley*, 180 Conn. 1, 4, 428 A.2d 317 (1980), to prove that the judgment was based on fraud.[5] [Judge Cobb] also denied the petitioner certification to appeal." (Footnotes added and omitted.) *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 558–62.

After Judge Cobb denied the motion to open and set aside the judgment in a memorandum of decision dated December 19, 2012, the petitioner filed two motions for reconsideration, which were denied. Id., 562 n.6. In June, 2013, the petitioner sought to appeal from the denial of his motion to open and set aside the judgment, but this court dismissed the appeal because the petitioner had failed to seek certification to appeal from the habeas court judgment. Id. The petitioner filed a petition for certification to appeal, which was denied in November, 2013. Id. In March, 2014, the petitioner appealed from the habeas court's denial of his petition for certification. Id.

[5] Judge Cobb stated: "The petitioner's delay in filing the motion to open is unreasonable, the prosecution of said motion has not been diligent, there is no clear proof of perjury or fraud, and there is no reasonable probability that the result of a new habeas trial will be different." (Internal quotation marks omitted.) *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 562 n.5.

In deciding the petitioner's appeal from the judgment, this court considered the controlling law. "Habeas corpus is a civil proceeding. . . . The principles that govern motions to open or set aside a civil judgment are well established. A motion to open and vacate a judgment . . . is addressed to the [habeas] court's discretion, and the action of the [habeas] court will not be disturbed on appeal unless it acted unreasonably and in clear abuse of its discretion." (Internal quotation marks omitted.) Id., 563.

"A motion to open and set aside judgment is governed by General Statutes § 52-212a and Practice Book § 17-4. . . . Section 52-212a provides in relevant part: 'Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . .' " (Citation omitted.) Id., 563–64.

"For claims of fraud brought in a civil action, our Supreme Court has established the criteria necessary for a party to overcome the statutory time limitation governing a motion to open and set aside judgment. *Varley* v. *Varley*, supra, 180 Conn. 4 . . . . To have a judgment set aside on the basis of fraud which occurred during the course of the trial upon a subject on which both parties presented evidence is especially difficult. . . . The question presented by a charge of fraud is whether a judgment that is fair on its face should be examined in its underpinnings concerning the very matters it purports to resolve. Such relief will only be granted if the unsuccessful party is not barred by any of the following restrictions: (1) There must have been no laches or unreasonable delay by the injured party after the fraud was discovered. (2) There must have been diligence in the original action, that is, diligence in trying to discover and expose the fraud. (3) There

must be clear proof of the perjury or fraud. (4) There must be a substantial likelihood that the result of the new trial will be different." (Internal quotation marks omitted.) *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 564.

This court concluded that Judge Cobb "properly denied the petitioner's motion to open and set aside the judgment [rendered in the first habeas trial] because it was raised after an unreasonable delay. [Judge White] denied the petitioner's first petition for a writ of habeas corpus on January 4, 2002. More than eight years later, the petitioner filed the present motion with [Judge Cobb]. During that span of time, the petitioner did not develop any new facts or claims to support his assertion of fraud. The petitioner instead seeks to set aside [Judge White's] judgment with facts that were known to him, as well as to the habeas court, at the time of his first petition for a writ of habeas corpus. The petitioner has not offered this court any argument that justifies his lengthy delay in bringing this motion in a habeas action. The determination that the petitioner delayed an unreasonable period of time in pursuit of his claim of fraud is not debatable among jurists of reason." Id., 564–65. This court dismissed the appeal from the denial of the motion to open and set aside the judgment in the first habeas case. Id., 565.

On September 10, 2014, the petitioner filed a fifth petition for a writ of habeas corpus, which is the subject of the present appeal. He filed a second amended petition (amended petition) on May 31, 2017, in which he alleged five counts: (1) the respondent violated his rights to due process at the first habeas trial by eliciting perjured testimony from Kaatz; (2) Kaatz rendered ineffective assistance at the criminal trial by failing to rehabilitate the credibility of the petitioner and Williams after their credibility had been impeached by the state with false claims of a recently fabricated alibi defense; (3) Kaatz rendered ineffective assistance by failing to

investigate deficiencies in the police investigation; (4) the state suppressed exculpatory evidence of K-9 tracking during the police search; and (5) the police department failed to preserve exculpatory evidence of K-9 tracking during the police search. Prior to trial, the petitioner withdrew his second and third counts. In her September 17, 2018 memorandum of decision, Judge Westbrook concluded that the petitioner's claim that Kaatz testified falsely at the first habeas trial was not justiciable and dismissed it. She also concluded that the evidence that the petitioner claims the state suppressed and that the police department did not preserve never existed and, therefore, she denied the petitioner's second and third counts.[6] The habeas court also denied the petitioner's petition for certification to appeal. The petitioner appealed on December 31, 2018.

