IN RE CAMERON H. ET AL.*
(AC 45534)

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

Syllabus

The respondent mother appealed to this court from the judgments of the trial court terminating her parental rights with respect to her minor children. She claimed that the trial court erroneously concluded, inter alia, that she was unable or unwilling to benefit from the reunification services offered to her by the Department of Children and Families pursuant to statute (§ 17a-112 (j) (1)) and that she failed to achieve a sufficient degree of personal rehabilitation. The minor children, who had previously been adjudicated neglected and committed to the care of the petitioner, the Commissioner of Children and Families, had complex

* 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 court.

needs, having been diagnosed with, inter alia, attention deficit hyperactivity disorder and post-traumatic stress disorder, which the department provided services to address and support. *Held*:

1. The respondent mother could not prevail on her claim that the trial court improperly concluded that the department made reasonable efforts to reunify her with her children and that she was unable or unwilling to benefit from such reunification efforts: because the petitioner did not allege in the petitions to terminate parental rights that the department had made reasonable efforts to reunify the mother with her children, this court did not address this portion of her claim; moreover, contrary to the mother's claim that the department's services were inadequate to assist her to meet the complex needs of her children, and that without adequate services, she was unwilling or unable to benefit from such services, the trial court's uncontested subordinate findings established that the department took various steps to facilitate the mother's reunification with her children before the petitioner sought to terminate the mother's parental rights, including referring her to several parenting education and supervision programs, and the department's social worker testified as to the mother's struggles with accountability for her actions and her difficulties accepting her children's special needs; furthermore, the record reflected the report of the court-appointed psychological evaluator, who noted that the mother did not incorporate the information learned from the parenting education programs into her behavior when interacting with the children, did not reach out to her children's service providers to further understand their special needs, and was resistant to making changes, particularly as to her parenting style.
2. The trial court properly concluded that the respondent mother had failed to achieve the requisite degree of personal rehabilitation, as required by § 17a-112 (j) (3) (B) (ii), to reasonably encourage the belief that, within a reasonable time, considering the ages and needs of the children, she could assume a responsible position in the children's lives: contrary to the mother's claim that she failed to acquire the knowledge necessary to care for the children because the department's services, as provided to her, were not adequate given the children's special needs, the record contained sufficient evidence to support the trial court's findings that the petitioner had proven by clear and convincing evidence that the mother failed to rehabilitate given the ages and needs of the children; moreover, although the mother participated in numerous parenting programs aimed to improve her skills as a parent given the special needs of the children, she failed to benefit from such services, as the department's social worker testified that the mother was not receptive to the children's special needs and had not contacted her children's service providers to better understand those needs, and the court-appointed psychological evaluator testified that the mother had difficulty addressing her own mental health needs, mistrusted service providers, which prevented her from making significant progress in learning from the services provided

to her, did not believe in her children's diagnoses and was not familiar with the diagnoses or the services her children received.

Argued November 7, 2022—officially released May 4, 2023**

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, and tried to the court, *Taylor*, *J.*, judgments terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Affirmed.*

Matthew C. Eagan, assigned counsel, for the appellant (respondent mother).

Evan O'Roark, assistant attorney general, with whom was *Ciarra J. Minacci-Morrey*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellee (petitioner).

Opinion

SUAREZ, J. The respondent mother, Joyce F., appeals from the judgments of the trial court terminating her parental rights as to her minor children, Cameron H. and Noah H. (children),[1] pursuant to General Statutes § 17a-112 (j) (3) (B) (ii). On appeal, the respondent claims that the court improperly concluded that (1) the Department of Children and Families (department) made reasonable efforts to reunify her with her children, and that she was unable or unwilling to benefit from the reunification services; and (2) she failed to

** May 4, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The father of Cameron and Noah, Milecom H., also was named as a respondent in the petitions for termination of parental rights. Milecom consented to the termination of his parental rights as to both children and is not participating in this appeal. We hereinafter refer to the respondent mother as the respondent.

achieve such a degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the age and needs of the children, she could assume a responsible position in their lives. We affirm the judgments of the court.

The following facts, which the court found by clear and convincing evidence or are otherwise undisputed, and procedural history are relevant to this appeal. The respondent has three adult children from previous relationships and three minor children.[2] She has an extensive history with the department dating back to 1994, which includes thirty-nine referrals, related to issues of physical abuse, medical neglect, physical neglect, inadequate supervision, domestic violence, parenting issues and inappropriate sexual contact between the older siblings.

On March 2, 2018, the petitioner, the Commissioner of Children and Families, filed neglect petitions and motions for orders of temporary custody (OTCs) on behalf of the children. The court granted the OTCs, finding that the children were in immediate physical danger from their surroundings and that the department had made reasonable efforts to prevent their removal. The court vested temporary custody of the children in the care and custody of the petitioner. On March 16, 2018, following a contested hearing, the OTCs were sustained and specific steps to facilitate reunification of the respondent with the children were ordered.

On July 16, 2018, the children were adjudicated neglected and committed to the care and custody of the petitioner. At that time, the court issued new specific steps.

On September 22, 2020, the petitioner filed motions to review and approve permanency plans, which

[2] In addition to Cameron and Noah, the respondent has another minor child who resides with his biological father and is not a subject of this appeal.

included the termination of parental rights and adoption of the children. On November 5, 2020, following a hearing, the court approved the permanency plans.

On February 8, 2021, the petitioner filed petitions to terminate the parental rights of the respondent with respect to the children (petitions). As to each child, the petitioner alleged, as the grounds for termination, that the children had been found in a prior proceeding to have been neglected, abused, or uncared for and that the respondent had "failed to achieve [such a] degree of personal rehabilitation [as] would encourage the belief that within a reasonable time, considering the age[s] and needs of the [children], [she] could assume a responsible position in [their lives] . . . ." The petitioner further alleged that the department had made reasonable efforts to locate the respondent, that she was unable or unwilling to benefit from reunification efforts, and that reasonable efforts to reunify were not required because the court had previously approved a permanency plan other than reunification.

A trial on the petitions was held over the course of four nonconsecutive days beginning on August 30, 2021. The respondent was represented by counsel. Numerous witnesses testified, and several exhibits were admitted into the record. On March 28, 2022, the court issued a memorandum of decision in which it granted the petition as to each child. The court found by clear and convincing evidence that the children had previously been adjudicated neglected and that the respondent had failed to rehabilitate sufficiently to satisfy the requirements of § 17a-112 (j) (3) (B) (ii). The court also found by clear and convincing evidence that the department had made reasonable efforts to reunify the respondent with the children, and that she was unable or unwilling to benefit from the reunification services.

In its memorandum of decision, the court made the following relevant findings concerning Cameron. "Cameron was born [in] 2014 in Hartford. [He] has a child protection history relating to physical neglect. This resulted in his hospitalization on January 26, 2018, and again on February 14, 2018, after he ingested Risperdal and on the subsequent occasion, presented as lethargic. There were also concerns regarding [the respondent's] delay in securing medical treatment. . . .

"Cameron has been engaged in individual therapy . . . to address his emotional and behavioral needs . . . . [He] displayed impulsive and aggressive behaviors as well as hyperactivity. His inability to self-regulate was disruptive to his foster home, and his impulsive behaviors had frequently presented a risk for his own safety. The treatment goals for Cameron were to reduce risky behaviors, have periods of focus, and increase his ability to express himself verbally. Cameron has been focusing on simple tasks and reducing impulsive and risky behaviors. Cameron also received play therapy to allow him the experience of calm, focused, and reduced hyperactivity by increasing his self-awareness through mindfulness and finding alternate and healthy methods of self soothing.

"Cameron's diagnoses include attention deficit/hyperactivity disorder (ADHD), other specified trauma-related disorder, pica, sensory sensitivity and integration disorder, and [post-traumatic stress disorder (PTSD)] by history." The court further noted that a clinician who worked with Cameron while he attended the YWCA LEAP program believed that his "behaviors were a result of trauma, voids, rejection, and a need to fulfill his social and emotional needs. . . . His behaviors usually included self-harming behaviors (biting and hitting his head against things), flipping his body, and eating nonfood items (rock salt, paper, paper clips, or playdough)."

The court made the following relevant findings concerning Noah. "Noah was born [in] 2015 in Hartford. [He] has been in [the department's] care since 2018, due to concerns of physical neglect related to inadequate supervision by [the respondent]. Noah's sibling, Cameron, was hospitalized on January 26, 2018, and again on February 14, 2018, after he ingested Risperdal and, on the subsequent occasion, presented as lethargic. There were concerns regarding [the respondent's] delay in securing medical treatment. Noah was two years old at the time. . . .

"Noah participated . . . and engaged in weekly [therapeutic] sessions . . . ." The goals of his treatment plans were to "identify his triggers for aggression, increase coping skills, reduce dysregulation, reduce [the] amount of emotional dysregulation, reduce encopresis, and reduce sibling fighting." The court further found that, according to his treatment provider, Noah "displayed hyperactive behavior, and his insight and judgment appear[ed] to be poor." Noah "was diagnosed with ADHD, other specified trauma-related disorder, enuresis-diurnal, and sensory sensitivity and integration disorder." The court noted that "Cameron and Noah were very emotional about being separated."

In addition, the court made the following relevant findings concerning the respondent. "[The respondent] participated in individual therapy on a weekly basis with Nadia Rivera, [a certified addiction counselor], until approximately November, 2020. [Rivera] reported that [the respondent] was diagnosed with anxiety and [PTSD] from childhood maltreatment. [Rivera] reported that [the respondent] exhibit[ed] symptoms of bipolar disorder but [was] not diagnosed with this condition at [that] time. [Rivera] suggested that [the respondent] meet with the [advanced practice registered nurse] for medication management, but [the respondent] declined medication.

"[Rivera] reported that [the respondent's] treatment goals were to work on coping and organizational skills, maintaining stability in the community, maintaining housing, and maintaining employment. Her main goal was to control her impulsivity. [Rivera] reported that [the respondent] appeared to be doing better emotionally. However, maintaining and developing social relationships continued to be a barrier for [the respondent]. [Rivera] reported that [the respondent] did not display mindfulness as she was unaware of her body language and had a difficult time adjusting in certain situations. She also reported that [the respondent] was not happy about her children not being in her care and she had a difficult time processing it."

With respect to reunification efforts, the court found by clear and convincing evidence that the department "offered [the respondent] administrative case reviews (ACRs), casework services, considered removal meeting, supervised visitation, and transportation assistance. All Pointe Care, [LLC (All Pointe Care)] offered parenting education and supervised visitation. Klingberg Family Center provided individual therapy and parenting education. St. Francis' Parenting Support Service offered parenting education. Unlimited Family Services, LLC (Unlimited Family Services), offered individual therapy, parenting education, and supervised visitation. Western Connecticut Behavioral Health, LLC, (Jessica Biren-Caverly, Ph.D. [a psychologist]) offered psychological evaluations. Wheeler Clinic offered [a] reunification and therapeutic family time . . . program."

Additionally, the court found by clear and convincing evidence that the respondent was "encouraged to engage with the children's service providers to gain insight into [the children's] trauma symptoms, presenting behaviors, and child specific strategies that may be more effective in managing [their] behaviors." She,

however, "failed to follow through with contacting [the children's] service providers in order to be able to understand their situation and issues better."

The court noted that the respondent "has been unable to correct the factors that led to the initial commitment of her children, insofar as she is concerned. The clear and convincing evidence reveals that, from the date of commitment through the date of the filing of the . . . petition[s], and continuing through the time of trial, [the respondent] has not been available to take part in her sons' lives in a safe, nurturing, and positive manner, and, based on her issues of mental health, parenting deficits, and a failure to engage, complete, and benefit from counseling and services, [the respondent] will never be consistently available to [the children].

"Unlike many [termination of parental rights] cases, the issue is not the respondent's . . . attendance with service providers and with visitation. There is no question that [her] attendance with service providers has been generally satisfactory. [The respondent's] issues have been related to her inability to gain benefit from her services. [She] has consistently refused to acknowledge her responsibility in Cameron's poisoning. This factor was noted by several witnesses and service providers. [The respondent's] understanding of [the children's] issues remains poor. As a result, she has difficulty in regulating their behavior or controlling them without resorting to violence.

"The clear and convincing evidence indicates that [the respondent] failed to follow through with contacting [the children's] service providers in order to be able to understand their situation and issues better. . . . [The respondent] has failed to master minimally acceptable parenting skills to meet the children's emotional and behavioral needs, as she was unable to appreciate the extent of their mental health diagnoses

and trauma. While [the respondent] has engaged in parenting services, she continues to need increased knowledge of the children's specific care needs, supervision needs, and age appropriate discipline in light of the children's trauma history. She has failed to acquire such knowledge."

