QUAN A. SOYINI *v.* COMMISSIONER OF CORRECTION (AC 45712)

Prescott, Clark and Seeley, Js.*

Syllabus

The petitioner, who had been convicted of being an accessory to murder and conspiracy to commit murder, sought a writ of habeas corpus, claiming, inter alia, that his trial counsel, G, rendered ineffective assistance because he failed to move to suppress certain evidence that the police extracted from the petitioner's cell phone prior to obtaining a valid search warrant and the fruits of the purportedly unconstitutional search. The victim allegedly had robbed the petitioner at gunpoint and, approximately one week later, when the petitioner located the victim, he called his brother, K, and asked him to meet at the victim's location. After chasing the victim into a school parking lot, K shot and killed the victim. After the petitioner's arrest, the police prepared a search and seizure warrant in which they sought the petitioner's cell phone records

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

from his provider and to conduct a physical search of his cell phone, which they had taken into their custody. After the prosecutor signed the search warrant, but before a judge signed it, a police officer attached the cell phone to a mechanical device to begin the process of extracting information from the petitioner's cell phone, a process that would take several hours. There was no evidence that any person reviewed any data from the petitioner's cell phone prior to the judge signing and approving the warrant. At the criminal trial, the lead detective, F, testified about the number and duration of the phone calls between the petitioner and K, which he testified were obtained from phone records that had been subpoenaed, but he did not distinguish between information obtained from the physical examination of the petitioner's phone and from the provider records that had also been sought. The records showed that the petitioner had called K right before the murder of the victim. There was no objection to this testimony and the phone records were not introduced into evidence at the trial by either party. On cross-examination, G did not question F about the phone records. The habeas court denied the petition for a writ of habeas corpus, finding that the petitioner had failed to establish that G rendered deficient performance or that the petitioner was prejudiced by any of G's alleged errors. On the granting of certification to appeal, the petitioner appealed to this court, contending, inter alia, that F's testimony prejudiced him because it corroborated the state's theory of the case that the petitioner had called K to the scene and entered a conspiracy with K to kill the victim. *Held* that the petitioner could not prevail on his claim that the habeas court improperly concluded that his right to the effective assistance of counsel was not violated on the basis of G's failure to move to suppress evidence extracted by the police from the petitioner's cell phone prior to obtaining a valid search warrant, this court having been unpersuaded that G's decision not to seek suppression of the cell phone data was constitutionally deficient: the petitioner did not call G to testify at the habeas trial and, accordingly, the habeas record failed to reflect what information G may have learned regarding other evidence that the state had in its possession with respect to the phone calls made between the petitioner and K or the timing of the search of the cell phone and the signing of the warrant by the judge, and the record contained no explanation by G for not moving to suppress the cell phone data that the police extracted from the petitioner's cell phone; moreover, reasonable strategic reasons existed as to why G may have chosen not to pursue a motion to suppress, including that, in addition to having the petitioner's cell phone data, the police also had obtained and examined K's cell phone, and, if G had been privy to this information through discovery or a review of the police file, it would have been objectively reasonable for G to have concluded that there was no benefit in seeking to suppress the petitioner's cell phone data because the state could have obtained the same information about the timing of the calls from data obtained

from K's cell phone; furthermore, in light of F's trial testimony, it reasonably could be inferred that the police had multiple sources regarding the petitioner's cell phone usage, including the petitioner's cell phone service provider; additionally, even if G's failure to move to suppress the petitioner's cell phone data constituted deficient performance, the petitioner failed to meet his burden of demonstrating prejudice, as the petitioner's cell phone data was not offered by the state as evidence at trial and, to the extent that the fruits of that cell phone data search arguably were admitted in the form of F's trial testimony, that information merely corroborated other evidence before the jury, including the testimony of K and K's former girlfriend that the petitioner had called K to tell him that he had located the victim and that K then went to the location at the request of the petitioner, and the petitioner's own statement to the police indicating that he had been searching for the victim and that he was at the school with K around the time of the murder.

Argued September 21—officially released November 21, 2023

Procedural History

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

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

Kathryn W. Bare, executive assistant state's attorney, with whom, on the brief, were *Sharmese Walcott*, state's attorney, and *Jo Anne Sulik*, senior assistant state's attorney, for the appellee (respondent).

Opinion

PRESCOTT, J. The petitioner, Quan A. Soyini, appeals from the judgment of the habeas court denying his petition for a writ of habeas corpus.[1] In his petition, he asserted that his underlying conviction is invalid because his constitutional rights not to be subjected to

[1] The habeas court granted the petitioner certification to appeal from the judgment.

an unreasonable warrantless search of his cell phone, to due process, and to the effective assistance of trial and appellate counsel were violated. On appeal, the petitioner claims that the court improperly concluded that his right to the effective assistance of trial counsel was not violated on the basis of counsel's failure to move to suppress certain evidence that the police extracted from the petitioner's cell phone prior to obtaining a valid search warrant and the "fruits" of the purportedly unconstitutional search.[2] We disagree and affirm the judgment of the habeas court.

The facts underlying the petitioner's criminal conviction as an accessory to murder in violation of General Statutes §§ 53a-8 and 53a-54a and for conspiracy to commit murder in violation of General Statutes §§ 53a-48 and 53a-54a were set forth by this court in our prior decision affirming the judgment of conviction. See *State* v. *Soyini*, 180 Conn. App. 205, 183 A.3d 42, cert. denied, 328 Conn. 935, 183 A.3d 1174 (2018). "In early July, 2013, the [petitioner] and his brothers, Kunta Soyini (Kunta) and Quincy Soyini (Quincy), attended the funeral of their father. At the funeral, the [petitioner] revealed to Quincy that he had been robbed at gunpoint while selling marijuana to the victim, Chimer Gordon. On the day of the robbery, the [petitioner] had asked Kunta to help him find the victim, but the two brothers were unable to locate him.

"Subsequently, on July 10, 2013, at approximately 10 a.m., the [petitioner] saw the victim and called Kunta.

[2] The petitioner has not challenged on appeal the habeas court's judgment with respect to his claims of ineffective assistance of appellate counsel or his freestanding constitutional claims alleging that his conviction was obtained in violation of the fourth, fifth and fourteenth amendments to the United States constitution. Moreover, although his petition for a writ of habeas corpus contained several specifications of alleged deficient performance by trial counsel, the petitioner has limited his claim of ineffective assistance of trial counsel on appeal to counsel's failure to file a pretrial motion to suppress. We limit our discussion accordingly.

Kunta drove to the [petitioner's] location on Vine Street in Hartford. At that time, the [petitioner] was driving a black Audi. Both Kunta and the [petitioner] searched for the victim.

"At some point, the victim became fearful and ran into the house of Robert Davis and Gussie Mae Davis, which was located on Greenfield Street. After apologizing for the intrusion, the victim stated to the Davises that '*they* was trying to kill' him and that if he called the police '*they're* gonna kill my family.' . . . Gussie Mae Davis called 911, reporting that the victim, after entering her home, had stated that '*guys* was after him to kill him.' . . . The victim, after exiting the residence, ran into the parking lot of the Thirman Milner School (school), which is located behind the Davises' house. Moments later, the [petitioner] drove up to the house and asked Robert Davis if 'a guy' had run through the house.