On January 7, 2019, the petitioner filed a motion with the habeas court to open the judgment and to disqualify the judicial authority (motion to open and disqualify). Judge Westbrook denied the motion to open and disqualify on January 15, 2019. On February 15, 2019, the petitioner filed an amended appeal to challenge the habeas court's denial of his motion to open and disqualify filed postjudgment. Additional facts will be set forth as necessary.

I

The petitioner first claims that the habeas court abused its discretion by denying his petition for certification to appeal. We conclude that the habeas court did not abuse its discretion.

Pursuant to General Statutes § 52-470 (g), a petitioner may appeal from the decision of the habeas court if

[6] In her memorandum of decision, Judge Westbrook renumbered the petitioner's counts and referenced them as count one, count two, and count three. We have adopted the habeas court's reference to the counts of the amended fifth habeas petition.

"the judge before whom the case was tried . . . [certifies] that a question is involved in the decision which ought to be reviewed by the court having jurisdiction . . . ." Section 52-470 (g) was enacted to discourage frivolous habeas corpus appeals by conditioning the petitioner's right to appeal upon obtaining certification from the habeas court. See *Simms* v. *Warden*, 230 Conn. 608, 616, 646 A.2d 126 (1994). A petitioner who was denied certification to appeal but nonetheless appeals must first demonstrate that the denial of certification constituted an abuse of the habeas court's discretion. See id.

A petitioner can establish that the habeas court abused its discretion by denying certification to appeal if the petitioner can demonstrate that either "[1] the issues are debatable among jurists of reason; [2] that a court could resolve the issues [in a different manner]; or [3] that the questions are adequate to deserve encouragement to proceed further." (Emphasis omitted; internal quotation marks omitted.) *Lozada* v. *Deeds*, 498 U.S. 430, 432, 111 S. Ct. 860, 112 L. Ed. 2d 956 (1991); see also *Simms* v. *Warden*, supra, 230 Conn. 616. Pursuant to *Simms*, the reviewing court consequently must consider the merits of the petitioner's claims in order to determine whether a certifiable issue exists under *Lozada*. *Simm*s v. *Warden*, supra, 616. "In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of the petitioner's underlying claims to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous." *Taylor* v. *Commissioner of Correction*, 284 Conn. 433, 449, 936 A.2d 611 (2007). Pursuant to our review of the petitioner's claims as addressed herein, we conclude that the habeas court reasonably determined that the petitioner's claims are frivolous and denied certification to appeal.

II

The petitioner claims that the court improperly dismissed count one of his amended petition as nonjusticiable. We disagree that the habeas court improperly determined that count one was nonjusticiable.

A claim regarding the court's subject matter jurisdiction raises a question of law. See *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 279, 933 A.2d 256 (2007). The plenary standard of review applies to questions of law. Id.

The following facts are relevant to this claim. In count one of his amended petition, the petitioner alleged that his due process rights were violated due to newly discovered evidence related to the first habeas trial in 2002. The petitioner alleged that, Macchiarulo, counsel for the respondent, elicited testimony from Kaatz that she knew or should have known was perjured, false or misleading and that there was a reasonable likelihood that the false testimony could have affected the judgment Judge White rendered.

In its return, the respondent pleaded that the claim alleged in count one failed to state a cause of action and was otherwise barred by the doctrine of res judicata or collateral estoppel.[7] The respondent argued that, although the petitioner claimed that he was entitled to a new habeas corpus trial on the basis of false testimony allegedly given at the first habeas trial, he was not challenging the lawfulness of his custody. Furthermore, the respondent argued, the purpose of habeas corpus is to challenge the legality of custody and because the petitioner did not challenge the legality of his custody in count one, the claim is not cognizable.

[7] Because we conclude that the habeas court properly concluded that the allegations contained in count one were not justiciable, we decline to address the respondent's res judicata argument.

The habeas trial was held on July 26 and September 20, 2017. The habeas court issued a memorandum of decision on September 17, 2018, after the parties submitted posttrial briefs. In its memorandum of decision, the habeas court demonstrated its familiarity with the factual history of the underlying crime as set forth in *State* v. *Turner*, supra, 252 Conn. 717–18, and the procedural history set forth in this court's opinion in *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 559–61 (dismissing appeal from denial of motion to open judgment in first habeas trial).[8] The court agreed with the respondent that there was no relief that it could provide the petitioner and, therefore, that the claim was not justiciable.