In reaching its conclusion that the respondent had failed to rehabilitate and was not reasonably likely to do so in the future, the court discussed, in part, the court-ordered psychological evaluation of the respondent and the children. A report thereof was admitted into evidence along with the testimony of the court-appointed evaluator, Biren-Caverly. The court noted that Biren-Caverly "testified that [the respondent] did not have much insight into her own mental health needs. She indicated that [the respondent's] therapist related that [the respondent] was reluctant to discuss her mental health issues during therapy. . . .

"[Biren-Caverly] concluded that [the respondent's] individual therapy was of limited effectiveness. She testified that [the respondent] mistrusts everyone and cannot incorporate the recommendations of the service providers into her parenting. Furthermore, [the respondent] does not believe that her parenting is wrong.

"[Biren-Caverly] recommended against reunification. She noted that, without [the respondent] incorporating the service providers' recommendation[s] into her parenting, it was unlikely that [the respondent] would be successful in raising her sons."

In light of the foregoing findings, the court concluded that there was clear and convincing evidence that (1) the department had made reasonable efforts to reunify the respondent with her children, (2) she was unable or unwilling to benefit from the reunification efforts, and (3) the respondent had failed to rehabilitate. The court then found that terminating the respondent's

parental rights was in the best interests of the children.[3] Accordingly, the court rendered judgments terminating the parental rights of the respondent and appointed the petitioner as the children's statutory parent. This appeal followed.[4] Additional facts and procedural history will be set forth as necessary.

Before turning to the respondent's claims, we first set forth the following legal principles. Section 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing as provided in [General Statutes §§] 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the [department] has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of [General Statutes §] 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to [§] 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding, or (ii) is found to be neglected, abused or uncared for and has been in the custody of the [petitioner] for at least fifteen months and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to [General Statutes §] 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a

[3] We note that the respondent in this appeal does not challenge the court's finding that the termination of her parental rights was in the best interests of the children.

[4] In this appeal, the attorney for the children filed a statement in accordance with Practice Book § 67-13 adopting the brief filed by the petitioner and asking the court to affirm the judgments of the trial court.

reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . .''

''Proceedings to terminate parental rights are governed by § 17a-112. . . . Under [that provision], a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)] exists by clear and convincing evidence. The [petitioner] . . . in petitioning to terminate those rights, must allege and prove one or more of the statutory grounds. . . . Subdivision (3) of § 17a-112 (j) carefully sets out . . . [the] situations that, in the judgment of the legislature, constitute countervailing interests sufficiently powerful to justify the termination of parental rights in the absence of consent. . . . Because a respondent's fundamental right to parent his or her child is at stake, [t]he statutory criteria must be strictly complied with before termination can be accomplished and adoption proceedings begun.'' (Internal quotation marks omitted.) *In re Ryder M.*, 211 Conn. App. 793, 806–807, 274 A.3d 218, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022).

I

The respondent first claims that the court improperly concluded that the department had made reasonable efforts to reunify her with her children and that she was unable or unwilling to benefit from the reunification efforts. Because the petitioner did not allege in the petitions that the department had made reasonable efforts to reunify the respondent with the children, we limit our analysis to the question of whether the court erred in concluding that the respondent was unwilling or unable to benefit from reunification services, which

the petitioner did allege. The respondent argues that the evidence was insufficient for the court to conclude that she was unwilling or unable to benefit from services because, although the department provided the respondent with services, all of which were aimed at improving her skills as a parent, these services were "grossly inadequate to meet the needs of these complex children." We are not persuaded.

In order to evaluate the respondent's claim, we first review the services the department provided.[5] The respondent does not contest the court's subordinate findings made in support of its reasonable efforts determination. She acknowledges that "[t]here is no dispute that the [d]epartment offered the respondent . . . casework and other administrative services, parenting education, supervised visitation, transportation to the visits, individual therapy and therapeutic family time program" and that these services were aimed at improving her skills as a parent. Rather, the respondent maintains that the services provided by the department were

[5] "[A]lthough it is true that a finding that the department made reasonable reunification efforts is not a necessary predicate to a finding that a parent is unable to benefit from such efforts, this does not mean that a trial court could never view those two issues as interrelated." *In re Elijah C.*, 326 Conn. 480, 497–98, 165 A.3d 1149 (2017). "[T]he question of whether the petitioner made reasonable efforts to reunify the respondent with her child is inextricably linked to the question of whether the respondent can benefit from such efforts." *In re Gabriella A.*, 319 Conn. 775, 814, 127 A.3d 948 (2015). "Depending on the case, a trial court might well conclude that the department's reunification efforts were so lacking as to preclude both a finding that the department made reasonable reunification efforts *and* that a parent is unable to benefit from such efforts." (Emphasis in original.) *In re Elijah C.*, supra, 498. However, the department is only required to "prove *either* that it has made reasonable efforts to reunify *or*, *alternatively*, that the parent is unwilling or unable to benefit from reunification efforts. Section 17a-112 (j) clearly provides that the department is not required to prove both circumstances. Rather, either showing is sufficient to satisfy this statutory element." (Emphasis in original.) *In re Jorden R.*, 293 Conn. 539, 552–53, 979 A.2d 469 (2009). Because the petitioner did not allege in the petitions at issue in the present case that reasonable reunification efforts had been made, we review the court's reasonable reunification efforts finding only

inadequate to assist her in adjusting her circumstances so that she could realistically care for the complex needs of the children, and that, without such services being offered to the respondent, there was insufficient evidence that she was unwilling or unable to benefit from them.

The petitioner argues that the department made numerous service referrals directed at "addressing . . . [the respondent's] impediments to reunification with [the children], specifically her untreated mental health concerns and parenting incapacities." The petitioner further argues that, despite these efforts, the respondent was unable or unwilling: "to fully appreciate her role in Cameron['s] and Noah's trauma, behaviors, and mental health needs"; recognize the emotional and behavioral needs of the children; and adequately engage and address her own mental health issues.

We first set forth the standard of review that governs the resolution of this claim. On appeal, "we review the trial court's ultimate determination that a respondent parent was unwilling or unable to benefit from reunification services for evidentiary sufficiency and review the subordinate factual findings for clear error. . . . [We do] not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. . . .

"In our review of the record for evidentiary sufficiency, we are mindful that, as a reviewing court, [w]e cannot retry the facts or pass upon the credibility of the witnesses. . . . Rather, [i]t is within the province of the trial court, when sitting as the fact finder, to weigh the evidence presented and determine the credibility and effect to be given the evidence." (Citations

as it relates to its conclusion that the respondent is unable or unwilling to benefit from such reasonable reunification efforts.

omitted; internal quotation marks omitted.) *In re Gabriella A.*, 319 Conn. 775, 790, 127 A.3d 948 (2015). "Under this standard, the inquiry is whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court." (Internal quotation marks omitted.) *In re Ryder M.*, supra, 211 Conn. App. 809.

The court's uncontested subordinate findings establish that the department took various steps to facilitate the respondent's reunification with her children before the petitioner sought to terminate the respondent's parental rights. The record reveals that the department referred the respondent to Unlimited Families Services, a parenting education and supervision program, which offered the respondent supervised visitation with the children and helped her develop strategies to better regulate the children's behaviors. Although the respondent was successfully discharged from that program, it was recommended that she continue to engage in parenting services due to her inability to accept responsibility for her actions that led to the department's removal of the children. In addition, Unlimited Family Services recommended mental health treatment for the respondent. Thereafter, the department referred the respondent to All Pointe Care, another supervised visitation service with a parenting education component. The respondent was discharged from this program shortly after an incident in which she was physically aggressive with one of the children. After she was discharged from All Pointe Care, the respondent was resistant to other services, as she believed she did not need

any supervised visits and briefly moved to North Carolina where she did not engage in any services.[6] Upon her return from North Carolina, the department referred the respondent to another parenting support service through Saint Francis Hospital, which was a curriculum based program during which the respondent received parenting education aimed at helping her gain insight into the children's emotional and behavioral needs.

The record further reveals that, despite the services that were offered to the respondent to facilitate reunification with the children, she was unable or unwilling to benefit from them. At trial, the court heard testimony from the department's social worker, Tenika Campbell. Campbell testified that the respondent still struggles with accountability for her actions. Campbell further testified that the respondent did not seem to be receptive when they spoke about the children's emotional and behavioral needs. According to Campbell, the respondent believes that the children are just regular hyperactive children. Campbell further testified that the department had provided the respondent and the respondent's therapists and parenting educators, on various occasions, with the contact information of the children's providers in order for the respondent to better understand the children's needs. To Campbell's knowledge, the respondent never contacted the children's providers to discuss their needs.

At trial, the petitioner also introduced into evidence the written report of the court-ordered psychological evaluation, which supports the court's conclusion that the respondent was unable or unwilling to benefit from reunification efforts. In the report, Biren-Caverly indicated that she asked the respondent about Cameron's

[6] The record reflects that the respondent moved to North Carolina in June, 2020, without the knowledge of the department. She returned to Connecticut in November, 2020.

needs. The respondent replied that Cameron had been diagnosed with ADHD and pica, however, she indicated that all of her children that have been in foster care have been diagnosed with ADHD. When asked about Noah's special needs, the respondent indicated to Biren-Caverly that Noah did not have any special needs and that he was just an active normal child. In Biren-Caverly's opinion, the respondent would require significant education to learn about the children's individual mental health needs. In her report, Biren-Caverly noted that the respondent had a history of attending services, however, it appeared that the respondent did not incorporate the information learned into her interactions with the children. Biren-Caverly further noted that the respondent had a limited understanding and acceptance of the children's mental health needs and that she had a minimal appreciation of her role in their current functioning. Biren-Caverly opined that, in order for the respondent to reunify with the children, she would need to engage in the children's therapy, gain understanding of their needs, and acknowledge that the children experienced trauma in her care. Biren-Caverly, however, believed that the respondent is resistant to making changes and that the respondent does not believe that she needs to make changes to her parenting style.

In the present case, the court's uncontested cumulative findings amply support its determination that, despite the department's reasonable efforts to reunify the respondent with the children, given their special needs, the respondent was unable or unwilling to benefit from such efforts.

II

Next, the respondent claims that the court improperly concluded that she had failed to achieve such a degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the ages and

needs of the children, she could assume a responsible position in their lives. We are not persuaded.

We begin by setting forth the established principles of law and the applicable standard of review that govern the resolution of this claim. "The trial court is required, pursuant to § 17a-112, to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further . . . such rehabilitation must be foreseeable within a reasonable time. . . . The statute does not require [a parent] to prove precisely when [she] will be able to assume a responsible position in [her] child's life. Nor does it require [her] to prove that [she] will be able to assume full responsibility for [her] child, unaided by available support systems. It requires the court to find, by clear and convincing evidence, that the level of rehabilitation [she] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [she] can assume a responsible position in [her] child's life. . . . Personal rehabilitation as used in [§ 17a-112 (j) (3) (B)] refers to the restoration of a parent to [her] former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [her] ability to manage [her] own life, but rather whether [she] has gained the ability to care for the particular needs of the [children] at issue. . . .

"[The] completion or noncompletion [of the specific steps], however, does not guarantee any outcome. . . . Accordingly, successful completion of expressly articulated expectations is not sufficient to defeat a department claim that the parent has not achieved sufficient rehabilitation. . . . Whereas, during the adjudicatory phase of a termination proceeding, the court is generally limited to considering events that precede the date of the filing of the petition or the latest amendment to the petition, also known as the adjudicatory date, it may rely on events occurring after the [adjudicatory] date

. . . when considering the issue of whether the degree of rehabilitation is sufficient to foresee that the parent may resume a useful role in the child's life within a reasonable time. . . .

"A conclusion of failure to rehabilitate is drawn from *both* the trial court's factual findings and from its weighing of the facts in assessing whether those findings satisfy the failure to rehabilitate ground set forth in § 17a-112 (j) (3) (B). Accordingly . . . the appropriate standard of review is one of evidentiary sufficiency, that is, whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . .[7] When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court. . . . We will not disturb the court's subordinate factual findings unless they are clearly erroneous. . . . A factual finding is clearly erroneous when it is not supported by any evidence in the record or when there is evidence to support it, but the reviewing court is left with the definite and firm conviction that a mistake has been made." (Citations omitted; emphasis in original; footnote added; internal quotation marks omitted.) *In re G. H.*, 216 Conn. App. 671, 683–85, 286 A.3d. 671 (2022).