"At this point, Kunta drove down Magnolia Street and saw the victim, who was wearing clothing that matched the description he had received from the [petitioner]. Kunta had no prior or pending disagreements with the victim and did not know him at all. Kunta exited his motor vehicle, walked through the school parking lot and approached the victim, who was crouched between parked cars. Kunta walked through the parking lot in the direction of the victim while talking on a cell phone and with his left hand in his pocket. Kunta then faced the victim and, when he was at a distance greater than one car length, removed a firearm from his left pants pocket. The victim was tying his shoe as Kunta aimed the firearm at him. The victim then turned to his left, got up and ran. While pursuing him, Kunta shot at the victim from close range, but missed. Kunta continued to chase the victim as he ran through the parking lot.

"A few moments later, the [petitioner], wearing a black T-shirt, black and red shorts, black ankle length

socks and flip-flops, walked through the school parking lot in the opposite direction from Kunta. As Roderick Maxwell, a special police officer employed by the Hartford Board of Education, investigated the noises that he had heard, he encountered the [petitioner]. The [petitioner] told Maxwell, 'don't worry about a thing.'

"The victim unsuccessfully attempted to scale a gate. Kunta then shot the victim in the chest, got in his car, and drove away. Maxwell heard Kunta emit a 'ghastly, nightmarish laugh' as he left the area.

"Jay Montrose, a Hartford police officer, responded to the 911 call. Montrose spoke with the Davises and then went outside, where he learned from Maxwell that the victim was lying on the ground near a fence. After driving his police vehicle into the school's parking lot, Montrose observed that the victim had suffered a gunshot wound and had lost a fair amount of blood. Montrose commenced resuscitation efforts on the victim. Medical personnel arrived shortly thereafter and transported the victim to a hospital, but he succumbed to his injuries and died.

"Reginald Early, a sergeant in the Hartford Police Department, was assigned to investigate th[e] homicide. He reviewed a video recording of the school parking lot. Early also learned that a black Audi had been circling the neighborhood prior to the shooting. The [petitioner] was inside the car when investigating officers located the black Audi approximately one block from the school. The officers arrested the [petitioner] on an unrelated charge of possession of marijuana with intent to sell. Early concluded that the [petitioner] was wearing the same clothes as the person on the video recording who had walked through the school parking lot shortly after the initial shooting.

"Joseph Fargnoli, a Hartford police detective, interviewed the [petitioner] following his arrest. He showed

the recording from the school parking lot to the [petitioner], who confirmed that he and Kunta were the men in the recording. The [petitioner] denied knowing the victim or how he had died. The [petitioner] did, however, admit that he had spoken to an 'old guy' on Greenfield Street that morning, asking if a 'kid' had run through the house.

"Fargnoli, who had examined the [petitioner's] cell phone records, determined that the [petitioner] had called Kunta first on the day of the shooting.[3] The [petitioner], however, stated during his interview that Kunta had called him first, asking the [petitioner] to 'come over . . . .'

"On the morning of the shooting, Kunta had driven his girlfriend, Shumia Brown, to work in Bloomfield at 4 a.m. Kunta was supposed to pick Brown up at 11 a.m., but was late. When he finally arrived, Brown voiced her displeasure with his tardiness, particularly because Kunta was using her motor vehicle. He explained that he 'got caught up in some mess with [the petitioner]' but did not elaborate.

"Later that day, Kunta told Brown that the [petitioner] had called him and instructed that they meet on Vine Street because the [petitioner] 'ran into who had robbed him before.' After traveling home, Kunta and Brown watched the afternoon news, and there was a story about the shooting at the school. Brown observed that Kunta started acting 'funny' and not 'like himself.' Brown asked if Kunta and the [petitioner] had anything to do with the shooting, and he hesitated in his response. At that point, Brown believed that Kunta had been

[3] At the criminal trial, Fargnoli testified that the phone records for both the petitioner and Kunta were available and reviewed by the police and that they established that, on the morning of the shooting, there were a total of five phone calls made between the petitioner and Kunta between 10:13 and 10:21 a.m.

involved in the shooting. Kunta then admitted to his involvement in the shooting. Additionally, at a later date, Kunta stated, during a phone conversation with Brown, that he had gotten 'involved in some drama behind [the petitioner].'

"Following the [petitioner's] arrest, Kunta fled to Virginia. He eventually was taken into custody by United States marshals and returned to Connecticut. Following his return, Kunta pleaded guilty to murdering the victim. In a statement to the police, Kunta noted that on the day of the shooting, the [petitioner] had found the victim 'walking around' and called to request that Kunta 'help him.'

"In an information dated May 27, 2015, the state charged the [petitioner] with being an accessory to murder and conspiracy to commit murder. The [petitioner] pleaded not guilty, and his trial spanned several days in July, 2015. The jury found him guilty on both counts. The [petitioner] received a total effective sentence of seventy years [of] incarceration . . . ." (Emphasis in original; footnote added; footnotes omitted.) *State* v. *Soyini*, supra, 180 Conn. App. 208–13. The petitioner filed a direct appeal in which he claimed that there was insufficient evidence to convict him on either the conspiracy or accessory charge and that the court gave improper jury instructions, including an unwarranted special credibility instruction on accomplice testimony. Id., 207–208. This court affirmed the judgment of conviction; id., 208; and our Supreme Court denied further review. *State* v. *Soyini*, 328 Conn. 935, 183 A.3d 1174 (2018).

During the pendency of his direct criminal appeal, the petitioner commenced the underlying habeas action. He later filed his five count, second amended petition on March 16, 2020. The petitioner alleged in counts one and two that his conviction was obtained in violation of

the fourth amendment to the United States constitution because the police conducted an unreasonable warrantless search of his cell phone and later submitted a warrant application that included a "false statement" in that the police requested to search the petitioner's cell phone despite having already completed the search. In count three, he alleged that his trial counsel was ineffective in a number of ways related to the physical search of his cell phone, including by failing (1) to challenge the validity of the search warrant, (2) to move to suppress the information obtained from the cell phone, (3) to object to the admission of the cell phone information at trial, (4) to seek to preclude testimony related to the cell phone records, and (5) to adequately cross-examine Fargnoli regarding the cell phone records. The petitioner alleged in count four that his appellate counsel was ineffective for failing to raise a claim in his direct criminal appeal that the police had violated his fourth amendment rights by searching his cell phone without a valid warrant. Finally, count five alleged violations of the petitioner's right to due process.[4]

The habeas court, *Cobb*, *J.*, conducted a trial over three days in May, 2021. The petitioner submitted a number of exhibits and presented as witnesses his appellate counsel, Tejas Bhatt; and current and former Hartford police officers Early, Daniel Richter, Dennis

[4] The respondent, the Commissioner of Correction, filed a return dated February 8, 2021, in which he generally denied the allegations in the petition. The respondent also asserted by way of special defense that counts one, two, and five were barred by procedural default because the petitioner failed to raise these freestanding constitutional claims at trial or on direct appeal. The petitioner filed a reply to the special defense in which he asserted that, if he proves his claims of ineffective assistance of prior counsel based on counsel's failure to raise his constitutional claims, this will satisfy the "cause and prejudice" test, thus overcoming any issue of procedural default, citing *Johnson* v. *Commissioner of Correction*, 285 Conn. 556, 570–71, 941 A.2d 248 (2008).