The habeas court cited the controlling law. "A petition for a writ of habeas corpus is a civil action . . . ." (Citation omitted.) *Gonzalez* v. *Commissioner of Correction*, 127 Conn. App. 454, 460, 14 A.3d 1053 (2011). "A court will not resolve a claimed controversy on the merits unless it is satisfied that the controversy is justiciable. . . . Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) *that the determination of the controversy will result in practical relief to the complainant*." (Citation omitted; emphasis added; internal quotation marks omitted.) *Mejia* v. *Commissioner of Correction*, 112 Conn. App. 137, 146, 962 A.2d 148, cert. denied, 291 Conn. 910, 969 A.2d 171 (2009).

[8] Judge Westbrook noted when dismissing the petitioner's appeal from the motion to open that "the petitioner did not develop any new facts or claims to support his assertion of fraud. The petitioner instead seeks to set aside the habeas court's judgment with facts that were known to him, as well as to [Judge White], at the time of his first petition for a writ of habeas corpus." *Turner* v. *Commissioner of Correction*, supra, 163 Conn. App. 565–66.

A habeas court may not set aside or vacate the judgment of a prior habeas court. General Statutes § 52-212a provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . ."

Our Supreme Court has stated that Connecticut's "jurisprudence concerning the trial court's authority to overturn or to modify a ruling in a particular case assumes, as a proposition so basic that it requires no citation of authority, that any such action will be taken only by the trial court with continuing jurisdiction over the case, and that the only court with continuing jurisdiction is the court that originally rendered the ruling." *Valvo* v. *Freedom of Information Commission*, 294 Conn. 534, 543–44, 985 A.2d 1052 (2010). "This assumption is well justified in light of the public policies favoring consistency and stability of judgments and the orderly administration of justice." Id., 545. It would wreak havoc on the judicial system to permit a trial court to second guess the judgment of another trial court in a separate proceeding. Id. "This is especially true when a direct challenge to the original ruling can be made by any person at any time in the trial court with continuing jurisdiction"; id.; as in the present case. The petitioner took a direct appeal from his criminal conviction, which was denied; *State* v. *Turner*, supra, 252 Conn. 714; and from the denial of his first petition for a writ of habeas corpus. *Turner* v. *Commissioner of Correction*, supra, 86 Conn. App. 341.

In the present case, Judge Westbrook lacked authority to open the judgment rendered in the first habeas action. For that reason, she was not able to render practical relief to the petitioner on count one. "[C]ourts

are established to resolve actual controversies [and] before a claimed controversy is entitled to a resolution on the merits it must be justiciable." (Internal quotation marks omitted.) *Valvo* v. *Freedom of Information Commission*, supra, 294 Conn. 540. If the court is not capable of providing practical relief to the complainant, the case is moot. Id., 541. Mootness is a question of justiciability that implicates the court's subject matter jurisdiction. Id. If a court lacks subject matter jurisdiction over an alleged claim, the claim must be dismissed. See, e.g., *O'Reilly* v. *Valletta*, 139 Conn. App. 208, 216, 55 A.3d 583 (2012), cert. denied, 308 Conn. 914, 61 A.3d 1101 (2013).[9]

The petitioner also claims that the habeas court improperly dismissed count one for lack of subject matter jurisdiction because, as a court of equity, it was "permitted to fashion a remedy or provide practical relief commensurate with the scope of the constitutional violation alleged . . . ." The respondent contends that the petitioner's claim that Kaatz testified falsely at the first habeas trial, not at his criminal trial, does not implicate a constitutional right. We agree with the respondent. "Subject matter jurisdiction for adjudicating habeas petitions is conferred on the Superior Court by General Statutes § 52-466, which gives it the authority to hear those petitions that allege illegal confinement or deprivation of liberty." (Internal quotation marks omitted.) *Anthony A.* v. *Commissioner of Correction*, 159 Conn. App. 226, 234, 122 A.3d 730 (2015).[10]

[9] The habeas court also pointed out that a habeas petitioner seeking relief on a claim that a witness testified falsely at the habeas trial may file (1) a motion to open and set aside the judgment pursuant to § 52-212a and Practice Book § 17-4, or (2) a petition for a new trial pursuant to General Statutes § 52-270 and Practice Book § 17-4A. The respondent correctly notes that the petitioner has availed himself of those options, albeit without success.