In its memorandum of decision, the court found by clear and convincing evidence that the respondent had failed to rehabilitate given the ages and needs of the children. It found that the respondent "ha[d] failed to master minimally acceptable parenting skills to meet

[7] The respondent claims in her brief to this court that evidentiary sufficiency is an improper standard of review in child protection cases. However, she concedes that, as an intermediary court of appeals, this court is bound by our Supreme Court's decision in *In re Shane M.*, 318 Conn. 569, 588, 122 A.3d 1247 (2015), in which the court held that the appropriate standard of review is one of evidentiary sufficiency.

the children's emotional and behavioral needs as she was unable to appreciate the extent of their mental health diagnoses and trauma." It further found that, "[w]hile [the respondent] has engaged in parenting services, she continues to need increased knowledge of the children's specific care needs, supervision needs, and age appropriate discipline in light of the children's trauma history. She has failed to acquire such knowledge." Significantly, the court also found that the respondent has "consistently refused to acknowledge her responsibility in Cameron's poisoning."

The court concluded that, when considering the "high level of care, patience, and discipline that [the children's] needs will require from their caregivers, it is patently clear that [the respondent] is not in a better position to parent her children than she was at the time of [the children's] commitment" and that the respondent "is no better able to resume the responsibilities of parenting at the time of filing the termination petition[s] than [she] had been at the time of the children's commitment." (Internal quotations marks omitted.) The court noted that the children "cannot wait for the remote possibility that their biological mother might overcome her mental health issues, her parenting issues, and her failure to appropriately benefit from referrals, recommendations, and services and acquire sufficient parenting ability to care for them one day in the future." Accordingly, the court found that the petitioner had proven, by clear and convincing evidence, that the respondent had failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (ii).

The respondent maintains that the court could not properly find that she had failed to rehabilitate because the reunification services that were provided to her were not adequate given the children's needs. She

argues that she failed to acquire the knowledge necessary to care for the children because the services provided to her by the department were not tailored to address the high level of care, patience and discipline that the children's special needs require from their caretakers.[8]

The record contains abundant evidence from which the court reasonably could have found that the respondent had failed to rehabilitate, considering the age and needs of the children. The undisputed evidence is that the children have special needs and that they have participated in services designed to address their needs. There also is undisputed evidence in the record establishing that the respondent participated in numerous services aimed to help her improve her skills as a parent given the special needs of the children but failed to benefit from such services. In support thereof, at trial, the petitioner presented testimony from the department's social worker, Tenika Campbell, who testified that she discussed with the respondent the behaviors and emotional needs of the children. According to Campbell, the respondent was not receptive to the children's needs. Additionally, Campbell testified that the

[8] In support of her claim that the department did not provide her with adequate reunification services, the respondent compares the services provided to the foster mother with the services provided to her. Specifically, she asserts that the foster mother received accurate diagnoses of the children's behavioral and psychological conditions, appropriate medication for the children's needs, weekly in-home services, coaching, counseling, and additional funding to facilitate any further enrichment that might help the children and the family to function. This argument assumes that the foster mother and the respondent are similarly situated in terms of their respective skill sets, circumstances and willingness and ability to benefit from the same services. The services offered to the respondent, because they must also be specifically tailored to the respondent's specific impairments before a return of the children to her custody can be considered, are not comparable to the services accepted by the foster mother under the circumstances of this case. We are, therefore, not persuaded by this argument because our review of the evidence reflects that the services provided to the foster mother were necessary to address the children's needs while in the physical care of the foster mother.

respondent was provided with the contact information for the children's service providers and was encouraged to contact them directly in an effort to help her understand and accept their needs. According to Campbell, however, the respondent never contacted the children's service providers.

In addition to the department's social worker, the court heard testimony from Biren-Caverly. Biren-Caverly testified that the respondent told her that she did not have a mental health diagnosis. On the basis of that statement, Biren-Caverly opined that the respondent did not have much insight into her own mental health needs and that she was reluctant to discuss her mental health needs with her therapists. According to Biren-Caverly, because of the respondent's unwillingness to discuss her mental health, any mental health treatment would be of limited effectiveness. Biren-Caverly further testified that the respondent's mistrust of service providers prevented her from making significant progress in learning from the resources provided to her. Regarding the respondent's understanding of the children's needs, Biren-Caverly testified that the respondent did not believe the children had ADHD and that the respondent was not familiar with the diagnoses of the children nor the services they had received. In light of the children's extensive mental health diagnoses, Biren-Caverly opined that the children would need a highly structured environment and, based on her evaluation, the respondent would not be able to meet the needs of the children. Biren-Caverly, therefore, recommended against reunification.

Construing the record in the manner most favorable to sustaining the judgments of the trial court, as we are obligated to do, we conclude that the record contains sufficient evidence to support the court's finding that the petitioner had proven by clear and convincing evidence that the respondent failed to rehabilitate such

that, considering the ages and needs of the children, she could assume a responsible position in their lives. Accordingly, the court properly concluded that the respondent had failed to rehabilitate.

The judgments are affirmed.

In this opinion the other judges concurred.

PATRICK YOUNG *v.* COMMISSIONER OF CORRECTION (AC 44723)

Bright, C. J., and Clark and Seeley, Js.

Syllabus

The petitioner, who had been convicted of the crimes of assault in the first degree and carrying a pistol without a permit, appealed to this court from the judgment of the habeas court denying his petition for a writ of habeas corpus. The petitioner had enlisted the help of T and M to cash a check that his girlfriend, Z, had stolen. When M was able to obtain only a portion of the funds after depositing the check into an automated teller machine, the petitioner believed that M and T had cashed the check and kept its full amount. After the bank informed M that the check had been stolen and that she would be arrested if she did not repay the funds she had received, the petitioner and Z, under the guise of retrieving money to repay the bank, drove with T and M to a dark road where the petitioner shot T. Prior to trial, Z, who was charged as a coconspirator of the petitioner, entered into an agreement with the state under which, in exchange for her cooperation and truthful testimony against the petitioner at his criminal trial, the state agreed to inform the court at her sentencing proceeding of that cooperation. The habeas court rejected the petitioner's claims that the state had violated his right to due process under *Brady* v. *Maryland* (373 U.S. 83) by failing to disclose to him its agreement with Z and by failing to correct her false or substantially misleading testimony at his criminal trial regarding the agreement. *Held*:

1. The petitioner could not prevail on his claim that the habeas court improperly concluded that the state had disclosed to his defense counsel its agreement with Z for her testimony at his criminal trial: the court's finding that the agreement was disclosed to the petitioner's defense counsel prior to Z's testimony was not clearly erroneous and thus supported the habeas court's determination that the petitioner had failed to establish a violation of his right to due process pursuant to *Brady*, as

the court credited the testimony of the prosecutor that, at the petitioner's criminal trial, he had disclosed the agreement to defense counsel; moreover, disclosure of the agreement was evident from Z's testimony at the criminal trial that she had asked her attorney to approach the prosecutor about a cooperation agreement, that no promises had been made to her about her own criminal case in exchange for her testimony, and that she was motivated to cooperate by her desire to get out of jail sooner and return to her children, from whom she had been separated.

2. This court's careful review of the record led it to conclude that the habeas court had properly determined that the petitioner failed to establish that Z's testimony was false or substantially misleading: the petitioner's contention that the prosecutor had knowingly presented such testimony from Z and then failed to correct it in violation of his due process rights was unavailing, as Z had accurately testified that she was charged as a conconspirator, the state made no promises to her in exchange for her testimony, and she had asked her attorney to approach the prosecutor just before the start of the petitioner's criminal trial to provide assistance with the hope that it would be brought to the attention of the sentencing judge because she wanted to do the right thing, get out of jail and get home to her children; moreover, there was no reasonable likelihood that any false or substantially misleading testimony by Z could have materially affected the jury's verdict, as the petitioner's defense counsel had presented that issue to the jury and impeached Z's credibility by showing inconsistencies between her testimony and her prior statements to the police, the prosecutor, in his closing argument, also noted that her credibility was questionable when he stated to the jury that it should take Z's testimony for what it was worth, and the state's case was so overwhelming that there was no reasonable likelihood that Z's testimony could have affected the judgment of the jury, as it was T and M who had testified about the shooting, during which Z was not present, and the petitioner's own testimony placed him at the crime scene with the firearm and a motive to injure T.

Argued September 15, 2022—officially released May 9, 2023

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the petition was withdrawn in part; thereafter, the case was tried to the court, *Chaplin*, *J.*; judgment denying the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

Daniel Fernandes Lage, assigned counsel, for the appellant (petitioner).

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

Opinion

SEELEY, J. The petitioner, Patrick Young, appeals from the judgment of the habeas court denying his petition for a writ of habeas corpus. On appeal, the petitioner claims that the habeas court improperly concluded that his due process rights were not violated as a result of (1) the state's failure to disclose to the defense its agreement with a witness, Maria Zambrano, for her testimony in the petitioner's criminal trial, and (2) the state's knowing presentation of false and misleading testimony regarding this agreement. We disagree with the petitioner's claims, and, accordingly, affirm the judgment of the habeas court.

The following facts and procedural history are relevant to our resolution of this appeal. After a jury trial, the petitioner was convicted of assault in the first degree in violation of General Statutes § 53a-59 (a) (1) and carrying a pistol without a permit in violation of General Statutes § 29-35. Additionally, the court found the petitioner to be in violation of his probation. The court imposed a total effective sentence of thirty-one years of incarceration, execution suspended after twenty-four years, and five years of probation. In affirming the petitioner's conviction, we set forth the following facts that the jury reasonably could have found: "[Zambrano, the petitioner's] girlfriend . . . worked as a home health care aide and stole a $6500 check from one of her patients. After Zambrano told the [petitioner] about the stolen check, the [petitioner], who did not have a bank account, approached Diane Turner, his cousin, and Jessica McFadden, Turner's

roommate, for assistance in cashing the check. Zambrano, Turner, McFadden, and the [petitioner] rode together in Zambrano's car in order to cash the check. McFadden was unable to cash the check at the first bank that she tried because the check was postdated; the [petitioner] then had Zambrano alter the date on the check. At a second bank, McFadden was able to obtain $200 by depositing the check into an automatic teller machine. The bank later informed McFadden that the check was stolen and that she would be arrested if she did not repay the bank $200. The [petitioner] became angry when he was told that the check would not be cashed for its entire amount. He thought that Turner and McFadden had lied to him, cashed the check, and kept for themselves the full amount of $6500.

"On the night of the following day, June 24, 2013, Zambrano and the [petitioner] picked up Turner and McFadden at their New Haven residence under the guise of driving to Hamden to retrieve $200 so that McFadden could repay the bank. While Zambrano drove, the [petitioner] repeatedly questioned Turner and McFadden about what they did with the $6500 and why they had not given it to him. Zambrano stopped the vehicle on a dark road near a wooded area. The [petitioner] again asked Turner and McFadden about the location of the money. The [petitioner] reached into the car's glove compartment, retrieved a silver revolver, waved the revolver in the direction of the backseat where Turner and McFadden were seated, and again asked where the money was.

"The [petitioner] forced Turner to exit the car. The [petitioner] pointed the revolver at Turner's head, and she pleaded for her life. At some point, Turner ran into the woods and yelled for McFadden to follow. The [petitioner] then returned to the car, pointed the revolver at McFadden, told her to exit the car, and he and Zambrano drove away. McFadden found Turner in

the woods, and they hid. They then left the wooded area and walked down the road to search for help. The [petitioner] jumped out from behind bushes and pointed the gun at Turner's head; Turner raised her hands. The [petitioner] said that Turner was throwing him under the bus. He then shot Turner in her left palm, and the bullet exited by her wrist. The [petitioner] fired more shots, and one bullet hit Turner under her right arm near her rib cage. The [petitioner] then ran away, and McFadden and Turner hid in the woods before flagging down a work crew for assistance.

"Turner was taken to Yale-New Haven Hospital and treated for her injuries. Doctors were unable to remove a .38 caliber bullet at that time, but it was surgically removed months later when it migrated near her spine. Zambrano informed the police that she had accompanied the [petitioner] to a marina where he threw the revolver off the dock. A police dive team recovered the revolver, which was a .38 caliber stainless steel Smith & Wesson revolver." *State* v. *Young*, 174 Conn. App. 760, 762–64, 166 A.3d 704, cert. denied, 327 Conn. 976, 174 A.3d 195 (2017).

During her testimony at the petitioner's criminal trial, Zambrano acknowledged that she had made an agreement with the state but had not received any promise from the state, a prosecutor, or the police. She replied in the negative to the following inquiry from the prosecutor, John P. Doyle, Jr.: "Have you been made any promises in regards to your pending [criminal] matters as to how they will be disposed of or what will happen with your charges?"[1] During cross-examination by the

[1] Specifically, the following colloquy occurred between Doyle and Zambrano:

"Q. Okay. Prior—I want to ask you about your current status right now. Is it correct that you are currently held in custody awaiting charges in a state prison facility?