DeMatteo, Renee LaMark Muir, Christopher Reeder, Denise Mendoza, and Andrew Weaver. Counsel for the respondent, the Commissioner of Correction, cross-examined various of these witnesses but called no additional witnesses. The petitioner did not testify, nor did he present testimony from his criminal trial counsel, William Gerace (trial counsel).[5] Fargnoli also was not called to testify at the habeas trial. The parties each filed a posttrial brief.

The petitioner's habeas claims centered on the physical search of his cell phone, which he asserted was conducted unreasonably and without a valid search warrant. With respect to that issue, the habeas court found the following additional facts: "Based on a surveillance video and eyewitness accounts, at about 1:25 p.m. on July 10, 2013, a few hours after the shooting, the police located the petitioner in his black Audi vehicle a few blocks from where the shooting occurred. After smelling marijuana in the petitioner's car, the police searched the petitioner's vehicle and found marijuana. The petitioner was arrested for possession and searched, at which time the police located the petitioner's black [Kyocera] C5133 cell phone, which they took into possession.

"At the police station, the petitioner was interviewed for several hours between 3:25 and 11:55 p.m. During the interview, the petitioner admitted that he and his brother Kunta spoke several times by phone that morning, around the time of the shooting, while he was driving his black Audi beginning around 10 a.m. He also admitted that he approached the Davises' house and asked about 'the kid' that ran into their house. He admitted to being in the location of the shooting and parking his car to look for his brother. The petitioner also identified himself and his brother on the surveillance video.

[5] The habeas court indicated in its decision that "[n]o evidence was produced to support a claim that [trial counsel] was unavailable to testify."

The petitioner then signed a voluntary statement under oath attesting to these facts.

"The police prepared a search and seizure warrant on July 10, 2013, in which they sought the petitioner's cell phone records from his provider, Sprint/Nextel Communications, and to conduct a physical search of the petitioner's cell phone, which they had taken into their custody. In particular, the warrant provided: 'Any and all cell phone account information associated with [the petitioner's] cell phone number . . . including, but not limited to all subscriber information, to include records of dates and times of any and all incoming and outgoing cell and telephone numbers, text messaging records, [I]nternet records, any additional telephone and cell phone numbers associated with the account, and account identification, account history to include any and all master cell phone and billing records and cellular site tower information and a Call Detail Report (CDR) for the period of December 22, 2012 at 1200 hours through December 23, 2012, at 1200 hours, inclusive. For the period July 3, 2013, at 0001 hours through July 10, 2013, at 1330 hours, inclusive. A physical exam of the black Kyocera C5133 Event cell phone device and any memory card contained with the device using Celebrite UFED machine updated with manufacturer revisions.' . . .

"After having the search warrant signed by the prosecutor, at some point prior to 3:40 p.m., [Fargnoli] brought the petitioner's cell phone to [Weaver] . . . who specialized in computer and cell phone forensics. [Fargnoli] told [Weaver] that the state's attorney had approved the physical search [of] the petitioner's cell phone using the Celebrite UFED machine and that the prosecutor was taking the warrant to a judge for final approval. [Weaver] attached the petitioner's phone to the Celebrite machine to begin the extraction of the information, just after receiving the petitioner's cell

phone at 3:40 p.m. and prior to the warrant being signed by the court. [Weaver] then left the station for the day. He did so, knowing that the extraction process would take several hours to complete and that he would obtain the data from the phone the next day when he returned to the police station. The court, *Vitale*, *J.*, signed the search warrant at 4:48 p.m. on July 10, 2013. There is no evidence that any person reviewed any data from the petitioner's cell phone prior to Judge Vitale signing and approving the warrant.

"The Celebrite search of the petitioner's cell phone . . . confirmed several calls between the petitioner and Kunta near the time of the shooting and [was] consistent with the petitioner's statement. . . .

"[Trial counsel] did not file any pretrial motions directed at the searches of the petitioner's cell phone and did not challenge the searches or cell phone data in any way during the trial. No direct testimony from [trial counsel] or any indirect testimony from any other source was presented at the habeas trial to establish whether he knew that the extraction process on the petitioner's phone began prior to the warrant being signed by a judge or, if he did know, why he decided not to challenge the warrant or the information obtained from it.

"At the criminal trial, [Fargnoli] testified about the number and duration of the phone calls between the petitioner and [Kunta], which he testified were obtained from 'phone records' that had been 'subpoenaed,' but did not distinguish between information from the physical examination of the petitioner's phone or from the provider records that were also sought. The records showed that the petitioner had called Kunta right before the murder of the victim. There was no objection to

this testimony and the phone records were not introduced into evidence at the trial by either party. On cross-examination, [trial counsel] did not question [Fargnoli] about the phone records."

The habeas court denied the second amended petition for a writ of habeas corpus. With respect to the claim of ineffective assistance of trial counsel, the court determined that the petitioner failed to establish that trial counsel had rendered deficient performance or that the petitioner was prejudiced by any of trial counsel's alleged unprofessional errors.[6] In particular, the habeas court stated that, because the petitioner had failed to provide any evidence establishing what information his trial counsel knew regarding the search of the petitioner's cell phone or counsel's reasoning, or lack thereof, for failing to seek to suppress or otherwise challenge the cell phone evidence, the petitioner was unable to overcome the strong presumption that trial counsel provided effective assistance. With respect to the prejudice prong, the court concluded that the data acquired from the cell phone regarding the time of incoming and outgoing calls and phone numbers was merely corroborative of other evidence that was admitted at trial, including the petitioner's own admissions that the petitioner and Kunta had been calling each other around the time of the shooting. Kunta also had testified at trial as to the substance of the phone calls, including that the petitioner told Kunta he had located the victim and asked Kunta for help.

Following the court's denial of his petition for a writ of habeas corpus, the petitioner filed a petition for certification to appeal, which the court granted. This appeal followed.

[6] Because the petitioner could not demonstrate ineffective assistance of trial counsel, the habeas court also concluded that he had failed to prove cause and prejudice necessary to overcome the procedural default of his freestanding constitutional claims.

The petitioner's sole claim on appeal is that the habeas court improperly concluded that his right to the effective assistance of counsel was not violated on the basis of trial counsel's failure to move to suppress evidence extracted by the police from the petitioner's cell phone prior to obtaining a valid search warrant. The respondent responds that the court correctly denied the petitioner's ineffective assistance of trial counsel claim. We agree with the respondent.

The legal principles governing our review of the denial of a petition for a writ of habeas corpus alleging the ineffective assistance of counsel are well settled. "A criminal defendant's right to the effective assistance of counsel extends through the first appeal of right and is guaranteed by the sixth and fourteenth amendments to the United States constitution and by article first, § 8, of the Connecticut constitution. . . .[7] To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)]. *Strickland* requires that a petitioner satisfy both a performance prong and a prejudice prong." (Footnote in original; internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 197 Conn. App. 822, 829–30, 234 A.3d 78 (2020), aff'd, 341 Conn. 279, 267 A.3d 120 (2021). To satisfy the performance prong, "the petitioner must establish that his counsel made errors so serious that [counsel] was not functioning as the counsel guaranteed the [petitioner] by the [s]ixth [a]mendment. . . . The petitioner must thus show that counsel's representation fell below an objective standard of reasonableness considering all

[7] "[T]he state and federal constitutional standards for review of ineffective assistance of counsel claims are identical and the rights afforded are essentially coextensive in nature and, thus, do not require separate analysis." (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 197 Conn. App. 822, 830 n.8, 234 A.3d 78 (2020), aff'd, 341 Conn. 279, 267 A.3d 120 (2021).

of the circumstances. . . . [A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the [petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. . . . Furthermore, the right to counsel is not the right to perfect counsel. . . .