[10] The petitioner also claims on appeal that the habeas court failed to exercise its discretion to fashion a remedy for the relief sought. As we have pointed out, the habeas court had no authority to affect the judgments rendered in the petitioner's criminal or first habeas trials. Moreover, the basic premise of the petitioner's claim that there is newly found evidence

"Habeas corpus provides a special and extraordinary legal remedy for illegal detention. . . . The deprivation of legal rights is essential before the writ may be issued. . . . Questions which do not concern the lawfulness of the detention cannot properly be reviewed on habeas corpus. . . . When a habeas petition is properly before a court, the remedies it may award depend on the constitutional rights being vindicated." (Citations omitted; internal quotation marks omitted.) *Vincenzo* v. *Warden*, 26 Conn. App. 132, 137–38, 599 A.2d 31 (1991). In the present case, the petitioner's allegations regarding Kaatz' testimony do not constitute a constitutional violation of the petitioner's liberty and, therefore, the habeas court had no subject matter jurisdiction. When a court finds that it lacks jurisdiction, it must dismiss the case. See *Pet* v. *Dept. of Health Services*, 207 Conn. 346, 351, 542 A.2d 672 (1988), overruled on other grounds by *Mangiafico* v. *Farmington*, 331 Conn. 404, 425, 204 A.3d 1138 (2019).

In the present case, the habeas court lacked subject matter jurisdiction because the petitioner's claim is not justiciable and, therefore, the habeas court properly dismissed count one of the petition.

III

The defendant's second claim is that the habeas court abused its discretion by denying those counts alleging violation of his constitutional rights under the fifth and fourteenth amendments to the United States constitution and article first, §§ 8 and 9, of the constitution of Connecticut in that (a) the state suppressed evidence of a K-9 track used during the police investigation of the crime scene in violation of *Brady* v. *Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963),[11] and

is fundamentally flawed. During the first habeas trial, the petitioner moved for a mistrial on the basis of Kaatz' testimony.

[11] "[I]n *Brady* v. *Maryland*, [supra, 373 U.S. 87], the United States Supreme Court held that the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material

(b) the police failed to preserve evidence of the K-9 track in violation of *Arizona* v. *Youngblood*, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988),[12] and *State* v. *Morales*, 232 Conn. 707, 657 A.2d 585 (1995). We disagree.

The petitioner has predicated his claim on the following testimony presented at his criminal trial. A Hartford police officer, Mark Castagna, was dispatched to the scene of the shooting and notified the patrol commander, Sergeant Stephen O'Donnell, of the seriousness of Woods' injuries. The crime scene had been secured when O'Donnell arrived. Castagna learned from Betty Lewis, who lived at 141 Homestead Avenue, that the perpetrator of the shooting came from the backyards of 143-145 Homestead Avenue and fled there after the shooting. According to Castagna, it would have been normal to call in a K-9 to track of the perpetrator in an investigation such as this, but he did not know whether it was done in this case. The state's lead investigator, Keith Knight, responded to the crime scene after it had been processed. According to Knight, a police sergeant would have been in charge of the investigation. Knight

either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. To establish a *Brady* violation, the defendant must show that (1) the government suppressed evidence, (2) the suppressed evidence was favorable to the defendant, and (3) it was material [either to guilt or to punishment]." (Internal quotation marks omitted.) *State* v. *Kelsey*, 93 Conn. App. 408, 418, 889 A.2d 855, cert. denied, 277 Conn. 928, 895 A.2d 800 (2006).

[12] "The United States Supreme Court, employing a federal due process clause analysis, explained that when confronted with a claim that the state failed to preserve evidence that could have been subjected to tests, the results of which might have exonerated the defendant; *Arizona* v. *Youngblood*, [supra, 488 U.S. 57]; unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (Internal quotation marks omitted.) *State* v. *Barnes*, 127 Conn. App. 24, 30–31, 15 A.3d 170 (2011), aff'd, 308 Conn. 38, 60 A.3d 256 (2013). But see *State* v. *Morales*, supra, 232 Conn. 720–27 (applying balancing test under constitution of Connecticut).

reviewed the police reports submitted to determine whether follow-up was needed. He did not know whether a K-9 unit was called to assist in the investigation, and he did not see one. According to Knight, it would have been good police work to call in a K-9 unit in a case such as this. In 2015, the petitioner retained private investigators to investigate whether there was evidence to challenge his conviction.