"A. Yes.

"Q. And is it correct that you are currently charged with offenses related to the events of June 24th, 2013?

petitioner's attorney, Thomas Farver, Zambrano admitted that she had been charged as a coconspirator with the petitioner and had been incarcerated for approximately eighteen months during which time she was

"A. Yes.

"Q. And is it true that you've been charged as a coconspirator with [the petitioner]?

"A. Yes. . . .

"Q. Okay. Now, I want to talk about your current situation just for a moment then. Like I said, you're charged as a coconspirator in this matter.

"A. Yes.

"Q. Okay. And you recognize that you've been called to the [witness] stand here to testify by the state of Connecticut.

"A. Yes.

"Q. Okay. And you recognize that you have the right not to have to testify here; is that correct?

"A. Yes.

"Q. And, however, you have made an agreement with the state of Connecticut with your attorney to testify here in regards to the events of June—in June, pardon me, of June 24th of 2013; is that correct?

"A. Yes.

"Q. All right. Have any promises been made to you by the state of Connecticut, by myself or any prosecutor or representative—

"A. No.

"Q. —or police officer?

"A. No.

"Q. In regards to your testimony here today?

"A. No.

"Q. Have you been made any promises in regards to your pending matters as to how they will be disposed of or what will happen with your charges?

"A. No. . . .

"Q. Okay. And you have actually been incarcerated and held on bond since June 27th of 2013 up until today [October 29, 2014]?

"A. Yes. . . .

"Q. Now, I just want to step back in regards to your—your understanding with the state of Connecticut and your attorney here. No promises have been made to you in regards to what your case is; correct?

"A. No.

"Q. But you are at some point hoping that it'll be brought to the attention of the judge that has handled your matter that you have cooperated with the state of Connecticut; is that correct?

"A. Yes.

"Q. All right. And your lawyer will obviously bring that to the attention of the court; is that correct?

"A. Yes."

separated from her two young children. She further admitted that she hoped, as a result of having reached out to the prosecution through her lawyer, that she would receive some consideration and be released from prison sooner. Zambrano also stated that she had not received any guarantees regarding the length of her incarceration and that "[n]o dates" had been promised to her. In conclusion, Zambrano noted that her motivation for testifying was to "do what was right," to get out of jail, and "to see her children again . . . ."[2]

[2] During Farver's cross-examination of Zambrano at the petitioner's criminal trial, the following colloquy occurred:

"Q. All right. Ma'am, you are charged as a coconspirator in this case, correct?

"A. Yes.

"Q. And you've been in jail for approximately a year and a half?

"A. Yes.

"Q. And at no time during—well, let me ask you, you have two young children?

"A. Yes.

"Q. You've been separated from them?

"A. Yes.

"Q. You want to get home to them?

"A. Yes.

"Q. And you had your attorney approach the state to volunteer last week, interview?

"A. Yes.

"Q. Now, was this with the hope that there'd be some consideration for you?

"A. Yes. . . .

"Q. Do you have any anticipation that this is going to help you get out of jail sooner?

"A. *I would hope so*, but I don't have any—they didn't guarantee me anything.

"Q. There's no—[n]o dates promised to you?

"A. No.

"Q. Right. But that certainly—that's your motivation, to come in here and testify, is to try to get over this quicker.

"A. Not to get over it, but just to do what was right.

"Q. To get out of—[t]o get out of jail?

"A. Yes.

"Q. And to see your children again?

"A. Yes." (Emphasis added.)

Subsequent to the petitioner's conviction, Zambrano pleaded guilty, pursuant to the *Alford* doctrine,[3] to conspiracy to commit assault in the first degree and conspiracy to commit larceny in the third degree for her actions in the matter involving the petitioner.[4] At that proceeding, Doyle informed the court, *Clifford*, *J.*, that Zambrano had agreed to cooperate with the state in the petitioner's trial a few days before the evidence had commenced and that no agreement or promises had been made to her in exchange for her testimony. At Zambrano's sentencing hearing on February 4, 2015, Doyle informed Judge Clifford of the following: "Prior to her testimony, [Zambrano] was not made any promises. It was made clear during both direct and cross-examination at the [petitioner's] trial that she had larceny cases pending. It was very clear that she had her part of the assault case pending there. And it came out, the fact that what she was facing was, she was exposed to, but that she had been made no promises by the state or any court for that matter. And that is correct, and it wasn't until we entered and worked a plea agreement out in front of Your Honor with [Zambrano's counsel] in this court that we came up with the plea arrangement." (Internal quotation marks omitted.) Judge Clifford ultimately sentenced Zambrano to ten years of incarceration, execution suspended after thirty months, and five years of probation.

[3] "See *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). A guilty plea under the *Alford* doctrine is a judicial oxymoron in that the defendant does not admit guilt but acknowledges that the state's evidence against [her] is so strong that [she] is prepared to accept the entry of a guilty plea nevertheless. . . . A defendant often pleads guilty under the *Alford* doctrine to avoid the imposition of a possibly more serious punishment after trial." (Internal quotation marks omitted.) *Smorodska* v. *Commissioner of Correction*, 217 Conn. App. 171, 173 n.1, 287 A.3d 1117 (2022), cert. denied, 346 Conn. 907, 288 A.3d 628 (2023).

[4] Zambrano also pleaded guilty to a charge of larceny in the fifth degree, which arose from a separate matter.

The petitioner subsequently commenced the present action and, on May 18, 2018, filed an amended petition for a writ of habeas corpus. In count one, the petitioner alleged that his incarceration was illegal because the state had failed to disclose exculpatory material pursuant to *Brady* v. *Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). In count two, the petitioner claimed that he received ineffective assistance of counsel during his criminal trial from Farver. Prior to the habeas trial, the petitioner withdrew his ineffective assistance of counsel claim. The habeas court, *Chaplin*, *J.*, conducted a one day trial on December 6, 2019.

At the habeas trial, Doyle testified that he had not planned on calling Zambrano as a witness in the petitioner's criminal case because she previously had refused to cooperate. Doyle indicated that Zambrano had made an initial statement to the police shortly after her arrest, and, at that time, she did not divulge the location of the gun used in the shooting or act in a cooperative manner. Doyle subsequently was provided with information obtained from a recorded telephone conversation from the Department of Correction in which Zambrano stated, "they ain't gonna find [the revolver], it's in the ocean, that's where he threw it."

Doyle further testified that, at or about the start of evidence in the petitioner's criminal trial, he was contacted by Zambrano's attorney, who indicated that she wanted to cooperate with the prosecution. Doyle met with Zambrano, who disclosed the location of the gun the petitioner used. In response to the question of whether he had made any promises to Zambrano in exchange for her testimony, Doyle stated: "I don't think I made any particular promises in exchange for her testimony . . . ." He further testified that he would not have told Zambrano that he would "assist her at sentencing if she had provided helpful testimony" but, rather, would have stated that he "would meet with her

attorney and discuss some kind of plea arrangement in regard to her case and that we would let the court know that she had cooperated."

During cross-examination by counsel for the respondent, the Commissioner of Correction, Doyle recalled that he had emphasized to Zambrano the importance of testifying truthfully. Doyle next explained what information he had provided to Farver regarding Zambrano's testimony. First, Doyle stated: "I mean, I did tell [Farver] at some point prior to the trial that [Zambrano] had now agreed to cooperate and she is going to testify, and that [her attorney] had approached us and that she had now given a statement, and I would have turned that statement over to . . . Farver . . . ." Doyle confirmed that he would have informed Farver that, if Zambrano testified truthfully, Doyle would apprise the court of that fact at Zambrano's sentencing. In response to further questioning, Doyle repeated that he had told Farver that Zambrano had agreed to cooperate and testify against the petitioner in his criminal trial and that, if she testified truthfully, Doyle would inform Judge Clifford of these facts.

On May 5, 2020, the petitioner filed his posttrial brief. Therein, he identified the two issues presented: "Did the prosecution's failure to inform defense counsel of exculpatory impeachment evidence against . . . Zambrano constitute a violation of *Brady* v. *Maryland*, [supra, 373 U.S. 83, and did] the failure to correct Zambrano's testimony during trial about not expecting consideration from the prosecution constitute a violation of due process?" With respect to the former, the petitioner argued that the informal understanding between the state and Zambrano regarding her testimony against the petitioner at his criminal trial in exchange for her own favorable treatment constituted *Brady* material and that the failure to disclose it violated the petitioner's due process rights. As to the latter, the petitioner

claimed that a conviction based on false or misleading evidence knowingly presented by the prosecution also amounts to a due process violation. See *Giglio* v. *United States*, 405 U.S. 150, 153, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972); *Napue* v. *Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).

On March 9, 2021, the habeas court issued its memorandum of decision denying the petition for a writ of habeas corpus. Specifically, the court concluded that the petitioner had failed to prove his claims that, at his criminal trial, (1) the state had failed to disclose the incentive it had provided to Zambrano in exchange for her testimony (*Brady* claim), and (2) the state had failed to correct Zambrano's false and misleading testimony regarding her motivation to testify (*Giglio/Napue* claim).[5]

At the outset of its analysis, the court set forth the following facts: "Zambrano was charged as a coconspirator of the petitioner in the underlying incident for which the petitioner was charged. On June 27, 2013, she provided her first statement to the police, in which she indicated that it was Turner who stole the check and was in possession of a firearm that evening. Zambrano remained incarcerated while awaiting trial. After jury selection was completed in the petitioner's criminal trial, Zambrano's attorney approached . . . Doyle and indicated that she would like to cooperate with the state. Zambrano then gave a second statement in which

[5] In his appellate brief, the respondent notes that the petitioner specifically did not plead a *Giglio/Napue* claim in his amended habeas petition. During the habeas trial, the court permitted the petitioner's counsel, over the respondent's objections, to present evidence regarding the *Giglio/Napue* claim. In his posttrial brief, the petitioner addressed the *Giglio/Napue* claim. The habeas court considered the merits of the petitioner's *Giglio/Napue* claim in its memorandum of decision, and the respondent did not move to correct or to rectify that aspect of the decision. Under these facts and circumstances, the respondent does not contest review by this court of the petitioner's *Giglio/Napue* claim.

she indicated that the petitioner threatened Turner and McFadden. Zambrano also revealed the location of the firearm used in the assault, and assisted law enforcement with finding it. The state [forensics] lab conducted a ballistics test and determined that the recovered firearm was the weapon used in the shooting."

In its analysis of the petitioner's *Brady* claim, the habeas court, citing *Turner* v. *Commissioner of Correction*, 181 Conn. App. 743, 758–59, 187 A.3d 1163 (2018), determined that, although the state had not made Zambrano a specific promise regarding a particular sentence in exchange for her testimony, its agreement to inform the sentencing court of her cooperation fell within the scope of *Brady* material, and, therefore, the state was required to disclose it to the defense.[6] The habeas court further concluded: "The evidence before this court, however, fails to demonstrate that evidence of this agreement or consideration was inadvertently or wilfully suppressed by the state. . . . *Doyle credibly testified that he informed . . . Farver that the state would make Zambrano's cooperation known to the sentencing judge in her case.* The record also reveals that the testimony provided at the petitioner's criminal trial indicated that Zambrano was charged as a coconspirator with the petitioner. The record also reveals that, while the state had offered no specific guarantees or promised dates regarding her own sentencing, Zambrano testified on behalf of the state for purposes of getting out of jail sooner to see her children again. As a result of the foregoing, the court finds that the petitioner failed to demonstrate that the state suppressed evidence of an

[6] "Our case law is clear . . . that the petitioner need not establish the existence of a formal plea agreement in order to prove a *Brady* violation. [E]vidence that merely suggests an informal understanding between the state and a state's witness may constitute impeachment evidence for the purposes of *Brady*. . . . Such evidence is by no means limited to the existence of plea agreements." (Emphasis omitted; internal quotation marks omitted.) *Turner* v. *Commissioner of Correction*, supra, 181 Conn. App. 758.

agreement as required for a due process violation under *Brady*." (Emphasis added.)

With regard to the *Giglio/Napue* claim that the petitioner's right to due process was violated based on Doyle's failure to correct Zambrano's false or substantially misleading testimony regarding her motivation to testify, the court explained: "[T]he evidence before the court indicates that there were no promises or guarantees made by the state to Zambrano regarding the disposal of her pending criminal charges, and she testified to that effect at the petitioner's trial. Zambrano was never asked whether she expected that her cooperation would be made known to the sentencing judge, and she did not testify on that issue. In the context of the entire record, the court finds that Zambrano's testimony at the petitioner's criminal trial was not substantially misleading."