"To satisfy the prejudice prong, a claimant must demonstrate that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . A reasonable probability is a probability sufficient to undermine confidence in the outcome. . . . In its analysis, a reviewing court may look to the performance prong or to the prejudice prong, and the petitioner's failure to prove either is fatal to a habeas petition." (Citation omitted; internal quotation marks omitted.) *Foster* v. *Commissioner of Correction*, 217 Conn. App. 658, 667–68, 289 A.3d 1206 (2023).

"On appeal, [a]lthough the underlying historical facts found by the habeas court may not be disturbed unless they [are] clearly erroneous, whether those facts constituted a violation of the petitioner's rights [to the effective assistance of counsel] under the sixth amendment is a mixed determination of law and fact that requires the application of legal principles to the historical facts of [the] case. . . . As such, that question requires plenary review by this court unfettered by the clearly erroneous standard." (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, supra, 197 Conn. App. 830–31.

In the present matter, the habeas court concluded that the petitioner failed to establish both that trial counsel had rendered deficient performance by not moving to suppress the petitioner's cell phone data

extracted by the police and that he was prejudiced by counsel's inaction. In light of the record before us, we agree with the habeas court that the petitioner has failed to satisfy both the performance and prejudice prongs of *Strickland*. The following additional facts are relevant to our analysis with respect to both prongs.

At the petitioner's criminal trial, Fargnoli, who was the lead detective in this matter, was called to testify about various evidence collected by the police. He also recounted portions of the petitioner's statements to the police following his arrest, including that the petitioner had identified himself and Kunta in the surveillance video taken from the school where the murder occurred but indicated that he was there because Kunta had phoned him. Fargnoli was asked the following questions by the prosecutor regarding cell phone evidence collected by the police:

"Q. Now, as part of your investigation in this case, were you able to establish phones for [Kunta] and [the petitioner]?

"A. Yes.

"Q. Were you able to examine phone records for those two individuals?

"A. Yes.

"Q. And were you able to establish phone calls that were made between [Kunta] and [the petitioner] on that day?

"A. Yes.

* * *

"Q. [A]gain, were you able to look at phone records that had been subpoenaed as part of your investigation in this case?

"A. Yes.

"Q. And, in fact, were you able to establish who called who first that day?

"A. Yes.

"Q. And what . . . did the phone records establish?

"A. [The petitioner] had called [Kunta] immediately before the murder."

The state did not seek to have any cell phone data entered into evidence at the criminal trial.[8] The petitioner contends, however, that Fargnoli's testimony regarding the timing of the phone calls between Kunta and the petitioner on the day of the murder was the fruit of the allegedly unconstitutional extraction of data by the police from his cell phone, which trial counsel should have sought to suppress. Moreover, the petitioner contends that this testimony prejudiced the petitioner because it corroborated the state's theory of the case that the petitioner had called Kunta to the scene and entered into a conspiracy with Kunta to kill the victim.

It is axiomatic that the petitioner bears the burden of establishing that his trial counsel's performance was deficient. See *Eubanks* v. *Commissioner of Correction*, 329 Conn. 584, 603, 188 A.3d 702 (2018) (petitioner bears burden of proof as to whether counsel's behavior was objectively unreasonable). In the petitioner's reply brief, he succinctly states that, in considering whether his trial counsel's performance fell outside the wide boundary of professional norms, the habeas court was required "to examine counsel's defense strategy, assess the extent to which a motion to suppress would have supported or conflicted with that strategy, and *consider whether there might be alternative strategic justifications for counsel's actions*." (Emphasis added.)

[8] The petitioner's cell phone data was admitted at the habeas trial.

In his main brief, the petitioner argues that his trial counsel "inexplicably chose not to challenge [the cell phone] evidence, thus allowing it to be admitted at trial. The evidence concerning the phone calls, which included the time, number, and which party initiated the call, was a crucial component of the state's case" and "no reasonable attorney would have forgone suppressing the evidence obtained from the petitioner's cell phone because no strategic reason justified forgoing a viable motion to suppress." The petitioner further argues in his reply brief that, if trial counsel had filed a pretrial motion to suppress, the petitioner also would have benefitted from raising the issue of the admission of any cell phone evidence obtained from the search of the petitioner's cell phone outside the presence of the jury, thereby eliminating any risk of waiting to object during trial and potentially calling undue attention to the evidence in the minds of the jurors.

The petitioner, however, did not call trial counsel to testify at the habeas trial and, accordingly, the habeas record fails to reflect what information counsel may have learned regarding other evidence that the state had in its possession with respect to the phone calls made between the petitioner and Kunta. The record also contains no explanation by trial counsel for not moving to suppress the cell phone data that the police extracted from the petitioner's cell phone. We are thus required affirmatively to contemplate whether *any* objectively reasonable strategy existed for not filing a motion to suppress. See *Jordan* v. *Commissioner of Correction*, supra, 341 Conn. 291.

Our review of the record demonstrates that reasonable strategic reasons exist as to why trial counsel may have chosen not to pursue a motion to suppress, and the petitioner has failed to persuade us otherwise. As reflected in Fargnoli's trial testimony, in addition to having the petitioner's cell phone data, the police also

had obtained and examined Kunta's cell phone. If trial counsel had been privy to this information through discovery or review of the police file, it would have been objectively reasonable for counsel to have concluded that there was no benefit in seeking to suppress the petitioner's cell phone data because the state could have obtained the same information about the timing of the calls from data obtained from Kunta's cell phone. In other words, trial counsel reasonably may have believed that the petitioner's cell phone data was cumulative. There was also some indication that the police had sought to obtain cell phone records from the petitioner's cell phone service provider, Sprint/Nextel Communications, which independently could have provided the police with the same information extracted from the petitioner's cell phone.

In seeking to demonstrate that trial counsel's inaction vis-à-vis the cell phone data was not objectively reasonable, the petitioner failed to present evidence regarding what information trial counsel knew at the time. Not only is the record unclear about what trial counsel may have known regarding other sources available to the state regarding the petitioner's cell phone use on the day of the murder, there is no evidence in the record regarding what, if anything, trial counsel knew about the timing of the search of the cell phone and the signing of the warrant by the judge. Given this evidentiary lacuna, and in light of Fargnoli's trial testimony, from which it reasonably can be inferred that the police had multiple sources regarding the petitioner's cell phone usage, we are unpersuaded that trial counsel's decision not to seek suppression of the cell phone data was constitutionally deficient.

Moreover, even if we were to conclude that trial counsel's failure to move to suppress the petitioner's cell phone data constituted deficient performance, which

we do not, we also agree with the habeas court's conclusion that the petitioner failed to meet his burden of demonstrating prejudice, which is independently fatal to his ineffective assistance claim.