On the basis of the record and evidence presented at the habeas trial, Judge Westbrook made the following findings in her memorandum of decision. "At the petitioner's criminal trial [Castagna], Detective Jim Chrystal and Detective Keith Knight were all questioned on whether a K-9 unit was present at the crime scene during the investigation on August 11 and August 12, 1995, and none of the witnesses could recall seeing one there. At the present habeas trial, the petitioner presented the court with a supplemental police report involving the crime scene filed by [O'Donnell, who is now retired]. The supplemental report does not reference any use of a K-9. The petitioner also presented documentary evidence indicating that [O'Donnell] attended a K-9 training program from February 2, 1992, to April 17, 1992.

"[The petitioner's] [p]rivate investigators, Thomas LaPointe and Jacqueline Bainer, testified at the habeas trial as to interviews they each had with [O'Donnell]. LaPointe's report . . . indicates that [O'Donnell] informed him that he had a vague recollection of performing a K-9 track in the area the crime occurred, but that he had performed tracking in that area on other occasions so he could not be certain that his recollection was related to the petitioner's case. Bainer's report . . . indicates that [O'Donnell] informed her that he could not recall if he was handling a K-9 [unit] during the investigation of the petitioner's case, but he would have reported it if the dog had hit upon a scent.

"At the habeas trial [O'Donnell] testified that on the night of the underlying incident, he responded to the crime scene as a patrol sergeant. He also testified that he believed he was a K-9 handler during that time, but that there was a period of time where he stopped being a K-9 handler so that he could accept a promotion to sergeant. [O'Donnell] further testified that he does not recall whether a track was performed that night, but that he would have written a report if he had performed one. The court finds [O'Donnell's] *testimony to be credible*."[13] (Emphasis added.) We now turn to the petitioner's claims regarding evidence of an alleged K-9 track at the scene of the shooting.

A

In count two of the amended petition, the petitioner alleged that the state suppressed evidence that would have raised opportunities for the defense to attack the thoroughness or good faith of the police investigation. Specifically, the petitioner alleged that the state failed to disclose the use of a K-9 to track the perpetrator of the crime.

In its memorandum of decision, the habeas court found that "there was no evidence presented that a K-9 track actually occurred during the course of the police investigation in the petitioner's case. The police officers

[13] On appeal, the respondent notes that a determination of a habeas claim that required "the court to perform its legitimate and essential role of weighing and evaluating the credibility of conflicting testimony does not, by itself, render a court's conclusion debatable among jurists of reason for the purpose of appellate review." (Internal quotation marks omitted.) *Bellino* v. *Commissioner of Correction*, 75 Conn. App. 743, 748, 817 A.2d 704, cert. denied, 264 Conn. 915, 826 A.2d 1159 (2003). The respondent argues that because credibility determinations are not reviewable for error, they necessarily are not debatable among reasonable jurists, subject to a different resolution or deserving of further argument, citing *Washington* v. *Commissioner of Correction*, 166 Conn. App. 331, 344–45, 141 A.3d 956, cert. denied, 323 Conn. 912, 149 A.3d 981 (2016). We agree with the respondent.

who were present at the scene and testified at the underlying criminal trial could not recall the use of a K-9 during the investigation. . . . O'Donnell, a trained K-9 handler present at the crime scene, testified that he could not recall the use of a K-9 during the investigation of the petitioner's case. There is no reference to the use of a K-9 team in any of the police reports submitted. As a result, a claim that the state suppressed such evidence that has not been proven to exist cannot survive." The court, therefore, denied count two of the amended petition.

B

In count three of the amended petition, the petitioner alleged that the Hartford Police Department violated his constitutional right to due process because it failed, in bad faith, to document or otherwise preserve material scientific or technical evidence, i.e., dog tracking evidence, which was subject to misinterpretation by the jury.

With respect to this count, in which the petitioner alleged a violation of *Arizona* v. *Youngblood*, supra, 488 U.S. 51, the habeas court noted that in *State* v. *Morales*, supra, 232 Conn. 707, our Supreme Court "rejected the bad faith litmus test from *Youngblood* as inadequate to determine whether the defendant had been afforded due process under the state constitution, and instead [the court] incorporated the *Asherman*[14] balancing test as the appropriate framework for deciding whether the failure of the police to preserve evidence deprived the defendant of his state constitutional rights to due process. . . . Accordingly, applying the *Asherman* test, [the court] weigh[s] the reasons for the unavailability of the evidence, the materiality of the missing evidence,

[14] See *State* v. *Asherman*, 193 Conn. 695, 724, 478 A.2d 227 (1984), cert. denied, 470 U.S. 1050, 105 S. Ct. 1749, 84 L. Ed. 3d 814 (1985).

the likelihood of mistaken interpretation of it by witnesses or the jury and the prejudice to the defendant." (Citation omitted; footnote added.) *State* v. *Estrella*, 277 Conn. 458, 483, 893 A.2d 348 (2006). The habeas court found no proof that evidence of the K-9 track the petitioner alleged that the police failed to preserve actually existed. The court therefore denied count three of the amended petition.