The court, therefore, denied the petition for a writ of habeas corpus. On March 18, 2021, it granted the petition for certification to appeal. This appeal followed.

I

We first address the petitioner's claim that the habeas court improperly concluded that the state did not violate his right to due process by failing to disclose to the defense its agreement with Zambrano to inform the sentencing judge in her criminal case of her testimony and cooperation against the petitioner, contrary to the principles set forth in *Brady* v. *Maryland*, supra, 372 U.S. 87, and its progeny.[7] We disagree.

[7] The petitioner mentions in his brief that his right to due process is protected by the fifth and fourteenth amendments to the United States constitution and under article first, §§ 8 and 9, of the Connecticut constitution. We note that the petitioner did not brief a separate state constitutional claim in accordance with *State* v. *Geisler*, 222 Conn. 672, 684–86, 610 A.2d 1225 (1992), or argue that the state constitution provides him greater protection than does the federal constitution. See, e.g., *State* v. *Taupier*, 197 Conn. App. 784, 787 n.1, 234 A.3d 29, cert. denied, 335 Conn. 928, 235 A.3d 525

We first set forth the relevant legal principles. "The fourteenth amendment to the United States constitution demands that [n]o [s]tate shall . . . deprive any person of life, liberty, or property, without due process of law . . . . Due process principles require the prosecution to disclose to the defense evidence that is favorable to the defendant and material to his guilt or punishment. . . . In order to obtain a new trial for improper suppression of evidence, the petitioner must establish three essential components: (1) that the evidence was favorable to the accused; (2) that the evidence was suppressed by the state—either inadvertently or wilfully; and (3) that the evidence was material to the case, i.e., that the accused was prejudiced by the lack of disclosure. . . .

"The state's failure to disclose an agreement with a cooperating witness may be deemed to be the withholding of exculpatory evidence. Impeachment evidence falls within *Brady*'s definition of evidence favorable to an accused. . . . Impeachment evidence is broadly defined in this context as evidence that could potentially alter the jury's assessment of a witness' credibility. . . . Specifically, we have noted that [a] plea agreement between the state and a key witness is impeachment evidence falling within the . . . *Brady* doctrine. . . . An undisclosed agreement for benefits between [a witness] and the state falls within the broad definition of impeachment evidence." (Citations omitted; internal quotation marks omitted.) *Marquez* v. *Commissioner of Correction*, 330 Conn. 575, 591–92, 198 A.3d 562 (2019); see also *Ayuso* v. *Commissioner of Correction*, 215 Conn. App. 322, 341–42, 282 A.3d 983, cert. denied, 345 Conn. 967, 285 A.3d 736 (2022). Stated differently,

(2020), cert. denied, U.S. , 141 S. Ct. 1383, 209 L. Ed. 2d 126 (2021). We therefore limit our review of the petitioner's claim to the federal constitution. See *Ham* v. *Commissioner of Correction*, 187 Conn. App. 160, 192 n.10, 201 A.3d 1074, cert. denied, 331 Conn. 904, 202 A.3d 373 (2019).

"[b]ecause a plea agreement is likely to bear on the motivation of a witness who has agreed to testify for the state, such agreements are potential impeachment evidence that the state must disclose." *Adams* v. *Commissioner of Correction*, 309 Conn. 359, 370, 71 A.3d 512 (2013).

Next, we identify the applicable standard of review. "The habeas judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony. . . . [T]his court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous . . . . The application of the habeas court's factual findings to the pertinent legal standard, however, presents a mixed question of law and fact, which is subject to plenary review. . . . Moreover, [w]hether the petitioner was deprived of his due process rights due to a *Brady* violation is a question of law, to which we grant plenary review." (Citation omitted; internal quotation marks omitted.) *Robinson* v. *Commissioner of Correction*, 204 Conn. App. 560, 566, 253 A.3d 1040, cert. denied, 337 Conn. 903, 252 A.3d 363 (2021); see also *Holbrook* v. *Commissioner of Correction*, 189 Conn. App. 108, 117, 206 A.3d 246, cert. denied, 331 Conn. 928, 207 A.3d 519 (2019); *Hines* v. *Commissioner of Correction*, 164 Conn. App. 712, 724, 138 A.3d 430 (2016).

In the present case, the habeas court concluded that the petitioner had failed to establish that the state inadvertently or wilfully suppressed its agreement with Zambrano to inform the sentencing judge in her criminal case of her testimony and cooperation against the petitioner. This conclusion was supported by its finding that Doyle disclosed the agreement[8] with Zambrano to Farver prior to her testimony at the petitioner's criminal

[8] Doyle testified at the habeas trial that Zambrano assisted the prosecution, inter alia, by revealing the location of the weapon and guiding law enforcement to its location. In exchange for her testimony and assistance, Doyle agreed to discuss a plea agreement with her attorney and to inform the sentencing judge in her criminal case of her cooperation.

trial. Specifically, the court stated: "Doyle testified credibly that he informed . . . Farver that Zambrano was now willing to cooperate with the state, and the state would make her cooperation known to the sentencing judge in her case, and gave him a copy of Zambrano's second statement."[9] It is well established that "it is not

[9] At the habeas trial, the following colloquy occurred between the respondent's counsel and Doyle during cross-examination:

"A. . . . I mean, I did tell [Farver] at some point prior to the trial that [Zambrano] had now agreed to cooperate, and she was going to testify . . . that she had now given a statement, and I would have turned that statement over to Attorney Farver and, you know . . . I probably would have informed Attorney Farver generally what, what she indicated or what she was going to [testify] to now. . . .

"Q. Okay. And do you recall telling Attorney Farver that you may, in the future, if she's, if she's truthful, go to her sentencing and just tell the judge what she had done?

"A. I, I would have told that. Any, any time there is a codefendant or even a witness with something else pending, I would have indicated, as part of their plea arrangement and probably in their plea canvass, too, that there's a certain range or a certain recommendation and that the state will let their sentencing court . . . know about their cooperation.

"Q. Right. Well, that's what I'm, I'm getting at.

"A. Yes.

"Q. I want to know what you told Attorney Farver.

"A. That I'm—yes. That I would tell Attorney Farver that, like I said, I can't remember off the top of my head; I'm assuming that she had entered pleas by the time that we—she testified. Okay? And that I would have, as part of her plea canvass . . . would have indicated that, when she is coming back for sentencing, I will let the court know about her cooperation and her truthfulness or lack thereof at sentencing.

"Q. So, did you tell Attorney Farver before she testified in the [petitioner's criminal] case, hey, Attorney Farver, she's going to cooperate now? When she goes to sentencing, I'm going to, if she's truthful, I'm going to go to [her sentencing judge] and tell her—

"A. Yes.

"Q. —what she did? So, you would, you—

"A. Yes.

"Q. —remember telling Attorney Farver that?

"A. Yes.

"Q. Okay.

"A. And I believe Attorney Farver would have cross-examined her about that as well.

"Q. Okay. Well, and that—the transcript will reflect that.

"A. Yes.

the role of this court to second-guess the credibility determinations made by the trial court." *Smith* v. *Commissioner of Correction*, 215 Conn. App. 167, 188, 282 A.3d 1036, cert. denied, 345 Conn. 921, 284 A.3d 983 (2022); see also *Kaddah* v. *Commissioner of Correction*, 211 Conn. App. 823, 829, 274 A.3d 115 (reviewing court ordinarily affords deference to credibility determination of habeas court based on its firsthand observations of conduct, demeanor and attitude of witness), cert. denied, 343 Conn. 928, 281 A.3d 1188 (2022).[10]

Additionally, Zambrano's direct testimony and the questions posed to Zambrano by Farver during cross-examination at the petitioner's criminal trial made it evident that Farver had been informed of her agreement with the state.[11] During Doyle's direct examination of

"Q. But I just want to know, specifically, if you recall what you told Attorney Farver with regards to her cooperation.

"A. Yes. I did tell him that.

"Q. You did tell him that. Okay. And this was all transpiring either right when evidence was starting or the day or two before?

"A. Yes. . . .

"Q. All right. And again, I want to be clear, at that point, you would agree with me, you would have to tell Attorney Farver she's going to now cooperate and, if she does cooperate, we're going to, I don't know, want to assist her, go through her sentencing or we're going to make this known to the sentencing judge in her case?

"A. Yes.

"Q. And you did that?

"A. Yes."

[10] We note that the habeas court specifically discredited "Zambrano's testimony that she did not initiate the meeting with the state to discuss cooperation, given the evidence to the contrary, including her own testimony at the petitioner's criminal trial . . . Doyle's representations to the court at Zambrano's sentencing and . . . Doyle's credible testimony at the habeas trial. In light of the foregoing, the court also does not credit Zambrano's testimony that the state used the phone recordings to pressure or threaten her into cooperating and testifying on behalf of the state."

[11] Doyle testified that he learned of Zambrano's intention to cooperate either on the eve of the petitioner's criminal trial or on the first day of evidence. He further testified that he informed Farver of the state's agreement with Zambrano before she testified in the criminal trial. The habeas court found Doyle to be a credible witness. Additionally, we note that "[e]vidence known to the defendant or his counsel, or that is disclosed,

her,[12] Zambrano acknowledged that she was charged as a coconspirator, that she had made an agreement with the prosecution to testify in the petitioner's criminal trial, and that she had not received any promises in regard to this testimony. Later, however, in her testimony on direct examination, Zambrano explicitly acknowledged that she was "hoping" that her attorney would inform the judge presiding over her sentencing hearing of her cooperation with the state.

During cross-examination,[13] Zambrano confirmed that she had been charged as a coconspirator in this case, and stated that she had been incarcerated for approximately eighteen months. She also testified that, during this time, she had been separated from her two young children and wanted to get home to them. Zambrano acknowledged that she had her attorney approach the prosecution about a cooperation agreement with the hope that she would receive some consideration. Farver inquired whether she had anticipated that her agreement to testify would "help [her] get out of jail sooner," and she responded: "I would hope so, but . . . they didn't guarantee me anything." He also asked her if the state had promised any "dates" regarding the period of incarceration and about her motivation for agreeing to cooperate with the state. On the basis of

even if during trial, is not considered suppressed as that term is used in *Brady*. . . . Even if evidence is not deemed suppressed under *Brady* because it is disclosed during trial, however, the defendant nevertheless may be prejudiced if he is unable to use the evidence because of the late disclosure. . . . Under these circumstances, the defendant bears the burden of proving that he was prejudiced by the state's failure to make the information available to him at an earlier time." (Internal quotation marks omitted.) *State* v. *Gray*, 212 Conn. App. 193, 225–26, 274 A.3d 870, cert. denied, 343 Conn. 929, 281 A.3d 1188 (2022); see also *State* v. *Washington*, 155 Conn. App. 582, 597, 110 A.3d 493 (2015). In the present case, the petitioner has not raised any argument that he was prejudiced as a result of a purported late disclosure.

[12] See footnote 1 of this opinion.

[13] See footnote 2 of this opinion.

Zambrano's testimony and the questions asked during cross-examination, it is apparent that Farver was aware of Zambrano's agreement with the state, including her hope of receiving consideration in exchange for her testimony.

Thus, the record supports the court's finding that Doyle informed Farver of the agreement with Zambrano.[14] It is axiomatic that "[e]vidence known to the defendant or his counsel, or that is disclosed, even if during trial, is not considered suppressed as that term is used in *Brady*." (Internal quotation marks omitted.) *State* v. *Gray*, 212 Conn. App. 193, 225–26, 274 A.3d 870, cert. denied, 343 Conn. 929, 281 A.3d 1188 (2022). Simply stated, "[t]he prerequisite of any claim under the *Brady*, *Napue* and *Giglio* line of cases . . . is the existence of an *undisclosed* agreement or understanding between the cooperating witness and the state." (Emphasis in original; internal quotation marks omitted.) *Gomez* v. *Commissioner of Correction*, 336 Conn. 168, 180, 243 A.3d 1163 (2020). We conclude, therefore, that the court's finding that Doyle had disclosed the agreement between the state and Zambrano in exchange for her testimony at the petitioner's criminal trial was not clearly erroneous and supports the court's ultimate determination that the petitioner did not establish a *Brady* violation.[15] Accordingly, the petitioner's *Brady* claim must fail.

[14] "[A] finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Jaynes* v. *Commissioner of Correction*, 216 Conn. App. 412, 423, 285 A.3d 412 (2022), cert. denied, 345 Conn. 972, 286 A.3d 906 (2023).