The potential harm to the petitioner of the data extracted from his cell phone was that it showed that the petitioner and Kunta had spoken to each other by cell phone on the morning of the shooting, including the number and timing of such calls. Further, it showed that the petitioner called Kunta first. The petitioner's cell phone data, however, was not offered by the state as evidence at trial. Nevertheless, to the extent that the "fruits" of that cell phone data search arguably were admitted in the form of Fargnoli's trial testimony, that information, as the habeas court found, merely corroborated other evidence before the jury. Specifically, Kunta testified that the petitioner had called him to tell him that he had located the victim and that Kunta then went to the location at the request of the petitioner. The jury certainly was free to credit that testimony over the contrary testimony of the petitioner that Kunta called him first. Brown also provided testimony that the petitioner had called Kunta and asked him to meet the petitioner on Vine Street because the petitioner had located the person who previously had robbed him. The petitioner's own statement to the police indicated that he had been searching for the victim and that he was at the school with Kunta around the time of the murder. Therefore, even without the petitioner's cell phone data, there was ample other evidence before the jury from which it reasonably could have inferred that the petitioner had conspired with Kunta and aided him in the murder of the victim. Finally, as we have already indicated, it is reasonable to infer from Fargnoli's trial testimony that, even if trial counsel had successfully moved to suppress evidence related to the data extracted from the petitioner's cell phone, the same information would

have been admitted into evidence either from information derived from Kunta's cell phone records or from records of the petitioner's cell phone provided to the police by the petitioner's cell phone carrier.

Accordingly, we cannot conclude on this record that if the cell phone data extracted from the petitioner's phone had been suppressed, there is a reasonable probability that the outcome of the trial would have been different. We therefore conclude that the habeas court properly found that the petitioner failed to satisfy *Strickland*'s prejudice prong.

The judgment is affirmed.

In this opinion the other judges concurred.

LYDIA SCHOFIELD *v.* RAFLEY, INC., ET AL.
(AC 45220)

Elgo, Suarez and Seeley, Js.

Syllabus

The plaintiff, S, sought to recover damages from the defendants, R Co., her former employer, and J and K, its principals, for, inter alia, breach of contract and employment discrimination. In early 2014, S met with J and K to discuss her potential employment with R Co. At a subsequent meeting, J and K presented S with a written employment agreement, which S signed. Thereafter, S commenced her employment with R Co. On her first day, she received a copy of R Co.'s employee handbook and signed an acknowledgement confirming the same. In 2016, S filed an employment discrimination complaint against R Co. with the Commission on Human Rights and Opportunities, and, in early 2017, the commission issued a release of jurisdiction over that complaint. In May, 2017, S commenced an action against the defendants (2017 action), alleging, inter alia, breach of contract and employment discrimination on the basis of her gender identity or expression. Approximately one year later, while the 2017 action was pending, R Co. terminated S's employment. Shortly thereafter, S filed another complaint with the commission in which she alleged that her employment had been wrongfully terminated in retaliation for commencing the 2017 action. On November 5, 2018, the commission issued a release of jurisdiction over that complaint. On May 23, 2019, S commenced the present action against the defendants,

claiming, inter alia, employment discrimination and breach of contract. Shortly thereafter, a trial was held on the 2017 action, at which S conceded that the employment discrimination count should be dismissed for lack of sufficient evidence and the trial court rejected her claim that she had an oral employment agreement with the defendants that predated the written agreement. The trial court rendered judgment for the defendants on all counts of S's complaint. Thereafter, in the present action, the trial court granted the defendants' motion to dismiss S's employment discrimination claim as untimely. Subsequently, the trial court granted the defendants' motion for summary judgment with respect to the remaining counts of S's complaint, and S appealed to this court. Thereafter, S died, and A, in her capacity as executor of S's estate, was substituted as the party plaintiff. *Held*:

1. The trial court did not err in dismissing the plaintiff's employment discrimination claim as untimely: pursuant to the applicable statute (§ 46a-101 (e)), which requires a plaintiff to commence an action for employment discrimination in the Superior Court no later than ninety days after the date of receipt of the release of jurisdiction from the commission, the present action was untimely because S did not commence it until more than six months after she had received a release of jurisdiction from the commission; moreover, contrary to the plaintiff's claim, the reasonably related exception did not apply because it excuses only a party's failure to exhaust its administrative remedies, and S had exhausted her administrative remedies by obtaining a release of jurisdiction from the commission; furthermore, even assuming that the reasonably related exception did apply, the plaintiff could not prevail because the record was inadequate to review the substantive merits of her claim, as this court was required to examine the complaint filed with the commission in connection with the 2017 action in light of the employment discrimination allegations in the operative complaint, and the record did not include a copy of that complaint nor was it appended to the plaintiff's appellate brief.

2. The trial court properly rendered judgment for R Co. with respect to the plaintiff's breach of contract claim: no genuine issue of material fact existed as to whether R Co. breached an oral employment agreement when it terminated S's employment, the doctrine of collateral estoppel having barred the plaintiff from alleging that such an agreement existed, as that claim had been fully and fairly litigated and expressly rejected in the 2017 action, which involved the same parties as the present action; moreover, no genuine issue of material fact existed as to whether S was an at-will employee because, with their motion for summary judgment, the defendants submitted copies of R Co.'s employee handbook and the written employment agreement, both of which provided that R Co. adhered to the policy of at-will employment and that it could terminate an employee's employment at any time and for any reason, and, in response, S failed to submit any evidence to demonstrate the existence

of a disputed factual issue; accordingly, the plaintiff's claim that R Co. breached its agreement with S by terminating her employment without just cause was untenable.

Argued September 18—officially released November 21, 2023

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Noble*, *J.*, granted the defendants' motion to dismiss as to the count alleging employment discrimination; thereafter, the court, *Sheridan*, *J.*, granted the defendants' motion for summary judgment with respect to the remaining counts of the complaint and rendered judgment thereon, from which the plaintiff appealed to this court; subsequently, Andrea Sadler, executor of the estate of Lydia Schofield, was substituted by this court as the party plaintiff. *Affirmed*.

Mathew Olkin, for the appellant (substitute plaintiff).

Peter J. Murphy, with whom, on the brief, was *Christopher E. Engler*, for the appellees (defendants).

Opinion

ELGO, J. This action sounding in breach of contract and employment discrimination follows a prior action commenced in 2017 between the same parties that involved similar claims (2017 action). See *Schofield* v. *Rafley, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-17-6078256-S (May 14, 2020). The substitute plaintiff, Andrea Sadler, executor of the estate of Lydia Schofield (decedent),[1] now appeals from the judgment of the trial court rendered in favor of the

[1] Lydia Schofield commenced this civil action in 2019. While this appeal was pending, Schofield died, and this court subsequently granted the motion to substitute the executor of her estate as the plaintiff. Accordingly, all references to the plaintiff in this opinion are to Sadler in her capacity as executor of the decedent's estate.

defendants, Rafley, Inc. (Rafley), Joseph Mason, and Karen Mason.[2] On appeal, the plaintiff claims that the court improperly (1) dismissed the decedent's employment discrimination count as untimely and (2) granted the motion for summary judgment in favor of Rafley on the breach of contract count.[3] We affirm the judgment of the trial court.

The record reveals the following facts and procedural history. For approximately two decades, the decedent owned and operated an automobile maintenance and repair shop in Windsor Locks known as Chief Automotive. At all relevant times, Joseph Mason and Karen Mason were principals of Rafley, a Connecticut business that operated automobile maintenance and repair shops in Windsor Locks and Enfield. In early 2014, Joseph Mason and Karen Mason met with the decedent to discuss her potential employment with Rafley due to the pending closure of Chief Automotive. At a subsequent meeting on March 15, 2014, Joseph Mason and Karen Mason presented the decedent with a written employment agreement, which the decedent signed on that date. On March 31, 2014, the decedent began her employment with Rafley and received a copy of Rafley's

[2] For clarity, we refer to Rafley, Joseph Mason, and Karen Mason collectively as the defendants and individually by name.