C

We thoroughly have reviewed the record and the briefs of the parties, and conclude that the petitioner has failed to demonstrate that the habeas court improperly denied counts two and three of his amended petition regarding the alleged suppression and failure to preserve K-9 evidence. The petitioner has failed to demonstrate that there was evidence that the state suppressed or that the police failed to preserve. Moreover, the habeas court's decision is predicated in part on its credibility determination. It is not the role of appellate courts to second-guess credibility determinations made by the habeas court. See *Fields* v. *Commissioner of Correction*, 179 Conn. App. 567, 577, 180 A.3d 638 (2018). The petitioner's claims regarding suppressed or unpreserved evidence of a K-9 track therefore fail.

IV

In his amended appeal, the petitioner claims that the habeas court abused its discretion by denying his postjudgment motion to open the judgment and disqualify the judicial authority (motion to open and disqualify). The respondent contends that the claim is not reviewable because the record is inadequate due to the petitioner's failure to comply with Practice Book § 1-23. We agree that the claim is not reviewable.

The record discloses the following procedural history. The habeas court issued its memorandum of decision on September 17, 2018, and the petitioner filed an appeal therefrom on December 31, 2018. On January

7, 2019, almost four months after the judgment was rendered, the petitioner filed the motion seeking to open the September 17, 2018 judgment dismissing count one and denying counts two and three of his amended petition and the recusal of Judge Westbrook "for the reasons set forth in the accompanying memorandum of law . . . ." In the accompanying memorandum of law, the petitioner stated that "the court's ruling dismissing the claims raised in count one of his amended petition evidences a deep-seated favoritism for the respondent warden or antagonism towards the petitioner that made a fair judgment on the merits of the petitioner's claims impossible." He represented that the record demonstrates that, during the habeas trial, Macchiarulo uttered a false statement in violation of General Statutes § 53a-156[15] by testifying that Kaatz' testimony during the first habeas trial was not an indication of perjury. The petitioner also represented that the habeas court hindered prosecution in violation of General Statutes § 53a-167 (a)[16] by failing to hold Macchiarulo accountable for having committed perjury before the court or to otherwise report her conduct to authorities.

On January 15, 2019, the habeas court denied the motion to open and disqualify.[17] The petitioner requested,

[15] General Statutes § 53a-156 (a) provides in relevant part: "A person is guilty of perjury if, in any official proceeding, such person intentionally, under oath or in an unsworn declaration . . . makes a false statement swears, affirms or testifies falsely, to a material statement which such person does not believe to be true."

[16] General Statutes § 53a-167 (a) provides: "A person is guilty of hindering prosecution in the third degree when such person renders criminal assistance to another person who has committed a class C, D or E felony or an unclassified felony for which the maximum penalty is imprisonment for ten years or less but more than one year."

[17] On February 28, 2019, the petitioner filed a motion for articulation of the habeas court's September 17, 2018 memorandum of decision denying his petition for a writ of habeas corpus. The court denied the motion for articulation on March 14, 2019. On April 1, 2019, the petitioner filed a motion for review of the habeas court's denial of his motion for articulation with this court. This court granted the motion for review but denied the relief requested on May 16, 2019.

pursuant to Practice Book § 64-1, that the habeas court file a memorandum of decision regarding its denial of the motion to open and disqualify. On February 15, 2019, the petitioner filed an amended appeal to challenge the habeas court's denial of his motion to open and disqualify.

On February 25, 2019, the habeas court issued an order pursuant to the petitioner's request.[18] The court stated: "The principles that govern motions to open or set aside a civil judgment are well established. Within four months of the date of the original judgment, Practice Book [§ 17-4] vests discretion in the trial court to determine whether there is a good and compelling reason for its modification or vacation. . . . *Chapman Lumber*, *Inc.* v. *Tager*, 288 Conn. 69, 94, 952 A.2d 1 (2008). Practice Book § 1-22 (a) provides in relevant part: A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct . . . . Rule 2.11 (a) of the Code of Judicial Conduct states in pertinent part: A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might be reasonably questioned . . . . Practice Book § 1-23 provides: A motion to disqualify a judicial authority shall be in writ-

On April 9, 2019, the petitioner filed a revised motion for summary reversal of the habeas court's judgment, which was directed to the postjudgment motion to open and disqualify underlying the amended appeal. On May 16, 2019, this court denied the revised motion for summary reversal.