[15] The petitioner argues in his principal appellate brief that the state's agreement with Zambrano was disclosed partially. Specifically, he contends that Doyle did not inform Farver that Zambrano had approached him at the start of the petitioner's criminal trial and that she sought to receive some consideration. The petitioner also appears to claim that Doyle failed to tell Farver that Zambrano had agreed to testify in the criminal trial only after Doyle told her that he would alert her sentencing judge of her cooperation.

II

We next address the petitioner's claim that the habeas court improperly concluded that his due process rights were not violated by Doyle's knowing presentation of false and substantially misleading testimony from Zambrano at the criminal trial. In particular, the petitioner asserts that Zambrano testified inaccurately that no promises had been made to her in exchange for her cooperation and that she had agreed to testify because she wanted "to do the right thing." The petitioner further argues that Doyle had an obligation to correct Zambrano's false or substantially misleading testimony and failed to do so in violation of his due process rights. The respondent counters, inter alia, that Zambrano's testimony was accurate and, therefore, not false or substantially misleading. Additionally, as an alternative basis for affirming the judgment of the habeas court, the respondent contends that there is no reasonable likelihood that any false or substantially misleading testimony affected the verdict. We agree with the respondent as to both of his arguments.

In his reply brief, the petitioner specifically claims that Doyle was required to inform Farver of Zambrano's specific motivation to cooperate with the prosecution in the petitioner's criminal case.

The record does not support the petitioner's contentions. As previously noted, during Farver's cross-examination of Zambrano at the petitioner's criminal trial, she admitted that she had her attorney reach out to the prosecution with the hope or anticipation of obtaining some consideration with respect to the disposition of her pending criminal charges in exchange for her testimony. Additionally, we are not persuaded that Doyle's obligation to inform the petitioner or Farver of his agreement with Zambrano applies to her specific motivations to assist the prosecution. In this case, given the information provided to Farver, he certainly could have deduced or inferred that Zambrano's decision to testify was the result of Doyle's offer to inform her sentencing judge of her cooperation. In other words, it was implicit that Zambrano's decision to testify was based on hearing that Doyle would alert her sentencing judge of her cooperation in the criminal case against the petitioner. Finally, the petitioner could have raised these matters in the direct examinations of Doyle or Zambrano during the habeas trial, but he failed to do so. We conclude, therefore, that this argument is unavailing.

We start by setting forth the applicable standard of review. "Whether a prosecutor knowingly presented false or misleading testimony presents a mixed question of law and fact, with the habeas court's factual findings subject to review for clear error and the legal conclusions that the court drew from those facts subject to de novo review." *Greene* v. *Commissioner of Correction*, supra, 330 Conn. 14; see also *State* v. *Johnson*, 345 Conn. 174, 204, 283 A.3d 477 (2022).

Next, we identify the relevant legal principles. Our Supreme Court has recognized that "[t]he teaching of [*Brady*, *Napue* and *Giglio*] . . . is that the state's knowing presentation of false testimony regarding the benefits that have been afforded to a cooperating witness may implicate two related but distinct rights protected by the due process clause of the fourteenth amendment. First, under *Brady* and its progeny, the state may not suppress material, exculpatory evidence, including evidence that tends to undermine the credibility of the state's witnesses. Second, under *Napue* and its progeny, *the state may not knowingly rely on the presentation of false or substantially misleading evidence to the jury, including evidence regarding the benefits that have been afforded to cooperating witnesses, to obtain a criminal conviction.* . . . [S]ee also, e.g., *Long* v. *Pfister*, 874 F.3d 544, 549 (7th Cir. 2017) (*Napue* and *Brady* are *cousin*[*s*] *representing distinct manifestations of principle that prosecutors must expose material weakness in their cases*), cert. denied, U.S. , 138 S. Ct. 1593, 200 L. Ed. 2d 777 (2018) . . . ." (Citation omitted; emphasis added; footnote omitted; internal quotation marks omitted.) *Gomez* v. *Commissioner of Correction*, supra, 336 Conn. 182–83; see also *Marquez* v. *Commissioner of Correction*, supra, 330 Conn. 592–93. Thus, a *Brady* claim is concerned primarily with disclosure of exculpatory material *to the defendant*, whereas the "essence

of [a] *Napue/Giglio* violation is [the] lack of disclosure of [the] truth *to* [*the*] *jury* . . . .'' (Emphasis added.) *Gomez* v. *Commissioner of Correction*, supra, 182; see id., 181, citing *Gaskin* v. *Commissioner of Correction*, 183 Conn. App. 496, 543–44 and n.30, 193 A.3d 625 (2018).

As our Supreme Court has recognized, ''[d]ue process is . . . offended if the state, although not soliciting false evidence, allows it to go uncorrected when it appears. . . . If a government witness falsely denies having struck a bargain with the state, or substantially mischaracterizes the nature of the inducement, the state is obliged to correct the misconception. . . . Regardless of the lack of intent to lie on the part of the witness, *Giglio* [v. *United States*, supra, 405 U.S. 153] and *Napue* [v. *Illinois*, supra, 360 U.S. 269–70] require the prosecutor to apprise the court when he or she knows that the witness is giving testimony that is substantially misleading.'' (Internal quotation marks omitted.) *Gomez* v. *Commissioner of Correction*, supra, 336 Conn. 175;[16]

[16] Approximately five years after the petitioner's criminal trial, our Supreme Court noted: ''To its credit . . . the Division of Criminal Justice voluntarily adopted a new policy, entitled '515 Cooperating Witnesses,' that is intended to ensure the vindication of defendants' rights under *Napue* and *Brady*. Of particular relevance to the present appeal, the policy provides: 'The prosecutorial official trying the case shall ensure that any testimony that is given by the cooperating witness concerning the cooperation agreement is true, accurate and not misleading. False, inaccurate or misleading testimony may be corrected with the use of leading questions, as permitted by the trial court.' '' *Gomez* v. *Commissioner of Correction*, supra, 336 Conn. 189–90 n.10.

In a letter sent to our Supreme Court following oral argument in *Gomez*, the prosecutor represented that Policy 515 had been adopted on October 1, 2019, and transmitted to all prosecutors on October 25, 2019. This policy required, inter alia, that cooperation agreements be reduced to a writing either in the form of an agreement signed by all parties, including the prosecutor, the cooperating witness, and counsel for the cooperating witness, or a memorandum prepared by the prosecutor. The policy also defined a cooperating witness as a person who ''1. Provides information to a law enforcement agency regarding the commission of a crime, or concerning a person suspected of, or charged with, committing a crime; and 2. Agrees to testify for the State in the trial of a criminal matter; and 3. Might reasonably

see also *State* v. *Johnson*, supra, 345 Conn. 204–205. As this court has stated, "[t]he state has a duty to correct the record if it knows that a witness has testified falsely." *Turner* v. *Commissioner of Correction*, supra, 181 Conn. App. 754; see also *Gomez* v. *Commissioner of Correction*, supra, 186 (more fundamental insult to due process occurs when state knowingly attempts to secure conviction based on falsehoods and fabrications). Our appellate courts have identified the rationale underlying this duty. "When a witness gives false testimony . . . the prosecutor and witness himself are the keepers of the truth. Without evidence of the falsity of the statement through admission by the witness, disclosure to the defendant or his counsel of any consideration the state offers to a cooperating witness is useless unless the jury gets to hear it." *Gaskin* v. *Commissioner of Correction*, supra, 183 Conn. App. 544 n.30; see also *Gomez* v. *Commissioner of Correction*, supra, 183 (harm associated with *Napue* violation is not limited to specific defendant but also undermines credibility of entire criminal justice system).

In order to prevail on this type of claim, the petitioner must demonstrate that (1) the state's witness provided *false or substantially misleading testimony* that was *material* and (2) the prosecutor failed to correct such testimony. *Gomez* v. *Commissioner of Correction*, supra, 336 Conn. 176. After a careful review of the record, we agree with the habeas court that the petitioner failed to establish that Zambrano's testimony was false or substantially misleading, and, therefore, his *Napue* claim fails. We further conclude that, even if Zambrano had provided false or substantially misleading testimony regarding her agreement with Doyle, there is no reasonable likelihood that it could have affected the jury's verdict.

expect to obtain, or has sought, been offered or obtained, a benefit from the State in exchange for his or her testimony."

As we previously noted in this opinion, during direct examination by Doyle at the petitioner's criminal trial, Zambrano stated that, although she had an agreement with the state, she had not been made any promises by the police or the prosecution in regard to her testimony.[17] Further, Zambrano agreed with the prosecutor that she had not "been made any promises in regards to [her] pending matters as to how they will be disposed of or what will happen with [her] charges . . . ." Zambrano later acknowledged that she was hoping that her cooperation would be brought to the attention of her sentencing judge. During cross-examination, Zambrano admitted that she had been incarcerated for approximately eighteen months and had been separated from her children.[18] She further acknowledged that she wanted "to get home to them . . . ." Zambrano's testimony informed the jury that she had her attorney reach out to Doyle about testifying in the petitioner's criminal trial with the possibility of some consideration for her by doing so. She agreed with Farver that she "hoped" to be released from jail sooner as a result of her testimony, but explained that the state had not guaranteed her anything and that no "dates" had been promised to her. Finally, she stated that her motivation was "to do what was right," to get out of jail, and to see her children again. The context of her agreement with the state was presented to the jury in its entirety. See *Greene* v. *Commissioner of Correction*, supra, 330 Conn. 12, 17, 22.

At the habeas trial, Doyle testified that he had informed Zambrano that he would not make any specific promises or guarantees in exchange for her testimony, only that he would inform her sentencing judge of her cooperation and assistance. Doyle also informed Farver of Zambrano's willingness to cooperate and his intention to present this cooperation at her sentencing

[17] See footnote 1 of this opinion.

[18] See footnote 2 of this opinion.

hearing. As the habeas court stated in its memorandum of decision: "Doyle further testified that he would not have felt obligated to correct Zambrano's testimony at the petitioner's trial because her statement that she was not guaranteed anything by the state in exchange for her testimony was accurate." The habeas court credited Doyle's testimony and specifically found that no specific promise was made to Zambrano.

The habeas court, therefore, properly concluded that Zambrano's testimony at the petitioner's criminal trial was not substantially misleading. Zambrano's testimony, viewed in its entirety, made clear to the jury that she (1) was charged as a coconspirator, (2) had made an agreement with the state to testify against the petitioner, and (3) had her attorney approach the state just before the start of the petitioner's trial to provide assistance with the hope that it would be brought to the attention of her sentencing judge and help her get out of jail sooner so that she could be with her children.[19] The jury in the petitioner's criminal trial was made aware that Zambrano had testified with the aspiration, but not the guarantee or specific promise, of receiving consideration in the form of a reduced period of incarceration.[20] See, e.g., *Greene* v. *Commissioner of Correction*, supra, 330 Conn. 12, 17, 22; id., 12 (statements

[19] We emphasize that Zambrano testified that she had agreed to cooperate with the prosecutor "to do what was right . . . [t]o get out of jail . . . [a]nd to see her children again . . . ." We therefore disagree with the petitioner's contention that her testimony was false or substantially misleading in that she had agreed to testify only because "she just wanted to do the right thing."

[20] The facts of the present case distinguish it from *Smith* v. *Commissioner of Correction*, Superior Court, judicial district of Tolland, Docket No. CV-16-4008338-S (September 20, 2021), a case cited by the petitioner in his principal appellate brief. In that case, the prosecutor at the criminal trial argued to the jury that certain witnesses had nothing to gain from their testimony and that they did not come willingly to testify but had been subpoenaed. Furthermore, defense counsel in *Smith* did not cross-examine the witness about his agreement with the state. "Finally, and most importantly, the jury never got to hear that [the witness] had an agreement with the prosecution that his cooperation with them would be made known to the sentencing judge and potentially [be] taken into consideration by the

regarding cooperation agreement described by habeas court as " 'not a model of clarity' " may sufficiently and accurately describe agreement when considered in entire context, and denial of knowledge of specific benefit or promise do not relate to broader question of whether witness received any benefit in exchange for testimony); cf. *State* v. *Jordan*, 314 Conn. 354, 366–67, 102 A.3d 1 (2014) (witness' testimony was "potentially misleading" where prosecutor informed court he would bring cooperation to attention of sentencing court and witness subsequently testified he did not expect "any kind" of benefit or consideration (internal quotation marks omitted)). Accordingly, we reject the petitioner's claim that his due process rights were violated.

Additionally, we agree with the respondent that, even if Zambrano had provided false or substantially misleading testimony regarding her agreement with Doyle, there is no reasonable likelihood that it could have affected the jury's verdict.[21] See, e.g., *Marquez* v. *Commissioner of Correction*, supra, 330 Conn. 593 (court assumed, without deciding, that state had improperly failed to disclose impeachment evidence concerning alleged agreement reached with witness and considered whether lack of disclosure to defense and failure to correct testimony were material). Compared to a traditional *Brady* claim, "the standard for materiality [in a *Napue/Giglio* claim] is significantly more favorable to

prosecutor when fashioning an appropriate offer. It was entitled to have that information." In light of these distinguishing facts, we conclude that the petitioner's reliance on *Smith* is misplaced.