[3] In their appellate brief, the defendants also contend that the decedent's death renders this appeal moot, as she no longer is available to provide testimony with respect to the claims raised in the complaint. We do not agree. As this court previously has observed, "[t]o declare this appeal moot would be to disallow the substitute plaintiffs to litigate their claims fully. Because substitute plaintiffs may be offered practical relief as a result of this appeal, their claims are not moot." *Stanley's Appeal from Probate*, 80 Conn. App. 264, 268, 834 A.2d 773 (2003); see also *Herman* v. *Endriss*, 187 Conn. 374, 376–77, 446 A.2d 9 (1982) (plaintiff's claim for damages was not moot despite death of critical witness because allegations of complaint were "sufficient to state a cause of action for damages"). While the defendants may be correct that the decedent's death makes it more difficult for the plaintiff "to prevail on either claim" at trial, it nonetheless remains that this court can grant the plaintiff practical relief by providing her the opportunity to prove the allegations contained in the operative complaint.

employee handbook. Both the written employment agreement and the employee handbook stated that the decedent was an at-will employee.

On July 15, 2016, the decedent filed an employment discrimination complaint (2016 complaint) against Rafley with the Commission on Human Rights and Opportunities (commission). On February 14, 2017, the commission issued a release of jurisdiction over that complaint. On May 9, 2017, the decedent commenced the 2017 action against the defendants. In her operative complaint in that action, the decedent alleged, inter alia, employment discrimination on the basis of the decedent's "gender identity or expression" and breach of contract. With respect to the latter, the decedent alleged that the defendants had breached an oral employment agreement entered into by the parties.[4] In response, the defendants filed an answer and several special defenses.[5] In particular, the defendants alleged, as a special defense to the breach of contract count, that, "[o]n or about March 15, 2014, the [decedent] and [Rafley] entered into a written employment agreement that contained all essential terms and conditions of employment" and that the decedent had "signed this written employment agreement voluntarily and of her own free will." In her reply, the decedent admitted the truth of those allegations.[6] A certificate of closed pleadings was filed on January 8, 2018.

[4] In paragraph 9 of that complaint, the decedent alleged that, "[o]n or about February 24, 2014, [Joseph Mason], as agent for [Rafley], made a verbal offer of employment to the [decedent]." In paragraph 11 of that complaint, the decedent alleged that, "[o]n March 12, 2014, the [decedent] communicated [her] acceptance of such terms to [Karen Mason]."

[5] The defendants also asserted three counterclaims against the decedent, which are not germane to this appeal and on which they did not prevail.

[6] "[T]he admission of the truth of an allegation in a pleading is a judicial admission conclusive on the pleader. . . . A judicial admission dispenses with the production of evidence by the opposing party as to the fact admitted, and is conclusive upon the party making it. . . . It is axiomatic that the parties are bound by their pleadings." (Citations omitted; internal quotation marks omitted.) *Rudder* v. *Mamanasco Lake Park Assn., Inc.*, 93 Conn.

Following the commencement of the 2017 action, the decedent remained in the employ of Rafley for more than one year. On March 22, 2018, Rafley suspended the decedent "for having accidentally damaged a vehicle she had been working on." Rafley thereafter terminated the decedent's employment on May 14, 2018, after she allegedly "forgot to fully tighten the lug nuts on [a wheel] of the vehicle she was working on." In response, the decedent filed another complaint with the commission on May 27, 2018 (2018 complaint), in which she alleged that her employment had been wrongfully terminated in retaliation for bringing the 2017 action. On November 5, 2018, the commission issued a release of jurisdiction over the 2018 complaint.

On November 20, 2018, the decedent requested leave from the court in the 2017 action to file an amended complaint for the purpose of adding "an additional count" of employment discrimination based on the defendants' purported retaliatory discharge of the decedent due to the filing of the 2017 action, arguing that such a claim was "reasonably related to the allegations of the operative complaint . . . ." The defendants filed an objection to that request, in which they argued that it was untimely and prejudicial, as the discovery period had closed and a motion for summary judgment currently was pending before the court. By order dated December 20, 2018, the court sustained that objection, thereby denying the decedent's request to amend her complaint.[7] The decedent elected not to challenge the propriety of that determination by way of appeal.

App. 759, 769, 890 A.2d 645 (2006); see also *DelVecchio* v. *DelVecchio*, 146 Conn. 188, 191, 148 A.2d 554 (1959) ("[t]he plaintiff's admissions, in her reply, of the allegations of the special defense were judicial admissions and conclusive upon her").

[7] At the time that the court denied the request to file an amended complaint, forty-six days remained in which the decedent could file a timely action pursuant to General Statutes § 46a-101 (e) following the commission's November 5, 2018 release of jurisdiction over her retaliatory termination claim.

A trial on the 2017 action was held over the course of six days in the summer of 2019. As the court noted in its memorandum of decision, "at the time of final argument on the briefs . . . the [decedent] conceded that [the employment discrimination count] should be dismissed for lack of sufficient evidence." With respect to the breach of contract count, the court concluded that, "based on all the admissible evidence presented at trial, the court rejects the [decedent's] claim that she had an oral agreement with the defendants that predated the written agreement of March 15, 2014." The court, therefore, rendered judgment in favor of the defendants on all counts of the decedent's complaint. The decedent did not appeal from that judgment.

On May 23, 2019, while the 2017 action was pending, the decedent commenced the present action against the same three defendants. In her operative complaint, the decedent alleged, inter alia, breach of contract on the part of Rafley and employment discrimination against all defendants.[8] In response, the defendants filed a motion to dismiss the employment discrimination count as untimely. By memorandum of decision dated October 6, 2020, the court granted that motion. The defendants then filed an answer and special defenses to the operative complaint, in which they alleged that the doctrine of collateral estoppel barred the decedent's breach of contract claim.

On May 21, 2021, the defendants filed a motion for summary judgment that was accompanied by a memorandum of law and several exhibits, including copies of the written employment agreement, Rafley's employee

[8] The operative complaint also contained counts alleging a breach of the covenant of good faith and fair dealing and an attempt to pierce the corporate veil. The court granted the defendants' motion for summary judgment on those counts and rendered judgment against the decedent, concluding that no genuine issue of material fact existed. In this appeal, the plaintiff does not challenge the propriety of that determination.

handbook, the decedent's signed acknowledgement of her receipt of that handbook, and the court's May 14, 2020 memorandum of decision in the 2017 action. Although the decedent filed an objection to the motion for summary judgment, she did not submit an affidavit or any documentary evidence. The court heard argument from the parties on September 20, 2021, and thereafter issued a memorandum of decision in which it concluded that no genuine issue of material fact existed with respect to any of the remaining claims. The court thus rendered judgment in favor of the defendants, and this appeal followed.

I

The plaintiff first claims that the court improperly dismissed the employment discrimination count of the complaint as untimely. We disagree.