[18] The habeas court first noted that the petitioner had filed numerous posttrial pleadings during the pendency of the present appeal, including the motion to open and disqualify. The court opined that given the procedural posture of the case, the motion to open and disqualify should not be considered a final judgment for purposes of Practice Book § 64-1 (a), and that it was illogical for the motion to open and disqualify to constitute a final judgment for purposes of appeal when there is an appeal pending from the judgment on the merits after trial. The court, nevertheless, set forth its reasons for denying the motion to open and disqualify.

ing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time." (Internal quotation marks omitted.)

The court found that the petitioner had alleged that its denial of his petition for a writ of habeas corpus "evidences a deep-seated favoritism for the respondent warden or antagonism toward the petitioner that made a fair judgment on the merits of the petitioner's claims impossible." The petitioner alleges that the court "rendered criminal assistance" to Macchiarulo by declining to hold her in contempt or to report her to the appropriate authorities for having committed perjury for soliciting and offering false testimony from Kaatz in a prior habeas proceeding. The court, however, found that the petitioner had failed to demonstrate that perjury in violation of § 53-156, in fact, had occurred. See footnote 15 of this opinion. The court found that the petitioner had not shown that Kaatz intentionally made a material false statement under oath or that Macchiarulo knew or should have known that Kaatz intentionally made a material false statement under oath.

The habeas court also found that the petitioner had failed to demonstrate that the court's failure to take certain action "rendered criminal assistance" for purposes of the offense of hindering prosecution pursuant to General Statutes § 53a-165.[19] The court found no indication that it had committed any of the specific acts

[19] General Statutes § 53a-165 provides that "a person 'renders criminal assistance' when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, another person whom such person knows or believes has committed a felony or is being sought by law enforcement officials for the commission of a felony, or with intent to assist another person in profiting or benefiting from the commission of a felony, such person: (1) Harbors or conceals such person; or (2) warns

that constitute the offense of hindering prosecution as defined by § 53a-165.

Significantly, the habeas court also found that the petitioner had failed to file the motion to disqualify with a proper affidavit or within ten days of the proceeding as required by Practice Book § 1-23. The petitioner also had not demonstrated good cause for failing to do so. The court concluded, therefore, that the petitioner had failed to demonstrate a good and compelling reason for opening the judgment or questioning the court's impartiality for disqualification purposes and reaffirmed its denial of the motion to open and disqualify.

We decline to review the petitioner's claim due to an inadequate record because the petitioner failed to follow the procedures required for disqualification. Practice Book § 1-23 provides that "[a] motion to disqualify the judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time." The respondent argues that we should not review the petitioner's claim because he failed to file the motion to open and disqualify at

such other person of impending discovery or apprehension; or (3) provides such other person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or (4) prevents or obstructs, by means of force, intimidation or deception, any person from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against such person; or (5) suppresses, by an act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such other person or in the lodging of a criminal charge against such other person, or (6) aids such other person to protect or expeditiously profit from an advantage derived from such crime."

least ten days prior to the habeas trial and failed to file an affidavit and good faith certificate, citing *Olson* v. *Olson*, 71 Conn. App. 826, 830, 804 A.2d 851 (2002). The failure to file an affidavit and good faith certificate, however, is not always fatal to a motion to disqualify. See *State* v. *Milner*, 325 Conn. 1, 6–10, 155 A.3d 730 (2017), and cases cited therein. The petitioner argues that he, in fact, filed an affidavit with the motion to open and disqualify.

Our review of the record disclosed that the petitioner attached to the motion to open and disqualify a document titled "Petitioner's Affidavit Filed in Support of his Motion for Recusal." The document, which is signed by the petitioner but not witnessed, states: "The undersigned is over the age of 21, and has personal knowledge of the facts stated herein. In particular, the facts stated in the undersigned's memorandum of law dated January 3, 2019 are hereby incorporated by reference and made the facts of this affidavit. See Petitioner's Memorandum of Law dated January 3, 2019. Pursuant to Connecticut Practice [Book] § 1-23 the undersigned hereby [certifies] that this motion is made in good faith." *Milner* teaches that the import of an affidavit is to provide a factual record. *State* v. *Milner*, supra, 325 Conn. 9–10. Evidence of bias sufficient to support a claim of judicial disqualification must be "based on more than opinion or conclusion." (Internal quotation marks omitted.) *State* v. *Bunker*, 89 Conn. App. 605, 613, 874 A.2d 301 (2005), appeal dismissed, 280 Conn. 512, 909 A.2d 521 (2006). "Our Supreme Court has indicated that, where there is a factual dispute involved in a claim of judicial bias, an evidentiary hearing may be in order, and it has implied that the hearing be before another judge. See *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 750–53, 444 A.2d 196 (1982)." *Szypula* v. *Szypula*, 2 Conn. App. 650, 653, 482 A.2d 85 (1984).