[21] The issue of whether Zambrano's testimony, even if determined to be false or substantially misleading, would have materially affected the jury's verdict presents a question of law that was addressed by both parties in their appellate briefs. See, e.g., *Marquez* v. *Commissioner of Correction*, supra, 330 Conn. 591 n.3; *Kaddah* v. *Commissioner of Correction*, 299 Conn. 129, 136 n.10, 7 A.3d 911 (2010). Both parties had the opportunity to discuss this issue, and, therefore, the petitioner is not prejudiced by our discussion of materiality.

the defendant than it is with other forms of exculpatory evidence. . . . A conviction obtained through uncorrected false testimony must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. . . . In other words, reversal is virtually automatic . . . *unless the state's case is so overwhelming that there is no reasonable likelihood that the false testimony could have affected the judgment of the jury*." (Citations omitted; emphasis in original; internal quotation marks omitted.) Id., 594; *Turner* v. *Commissioner of Correction*, supra, 181 Conn. App. 754–55; see also *Adams* v. *Commissioner of Correction*, supra, 309 Conn. 372 (this standard "is not substantively different from the test that permits the state to avoid having a conviction set aside, notwithstanding a violation of constitutional magnitude, upon a showing that the violation was harmless beyond a reasonable doubt").

"This calls for a careful review of that testimony and its probable effect on the jury, weighed against the strength of the state's case and the extent to which [the defendant was] otherwise able to impeach [the witness]. . . . [E]vidence that may first appear to be quite compelling when considered alone can lose its potency when weighed and measured with all the other evidence, both inculpatory and exculpatory. Implicit in the standard of materiality is the notion that the significance of any particular bit of evidence can only be determined by comparison to the rest." (Citation omitted; internal quotation marks omitted.) *Marquez* v. *Commissioner of Correction*, supra, 330 Conn. 594; see also *State* v. *Jordan*, supra, 314 Conn. 371.

As we have noted in this opinion, Farver challenged the credibility of Zambrano during cross-examination and presented this issue to the jury. Her credibility was impeached further as a result of her testimony that was inconsistent with her initial statements to the police

regarding the assault.[22] See, e.g., *Marquez* v. *Commissioner of Correction*, supra, 330 Conn. 599–600 (impeachment of witness constitutes factor in determining whether elevated standard for materiality has been met). Farver highlighted these inconsistencies in his closing argument to the jury: "Why suddenly last week does [Zambrano] flip her story? She told you she gave a different—an inconsistent story and then lied when she was interviewed by the [police] because she's charged, she said. That's when she changes her story. Because she hopes to have something for the cooperation, that she get some consideration, that she's been in jail for a year and a half, hasn't seen her kids, wants to go back and see them. But yet, there's nothing in her story that gives her any responsibility. Everyone else who testified with knowledge of those events said [Zambrano] stole the check. She denied it." Further, Doyle recognized that Zambrano's credibility was questionable when, in his closing argument, he stated that the jury should "[t]ake her testimony for what it's worth . . . ."[23]

[22] The habeas court set forth the following in its memorandum of decision: "On June 27, 2013, [Zambrano] provided her first statement to the police, in which she indicated that it was Turner who stole the check and was in possession of a firearm that evening. . . . Zambrano [subsequently] gave a second statement in which she indicated that the petitioner threatened Turner and McFadden. Zambrano also revealed the location of the firearm used in the assault . . . ." Farver cross-examined her regarding this inconsistency, and she admitted that "portions" of her first statement were untruthful.

[23] Specifically, Doyle argued: "There's no doubt that . . . Zambrano's testimony is what it is. She made a request to testify on behalf of the state. She led the police to the gun. You could see it here in evidence. I agree with Mr. Farver on this fact. She's minimized her culpability in this. Perhaps in some idea that one day she'll be able to go back out there and be a visiting nurse. I agree with him. Minimize her responsibility in regards to that stolen check. Minimize her responsibility in regards to knowing what [the petitioner] was going to do when he pulled out there. . . . Take her testimony for what it's worth . . . ."

Additionally, the court provided the jury with the following instruction regarding Zambrano's testimony: "In weighing the testimony of an accomplice in this case, [Zambrano], who has not yet been sentenced or whose

We next consider the strength of the state's case. The key issue was whether the petitioner had pointed the revolver at Turner and pulled the trigger, as Turner and McFadden testified at the criminal trial, or whether the revolver accidentally discharged when Turner grabbed the barrel of the revolver as the petitioner waved it around with his finger on the trigger, as the petitioner testified. Zambrano was not present at the specific time and location of the shooting, and, therefore, her testimony did not address the petitioner's actions and intention at that particular moment.[24] See *Marquez* v. *Commissioner of Correction*, supra, 330 Conn. 600 (even if jury believed allegedly false testimony from witness regarding lack of deal with state, that impression was harmful only to extent witness' testimony provided unique value to state's case).

The petitioner's own testimony at the criminal trial placed him at the crime scene with the firearm and a motive for injuring Turner, namely, that she had absconded with proceeds from the stolen check. The petitioner admitted that he was "pissed off that . . .

case has not yet been disposed of, you should keep in mind that she may in her own mind be looking for some favorable treatment in the sentence or disposition of her own case. Therefore, she may have such an interest in the outcome of this case that her testimony may have been colored by that fact. Therefore, you must look with particular care at the testimony of an accomplice and scrutinize it very carefully before you accept it. . . . There are many offenses that are of such a character that only the person capable of giving useful testimony are those who are themselves implicated in the crime. It is for you to decide what credibility you will give to a witness who has admitted her involvement and criminal wrongdoing and whether you will believe or disbelieve the testimony of a person who, by her own admission, has committed or contributed to the crime charged by the state here. Like all other questions of credibility, this is a question you must decide based on all the evidence presented to you."

[24] As the respondent correctly noted in his appellate brief: "Thus, while Zambrano was both a witness to and participant in the events surrounding the shooting, the jury's determination of guilt on the sole contested issue at trial—namely, the petitioner's intent—rested primarily on its evaluation of the testimony offered by Turner, McFadden and the petitioner himself."

Turner had screwed [him] out of [his] half of that $6500 . . . .” The petitioner testified that, after stopping on a dark road near a wooded area, he removed the revolver from the glove compartment to “scare” Turner. He admitted that he was not permitted to possess the revolver due to his prior felony convictions. The petitioner further testified that he told Turner to get out of the vehicle and then questioned her about the money from the stolen check. He acknowledged having his finger on the trigger of the revolver in the moments before Turner was shot. The petitioner admitted to transporting the revolver to Milford and dropping it in the water with the intention of discarding it in the hope that it would never be found. Finally, the petitioner admitted that he had initially lied to the police when he told them that Turner had brought the revolver and held him at gunpoint before a struggle ensued.[25]

Furthermore, both Turner and McFadden testified that the petitioner accused Turner of withholding money from him, removed the revolver from the glove

[25] The petitioner testified that Turner reached for the revolver and, during their struggle, it discharged twice. He denied intentionally pulling the trigger and intentionally shooting Turner.

The court instructed the jury as follows: “In deciding what the facts are you must consider all the evidence. In doing this you must decide which testimony to believe and which testimony not to believe. You may believe or disbelieve all, none, or part of a witness’ testimony. In making that decision you may take into account a number of factors, including the following: number one, was the witness able to see or hear or know things about what the witness testified to; number two, how well was the witness able to recall and describe those events; three, what was the witness’ manner or demeanor while testifying; four, *did the witness have any interest in the outcome of this case* or any bias or prejudice concerning any party or any matter involved in this case; five, how reasonable was the witness’ testimony considered in the light of all the evidence in this case; six, *was the witness’ testimony contradicted by what the witness had said or done at another time or by the testimony of other witnesses or by other evidence.* If you conclude that a witness has deliberately testified falsely in some respect you should carefully consider whether you should rely on any of that person’s testimony.” (Emphasis added.)

box, ordered Turner to exit the vehicle, and then forced her to her hands and knees. Both McFadden and the petitioner testified that he drove off with Zambrano and then returned.[26] Turner and McFadden testified that he pointed the revolver at Turner and shot her twice. See, e.g., *Marquez* v. *Commissioner of Correction*, supra, 330 Conn. 595–98 (little question petitioner was present at scene of criminal activity and had held weapon used in murder; primary issue, if petitioner's statement was credited, was whether he participated in robbery that led to victim's murder; ample evidence presented that petitioner not only participated in robbery but fired fatal gunshots, *including testimony from two eyewitnesses who presented persuasive and consistent testimony*, selected petitioner's photograph from photographic array and identified him in court, consciousness of guilt evidence, and petitioner's confession to fellow inmate). The state's case as to the petitioner's intent, therefore, did not depend on the testimony of Zambrano, who was not present when Turner was shot, but, instead, was based on the testimony of Turner and McFadden, who were present when the shooting occurred.[27]

[26] Turner testified that she ran into the woods, where McFadden found her. She further testified that, after staying there for a few minutes, they left the woods because she thought the petitioner and Zambrano were gone. According to Turner, she and McFadden were walking on a road when the petitioner jumped out of some bushes and pointed the revolver at her head.

[27] We disagree with the petitioner's argument that "Zambrano's testimony was the only witness testimony that was in direct conflict with the [defense] case, which was a lack of intent on the assault charge. . . . Zambrano's damaging testimony regarding the [petitioner's] preshooting anger and postshooting actions to conceal evidence undoubtedly conflicted with the defense." (Citation omitted.) As discussed previously in this opinion, the petitioner himself testified regarding his efforts to conceal evidence by throwing the revolver in a body of water. Additionally, although Zambrano testified that the petitioner was "in a rage" about Turner a day or two before the shooting, there was other evidence regarding his anger toward his cousin. As noted, the petitioner stated he was "pissed off" at Turner, and McFadden recounted that he spoke to Turner with an assertive, raised and accusatory voice during the car ride to the remote location.

In light of the evidence the state presented, particularly the testimony of Turner and McFadden regarding the petitioner's actions at the time of the shooting, coupled with the petitioner's own testimony, we are not persuaded that Zambrano's testimony materially affected the jury's verdict. The state's case was so overwhelming that there is no reasonable likelihood that Zambrano's testimony could have affected the judgment of the jury, even if we were to conclude that her testimony as to her agreement with the state was false or substantially misleading. After weighing Zambrano's testimony, its probable effect on the jury, the strength of the state's case, and the extent to which defense counsel impeached Zambrano, we conclude that Zambrano's allegedly misleading testimony and Doyle's purported failure to correct it were immaterial under *Napue* and *Giglio*.

The judgment is affirmed.

In this opinion the other judges concurred.

COMMISSIONER OF TRANSPORTATION *v.* TERESA CHUDY ET AL.
(AC 44764)

Prescott, Suarez and DiPentima, Js.

Syllabus

The defendants property owners filed an application in the trial court, pursuant to statute (§ 13a-76), challenging the assessment of damages filed by the plaintiff Commissioner of Transportation in connection with the partial taking by condemnation of certain of the defendants' real property. The defendants claimed that the damages assessed by the commissioner were inadequate because the taking included all access to the only public street serving their property, thereby rendering the property landlocked. The court rendered judgment reassessing the damages due to the defendants for the taking, and the defendants appealed to this court. *Held* that the trial court did not improperly decline to award severance damages to the defendants as of the date of the taking, as the court's determination that the defendants failed to prove that

their property was landlocked on the date of the taking was not clearly erroneous: the court considered all of the evidence before it and credited the expert testimony of the commissioner's appraiser that access to the road from the defendants' property had not been restricted by the taking, and it did not credit the contrary expert testimony of the defendants' appraiser, which it determined to be inaccurate primarily as a result of the appraiser's failure to undertake a detailed review of the pertinent statute (§ 13a-73) and relevant documents relating to the construction project that prompted the partial taking.

Argued February 27—officially released May 9, 2023

Procedural History

Notice of condemnation of certain real property of the named defendant et al., brought to the Superior Court in the judicial district of Middlesex, where the named defendant et al. filed an application for the reassessment of damages; thereafter, the matter was tried to the court, *Hon. Barbara M. Quinn*, judge trial referee; judgment awarding certain damages to the named defendant et al., from which the named defendant et al. appealed to this court. *Affirmed.*

C. Scott Schwefel, with whom, on the brief, was *Mark S. Shipman*, for the appellants (named defendant et al.).

Cara C. Tonucci, assistant attorney general, with whom were *John Russo*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellee (plaintiff).