Whether a party's claim is barred by a statute of limitations is a question of law over which our review is plenary. See *Certain Underwriters at Lloyd's, London* v. *Cooperman*, 289 Conn. 383, 407–408, 957 A.2d 836 (2008); *Sean O'Kane A.I.A. Architect, P.C.* v. *Puljic*, 148 Conn. App. 728, 734, 87 A.3d 1124 (2014). The motion to dismiss in the present case was predicated on the decedent's failure to comply with the mandate of General Statutes § 46a-101 (e), which requires any person who has obtained a release of jurisdiction from the commission to commence an action in the Superior Court "not later than ninety days after the date of the receipt of the release from the commission." As this court recently observed, § 46a-101 (e) "is a mandatory time limitation" with which a plaintiff must comply. *Sokolovsky* v. *Mulholland*, 213 Conn. App. 128, 146, 277 A.3d 138 (2022).

It is undisputed that the decedent commenced the present action on May 23, 2019, more than six months after she received a release of jurisdiction over the 2018

complaint from the commission. The present action, therefore, is untimely under § 46a-101 (e). The plaintiff does not suggest otherwise in this appeal.

Instead, the plaintiff argues that the "reasonably related" exception applies under the facts of the present case, arguing that her claim of retaliatory termination was reasonably related to the substance of the 2016 complaint. Her contention reflects a fundamental misunderstanding of that exception.

As our Supreme Court has explained, General Statutes § 46a-100 "creates a cause of action in the Superior Court" for claims alleging a discriminatory employment practice. *Lyon* v. *Jones*, 291 Conn. 384, 400, 968 A.2d 416 (2009). Pursuant to § 46a-101 (a), "[n]o action may be brought in accordance with [§] 46a-100 unless the complainant has received a release from the commission in accordance with the provisions of this section." Accordingly, parties alleging a discriminatory employment practice are statutorily obligated to exhaust their administrative remedies before the commission and secure a release therefrom as a prerequisite to the commencement of an action in the Superior Court.

The reasonably related doctrine invoked by the plaintiff is an exception to the exhaustion requirement. See *Williams* v. *New York City Housing Authority*, 458 F.3d 67, 70 (2d Cir. 2006); *Ware* v. *State*, 118 Conn. App. 65, 83, 983 A.2d 853 (2009). When applicable, it excuses a party's failure to exhaust its administrative remedies. As the United States Court of Appeals for the Second Circuit has observed, "[e]xhaustion is an essential element of [the employment discrimination] statutory scheme. . . . The reasonably related doctrine is a limited, judge-made exception to that requirement . . . ."[9]

[9] In *Mount* v. *Johnson*, 664 Fed. Appx. 11, 11 (D.C. Cir. 2016), the United States Court of Appeals for the District of Columbia Circuit questioned whether the reasonably related exception was "displaced by the [United States] Supreme Court's decision in *National Railroad Passenger Corp.* v. *Morgan*, 536 U.S. 101, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002) . . . ." See

(Citation omitted; internal quotation marks omitted.) *Duplan* v. *New York*, 888 F.3d 612, 624 (2d Cir. 2018); see also *Deravin* v. *Kerik*, 335 F.3d 195, 201 (2d Cir. 2003) (holding that reasonably related doctrine operates as "exception to the exhaustion requirement"). The reasonably related exception is rooted in the recognition that "in certain circumstances it may be unfair, inefficient, or contrary to the purposes of the statute to require a party to separately re-exhaust new violations that are 'reasonably related' to the initial claim." *Duplan* v. *New York*, supra, 622; see also id., 624 ("it would be burdensome and wasteful to require a plaintiff to file a new [employment discrimination complaint] instead of simply permitting [the plaintiff] to assert that related claim in ongoing proceedings"). In Connecticut, the reasonably related exception operates to excuse a party's failure to obtain a release of jurisdiction from the commission. See *Ware* v. *State*, supra, 82–83. Put differently, it salvages an employment discrimination claim that was not presented to the commission in accordance with General Statutes §§ 46a-82, 46a-100 and 46a-101.

That scenario is not present here. Following the termination of the decedent's employment on May 14, 2018, the decedent did, in fact, file a timely complaint with the commission. Moreover, she obtained a release of jurisdiction from the commission regarding that complaint on November 5, 2018. Because the decedent properly exhausted her administrative remedies before the

also *Achoe* v. *Clayton*, Docket No. 17-CV-02231 (CRC), 2018 WL 4374926, *4 n.4 (D. D.C. September 13, 2018) ("[i]t is an open question whether [the reasonably related] exception still exists following the Supreme Court's decision in *National Railroad Passenger Corp.*"); *McElroy* v. *State*, 703 N.W.2d 385, 391 n.2 (Iowa 2005) (opining that *National Railroad Passenger Corp.* may "render the 'reasonably related' exception obsolete"); cf. *Annett* v. *University of Kansas*, 371 F.3d 1233, 1238 (10th Cir. 2004) (noting that United States Court of Appeals for Tenth Circuit has abandoned reasonably related exception in light of *National Railroad Passenger Corp.*). The continued vitality of the reasonably related exception in this jurisdiction is a question we need not address in the present appeal.

commission, the reasonably related exception to the exhaustion requirement has no application in the present case.

As the trial court emphasized in its memorandum of decision, "[n]o principled reason is advanced when a plaintiff has timely availed herself of an administrative remedy, arrived at the terminus of administrative action with receipt of the release of jurisdiction, but . . . by subsequent inaction, failed to timely commence an action within the ninety day mandate of § 46a-101 (e). A timely suit would not have likely otherwise been barred. The 'reasonably related' . . . exception serves principles of fairness, equity and economy so as not to bar a claim before action may be taken to preserve it. These principles are not advanced in the present case where the claimant filed an administrative claim and could have timely filed a new action." We concur with that observation. We further note that the plaintiff has provided this court with no authority from any jurisdiction in which the reasonably related exception to the exhaustion requirement has been deemed applicable to a claim that the party did, in fact, properly exhaust before the administrative agency.

Even if we were to conclude otherwise, the plaintiff still could not prevail. As this court has explained, resolution of a claim involving the reasonably related exception rests largely "on our interpretation of the plaintiff's pleadings . . . ." *Ware* v. *State*, supra, 118 Conn. App. 83. Significantly, "[t]he central question is whether *the complaint filed with the commission* gave that agency adequate notice to investigate discrimination claimed in the present action." (Emphasis added.) Id., 85. Accordingly, when a party invokes the reasonably related exception, the court must carefully examine the initial complaint that was filed with the commission to determine whether the exception applies. As applied to the present case, that inquiry requires this court to

examine the 2016 complaint that the decedent filed with the commission in light of the allegations contained in the employment discrimination count of the operative complaint. The record before us, however, does not contain a copy of the 2016 complaint, nor has the plaintiff appended a copy to her appellate brief. The record thus is inadequate to review the substantive merits of the plaintiff's claim. See Practice Book § 61-10 (a) ("[i]t is the responsibility of the appellant to provide an adequate record for review"); *Brown & Brown, Inc.* v. *Blumenthal*, 288 Conn. 646, 656 n.6, 954 A.2d 816 (2008) (appellant must ensure that record is perfected for presentation of appeal). Because the plaintiff has not presented this court with an adequate record on which to review the merits of her reasonably related claim, she cannot prevail.[10]

II

The plaintiff also contends that the court improperly rendered judgment in favor of Rafley on the breach