Although the petitioner's affidavit does not comport with legal standards nor does his purported good faith certificate, we need not decide that the record is inadequate for review on that basis alone. The petitioner's appellate claim is not reviewable because his motion to open and disqualify was not timely filed and there was no opportunity for a hearing to be held on the motion to disqualify to create a factual record for review. Practice Book § 1-23 provides that the motion be filed at least ten days before the judicial proceeding. If the motion is not filed within that time, good cause must be shown for failure to do so. In his appellate brief, the petitioner responds to the respondent's position that the claim is not reviewable, stating that the motion to open and disqualify is "based upon an issue that did not materialize until after trial" and therefore he can demonstrate good cause for failing to comply with the rules of practice. He relies on *State* v. *Rizzo*, 303 Conn. 71, 122, 31 A.3d 1094 (2011) ("[b]ecause the defendant could not have been aware of this claimed basis for disqualification at the time of the [relevant proceedings], he cannot be faulted for his failure to raise it in an objection"). The petitioner's argument is disingenuous, to say the least. For almost two decades, the petitioner has represented himself in habeas appeals in this court trying to undo his criminal conviction.[20]

The petitioner's argument also is unpersuasive. He waited almost four months after the habeas court rendered judgment on his petition to file the motion to open and disqualify. The petitioner may not legitimately claim judicial bias after he receives a judgment that is not to his liking. See *McGuire* v. *McGuire*, 102 Conn. App. 79, 83, 924 A.2d 886 (2007) (parties not permitted to anticipate favorable decision, reserving right to

[20] In the twenty-three years since the petitioner murdered Woods, he has freely leveled serious, unsubstantiated accusations at a number of people. We view this claim to be another such accusation.

impeach it or set it aside if it happens to be against them, for cause known to them before or during trial).

"Although we allow [self-represented parties] some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law. . . . Self-represented parties are not afforded a lesser standard of compliance and although we are solicitous of the rights of [self-represented parties] . . . [s]uch a litigant is bound by the same rules . . . and procedure as those qualified to practice law." (Internal quotation marks omitted.) *In re Enrico S.*, 136 Conn. App. 754, 757, 46 A.3d 173 (2012). It is the policy of Connecticut courts to be solicitous of self-represented parties and to construe the rules of practice liberally "when it does not interfere with the rights of other parties . . . ." (Emphasis omitted; internal quotation marks omitted.) *Rosato* v. *Rosato*, 53 Conn. App. 387, 390, 731 A.2d 323 (1999). Our liberal policy toward self-represented parties is, however, "severely curtailed in cases where it interferes with the rights of other parties." Id.

The petitioner in the present case is no ordinary self-represented party in the Appellate Court, as footnote 2 of this opinion and the record in the present appeal demonstrate. He files habeas petitions and appeals frequently. He is well versed in the rules of practice as demonstrated by his several petitions for a writ of habeas corpus and appeals, many motions for articulation, to reargue, to reopen and set aside and for permission to file late. The petitioner's failure to comply with the requirements of Practice Book § 1-23 has interfered with the rights of the respondent who was not afforded an opportunity to respond and to appear at a hearing on the motion. Moreover, the petitioner's claims against the habeas court are of the most serious nature in that they attack the court's impartiality and integrity and the fairness of our judicial system. Motions to disqualify

are to be filed no fewer than ten days before the judicial proceeding in order for the factual allegations against the court to be adjudicated by a different judge. The path taken by the petitioner interfered with the respondent's rights and was an affront to the court itself. We decline to review the claim because the record is inadequate.

For the reasons stated herein, we conclude that the habeas court did not abuse its discretion by denying certification to appeal from the judgment dismissing in part and denying in part the petitioner's second amended fifth petition for a writ of habeas corpus. The issues are not debatable among jurists of reason. See *Lozada* v. *Deeds*, supra, 498 U.S. 431–32.

The appeal is dismissed.

In this opinion the other judges concurred.