Opinion

PER CURIAM. The defendants Teresa Chudy and Michal Chudy appeal from the judgment of the trial court awarding them damages in the amount of $2000 for the taking by eminent domain of a portion of their real property (partial taking) by the plaintiff, the Commissioner of Transportation (commissioner).[1] On

[1] A notice of condemnation and assessment of damages filed by the commissioner also named AT&T, doing business as Frontier Communications, and the town of Cromwell as having an interest in the subject property by way of easements. No appearance has been filed on behalf of either of those additional parties. In this opinion, our references to the defendants are to Teresa Chudy and Michal Chudy.

appeal, the defendants claim that the court erred by not awarding severance damages as of the date of the partial taking. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The defendants own property located at 170 Coles Road in the town of Cromwell. The property consists of a vacant, wooded lot, 1.046 acres in size in a residential zone. On September 7, 2018, the commissioner filed a notice of condemnation and assessment of damages (notice of condemnation), pursuant to General Statutes § 13a-73 (b),[2] for the partial taking of a narrow strip of land along the entire frontage of the defendants' parcel, together with certain easements, in connection with a road widening and drainage improvement project in Cromwell, which involved the takings of narrow strips of roadside land from property owners abutting Coles Road. The partial taking of the defendants' property was for an area of land in fee of 620 square feet, a slope easement of 192 square feet for the purpose of sloping the property for the safety of the highway, and an easement to excavate a ditch within a 94 square feet area. In the notice of condemnation, the commissioner assessed damages in the amount of $3500.

The defendants filed an application in the Superior Court pursuant to General Statutes § 13a-76 for a reassessment of damages, claiming that the damages were inadequate because the commissioner took "access to the only public street serving their property," thereby rendering their property landlocked. The defendants argued that they were entitled to damages in the amount of $91,000, which allegedly represented the diminution in value of their property following the partial taking.

[2] Although § 13a-73 (b) was the subject of a technical amendment in 2018; see Public Acts 2018, No. 18-62, § 1; that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

Hearings were held on the matter over the course of several days in September, 2020, and January and March, 2021,[3] at which the court heard testimony from various witnesses, including the commissioner's appraiser, Michael Aletta, and the defendants' appraiser, Marc Gottesdiener. In a memorandum of decision dated May 19, 2021, the court rendered judgment awarding the defendants damages in the amount of $2000. In making that determination, the court specifically credited the analysis and appraisal presented by Aletta, who provided expert testimony that the defendants' access to Coles Road from their property had not been restricted. Specifically, Aletta demonstrated, by use of a map showing the area of the taking and photographs, that the defendants, either before or after the taking, could have applied to the town for a curb cut, which would have enabled them to secure access to the road. He also explained that, if the town had restricted access, the condemnation notice would have referenced subsection (f) of § 13a-73, rather than subsection (b). Aletta also testified concerning the appraised value of the defendants' property both before and after the condemnation, which resulted in his assessment of damages of $2000, and he specifically stated that the value of the remaining land was not affected by the condemnation.

Gottesdiener also provided expert testimony regarding the value of the property prior to and after the partial taking. He testified that, prior to the taking, the property had a value of $101,000.[4] He also testified that,

[3] Specifically, the court held a hearing on September 22, 2020, at the conclusion of which the parties rested. Thereafter, on January 7, 2021, the court issued an order requesting the parties to present argument regarding whether the matter should be opened for the purpose of taking evidence on the issue of a time limited taking of the subject property. Following argument on January 28, 2021, the court opened the evidence, and on March 29, 2021, the plaintiff presented testimony from two more witnesses.

[4] Although Gottesdiener valued the property prior to the taking at $101,000, during the hearing on September 22, 2020, the defendants' counsel stipulated to the $125,000 pretaking value of the property determined by Aletta.

after the taking, the defendants' property was landlocked with no right of access to a public road, as the commissioner's taking "took away all the frontage and access to Coles Road" from the defendants' parcel. That determination was based, in part, on his belief that guardrails along Coles Road ran across the entire length of the defendants' parcel and the fact that no easements or rights-of-way had been reserved to the defendants. As a result, he opined that the diminution in value to the defendants' property after the taking was $91,000, leaving the property with a value of $10,000 after the taking. The court, however, found that Gottesdiener's underlying assumption regarding the guardrails was inaccurate, as the guardrails, in fact, "intruded only a little distance, if at all, on the property frontage [of the defendants' parcel] on Coles Road . . . ."[5] Moreover, the court found that Gottesdiener never reviewed the taking statute referenced in the notice of condemnation. The court stated: "Had [Gottesdiener] reviewed the statute referenced in the condemnation notice and inquired further, the relevant details as well as the detailed construction maps, [a] memorandum of agreement [between the commissioner and] the town . . . and other documents would have been made available to him for his review. This detailed inquiry . . . the [defendants'] appraiser did not undertake. Those additional publicly available documents and facts would have led him to a different conclusion than the one he reached, and the court finds it cannot accept his ultimate conclusions as accurate."

The court also heard testimony from the engineer for the town of Cromwell, who testified about the defendants' access to Coles Road. That testimony was consistent with Aletta's testimony and was not contradicted

[5] At oral argument before this court, counsel for the defendants conceded that there was evidence in the record supporting the court's finding regarding the guardrails and, thus, withdrew any claim that the court's finding was clearly erroneous.

by the defendants. The court, which expressly rejected the "drastic conclusions" of Gottesdiener, concluded that the defendants "had the right to obtain a curb cut for access to Coles Road both before and after the taking, dependent only upon the presentation of appropriate plans." Accordingly, the court found that the defendants had failed to meet their burden of proving that their parcel was landlocked after the taking. Moreover, the court concluded that the defendants, who had planned to build a home on their property, "could still put their property to its highest and best use as a buildable residential lot with access to Coles Road." This appeal followed.

On appeal, the defendants claim that the court erred by not awarding severance damages as of the date of the taking. According to the defendants, on the date of the taking, the remaining portion of the premises was landlocked, which rendered their property essentially valueless. Thus, the defendants' challenge to the court's measure of damages is premised on their assertion that the court improperly rejected their claim that their parcel was landlocked at the time of the taking. Before addressing the defendants' claim, we set forth our standard of review and general principles that govern condemnation cases.

"In a condemnation matter, it is the condemnee's burden to show loss or damages in excess of the condemnor's figures." (Internal quotation marks omitted.) *Commissioner of Transportation* v. *Larobina*, 92 Conn. App. 15, 27, 882 A.2d 1265, cert. denied, 276 Conn. 931, 889 A.2d 816 (2005). "Damages recoverable for a partial taking are ordinarily measured by determining the difference between the market value of the whole tract as it lay before the taking and the market value of what remained of it thereafter, taking into consideration the changes contemplated in the improvement and those which are so possible of occurrence in the future

that they may reasonably be held to affect market value." (Internal quotation marks omitted.) *Cappiello* v. *Commissioner of Transportation*, 203 Conn. 675, 679, 525 A.2d 1348 (1987). "When only a portion of a party's property is taken, the landowner is entitled not only to compensation for the value of the property taken, but also to severance damages for the diminution in the value of the landowner's remaining property that the severance of a portion of the property causes." (Internal quotation marks omitted.) *Commissioner of Transportation* v. *Larobina*, supra, 23.

"Valuation is a matter of fact to be determined by the trier's independent judgment. . . . In determining fair market value, the trier may select the method of valuation most appropriate to the case before it; *Laurel, Inc.* v. *Commissioner of Transportation*, 180 Conn. 11, 37–38, 428 A.2d 789 (1980); and has the right to accept so much of the testimony of the experts and the recognized appraisal methods which they employed as [the court] finds applicable; [the court's] determination is reviewable only if [it] misapplies, overlooks, or gives a wrong or improper effect to any test or consideration which it was [its] duty to regard." (Citation omitted; internal quotation marks omitted.) *Cappiello* v. *Commissioner of Transportation*, supra, 203 Conn. 679–80. On appeal, this court must "determine whether the decision of the trial court is clearly erroneous." Id., 680. "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *New London* v. *Picinich*, 76 Conn. App. 678, 685, 821 A.2d 782, cert. denied, 266 Conn. 901, 832 A.2d 64 (2003).

In the present case, the court's determination that the defendants failed to meet their burden of proving

that their parcel was landlocked for purposes of establishing their claimed entitlement to compensation in the amount of $91,000 was premised on the court's credibility assessment of the expert testimony provided. Specifically, the court did not accept the testimony of the defendants' appraiser and, instead, found "credible the analysis and appraisal presented by the commissioner's appraiser . . . ."

"[I]t is well settled that [t]he weight to be given the evidence and the credibility of the witnesses are within the sole province of the trial court. . . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible. . . . *United Technologies Corp.* v. *East Windsor*, 262 Conn. 11, 26, 807 A.2d 955 (2002). [T]he trial judge . . . is free to accept or reject, in whole or in part, the testimony offered by either party. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling. . . . Where the trial court rejects the testimony of a [party's] expert, there must be some basis in the record to support the conclusion that the evidence of the [expert witness] is unworthy of belief." (Citations omitted; internal quotation marks omitted.) *Cavanagh* v. *Richichi*, 212 Conn. App. 402, 424–25, 275 A.3d 701 (2022); see also *Gaughan* v. *Higgins*, 186 Conn. App. 618, 623, 200 A.3d 1161 (2018) (although "credibility determinations are beyond the reach of an appellate court . . . the trial court cannot arbitrarily disregard, disbelieve or reject an expert's testimony in the first instance" (citation omitted; internal quotation marks omitted)),

cert. denied, 330 Conn. 968, 200 A.3d 188 (2019), and cert. denied, 330 Conn. 968, 200 A.3d 699 (2019).

On the basis of the record before us, we conclude that the court did not arbitrarily disregard the expert testimony of Gottesdiener. It is clear from the record that the court considered all of the evidence before it but chose to credit the appraisal and analysis provided by Aletta, who testified that access to the road from the defendants' property had not been restricted, nor had there been any impact on the remaining land, as a result of the partial taking; it did not accept the conclusions to the contrary of Gottesdiener, which it found were inaccurate primarily as a result of his failure to undertake a detailed review of the condemnation statute and relevant documents relating to the construction project that prompted the partial taking. See *Arroyo* v. *University of Connecticut Health Center*, 175 Conn. App. 493, 518, 167 A.3d 1112 ("[w]here expert testimony conflicts, it becomes the function of the trier of fact to determine credibility and, in doing so, it could believe all, some or none of the testimony of either expert" (internal quotation marks omitted)), cert. denied, 327 Conn. 973, 174 A.3d 192 (2017). The court also specifically found, "from all of the credible evidence, that the [defendants] had the right to obtain a curb cut for access to Coles Road both *before and after* the taking . . . ." (Emphasis added.) It was within the exclusive province of the court, as the trier of fact, to make those credibility determinations, which we may not second-guess.[6] See

[6] Although, on appeal, the defendants argue that the portion of their premises not taken was landlocked, in doing so they fail to address the credibility determinations made by the court. Instead, they focus their argument on their claim that this case is governed by *Laurel, Inc.* v. *Commissioner of Transportation*, supra, 180 Conn. 11, which the trial court found was factually distinguishable from the present case. We agree with the court's conclusion that *Laurel, Inc.*, does not apply to the present case, as the subject property in *Laurel, Inc.*, was taken for the improvement of a limited access highway, which "may be broadly described as a highway [that] motorists can enter and leave only at designated interchanges," and for which the right of direct access by abutting landowners is restricted; *State* v. *Lane*, 4

Abrams v. *PH Architects, LLC*, 183 Conn. App. 777, 804, 193 A.3d 1230 ("it is outside the role of this court to second-guess the credibility determinations of the trier of fact"), cert. denied, 330 Conn. 925, 194 A.3d 290 (2018). Therefore, the trial court's determination that the defendants failed to prove that their property was landlocked on the date of the partial taking is not clearly erroneous, and the court did not improperly decline to award severance damages.

The judgment is affirmed.

Conn. Cir. 368, 374, 232 A.2d 518 (1967); see also *Laurel, Inc.* v. *Commissioner of Transportation*, supra, 28 ("[t]here are no abutter's rights to a limited access highway"); whereas, in the present case, Coles Road is a public roadway, for which abutting landowners have a common-law right of access or egress over the roadway. See *State* v. *Lane*, supra, 374; see also *Cohen* v. *Hartford*, 244 Conn. 206, 209 n.8, 710 A.2d 746 (1998). Therefore, the defendants' reliance on *Laurel, Inc.*, is unavailing.