[10] We are mindful that, subsequent to the granting of the motion to dismiss the employment discrimination count, this court, in *Sokolovsky* v. *Mulholland*, supra, 213 Conn. App. 146, concluded that "the time limitation in § 46a-101 (e) is mandatory and not jurisdictional" and, thus, is "subject to waiver and equitable tolling." At the same time, this court has held that, "[a]lthough the defendant raised the time limitation defense in a motion to dismiss, we discern no appropriate basis under the circumstances of this case to upset the court's judgment of dismissal. The plaintiff did not properly raise or preserve a waiver, consent, or equitable tolling claim below or on appeal that would warrant reversal of the court's dismissal. We therefore affirm the court's judgment dismissing the plaintiff's complaint." *Westry* v. *Litchfield Visitation Center*, 216 Conn. App. 869, 882 n.7, 287 A.3d 188 (2022); see also *Mosby* v. *Board of Education*, 187 Conn. App. 771, 775 n.5, 203 A.3d 694 ("[b]ecause the plaintiff presents no argument as to whether the time limit of § 46a-101 (e) is either mandatory or jurisdictional and presents no claim of waiver, consent, or equitable tolling . . . the court properly dismissed . . . the [plaintiff's] claim regardless of whether the time limit is jurisdictional" (internal quotation marks omitted)), cert. denied, 331 Conn. 917, 204 A.3d 1160 (2019). That logic applies equally here, as the plaintiff concedes that she has not asserted a defense of waiver, consent, or equitable tolling and submits that *Sokolovsky* is "irrelevant" to the claim advanced in this appeal.

of contract count. She claims that a genuine issue of material fact exists as to whether Rafley breached an oral employment agreement by terminating the decedent's employment without just cause. We do not agree.

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . [T]he moving party . . . has the burden of showing the absence of any genuine issue as to all the material facts . . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the [nonmoving] party must present evidence that demonstrates the existence of some disputed factual issue. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Citations omitted; internal quotation marks omitted.) *Lucenti* v. *Laviero*, 327 Conn. 764, 772–73, 176 A.3d 1 (2018).

On appeal, the plaintiff claims that a genuine issue of material fact exists as to whether Rafley breached an oral employment agreement by terminating the decedent's employment without cause. The operative complaint in the present case, like the operative complaint in the 2017 action; see footnote 4 of this opinion; alleges that, "[o]n or about February 24, 2014, [Joseph Mason], as agent for [Rafley], verbally offered to employ the [decedent]" and that, "[o]n March 12, 2014, the [decedent] communicated her acceptance of such terms to [Karen Mason]."

In granting the defendants' motion for summary judgment, the court concluded that the decedent was collaterally estopped from asserting that an oral employment agreement existed between the decedent and Rafley. The applicability of the doctrine of collateral estoppel presents a question of law, over which our review is plenary. *Testa* v. *Geressy*, 286 Conn. 291, 306, 943 A.2d 1075 (2008). That doctrine "expresses the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest." (Internal quotation marks omitted.) *Megin* v. *New Milford*, 125 Conn. App. 35, 38, 6 A.3d 1176 (2010). "[C]ollateral estoppel precludes a party from relitigating issues and facts actually and necessarily determined in an earlier proceeding between the same parties or those in privity with them upon a different claim. . . . An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined. . . . To assert successfully the doctrine of issue preclusion, therefore, a party must establish that the issue sought to be foreclosed actually was litigated and determined in the prior action between the parties or their privies, and that the determination was essential to the decision in the prior case." (Internal quotation marks omitted.) *Rocco* v. *Garrison*, 268 Conn. 541, 555, 848 A.2d 352 (2004).

Those requirements are met in the present case. The parties to the 2017 action and the present one are identical, and the judgment in the 2017 action was rendered on the merits by a judge of the Superior Court. The same issue that was asserted as part of the breach of contract count in the 2017 action—that the decedent and Rafley entered into an oral employment agreement on March 12, 2014—was asserted in the breach of contract count of the operative complaint here. That issue was fully and fairly litigated in the 2017 action, as a trial on that action was held over the course of six days

and the decedent thereafter filed a posttrial brief, in which she further elaborated on her claim that "the parties entered into an enforceable oral agreement" on March 12, 2014. Moreover, in the breach of contract section of the "Conclusions of Law" portion of its memorandum of decision, the court expressly rejected the decedent's "claim that she had an oral agreement with [Rafley] that predated the written agreement of March 15, 2014." That determination plainly was essential to the court's decision in favor of Rafley on the breach of contract claim in the 2017 action. For those reasons, the court in the present case properly determined that the doctrine of collateral estoppel barred the decedent's allegation that an oral employment agreement existed between the decedent and Rafley.

The remaining question is whether any genuine issue of material fact exists as to whether the decedent was an at-will employee. In support of their motion for summary judgment, the defendants submitted a copy of the written employment agreement between the parties. That agreement includes a section titled "EMPLOYMENT-AT-WILL STATEMENT," which provides in relevant part: "[W]e are AN **'AT WILL'** EMPLOYER. THIS MEANS THAT the right of the employee or us to terminate the employment relationship **'at will'** is recognized and affirmed as a condition of employment. **'At will'** means that an employee's employment can be terminated at any time AND FOR ANY REASON, *WITH OR WITHOUT CAUSE* AND with or without notice. . . . This does not represent a departure from a long-standing company policy and is INTENDED TO REAFFIRM THAT WE ARE AN **'AT WILL'** EMPLOYER." (Emphasis in original.) The decedent signed that written employment agreement on March 15, 2014. In her reply to the special defenses raised by the defendants in the 2017 action, the decedent admitted both that, "[o]n or about March 15, 2014, the [decedent] and [Rafley] entered

into a written employment agreement that contained all essential terms and conditions of employment" and that she "signed this written employment agreement voluntarily and of her own free will."[11]

The defendants also submitted a copy of Rafley's employee handbook. Section II of that handbook includes a section titled "At-Will Employment." It provides: "[Rafley] adheres to the policy of **employment-at-will**, which enables either the employee or the employer to terminate the employment relationship at any time, with or without cause and with or without notice. The policy of employment-at-will may only be modified by a formal, written contract, signed by both the employee and [Joseph Mason] or Karen Mason evidencing [Rafley's] intent to enter into a contract of employment." (Emphasis in original.) Also accompanying the defendants' motion for summary judgment was a copy of the decedent's signed acknowledgement that she received a copy of Rafley's employee handbook on March 31, 2014, her first day of employment.

In light of that documentary evidence proffered by the defendants, it was incumbent on the decedent to submit some evidence to demonstrate the existence of a disputed factual issue. See *Lucenti* v. *Laviero*, supra, 327 Conn. 773. That she failed to do. Accordingly, the court properly determined that no genuine issue of material fact existed as to whether the decedent was an at-will employee of Rafley.

Under Connecticut law, "[e]mployment at will grants both parties the right to terminate the relationship for any reason, or no reason, at any time without fear of

[11] It is well established that an appellate court may "take judicial notice of the court files in another suit between the parties, especially when the relevance of that litigation was expressly made an issue at this trial." *McCarthy* v. *Warden*, 213 Conn. 289, 293, 567 A.2d 1187 (1989), cert. denied, 496 U.S. 939, 110 S. Ct. 3220, 110 L. Ed. 2d 667 (1990).

legal liability." (Internal quotation marks omitted.) *Dunn* v. *Northeast Helicopters Flight Services, LLC*, 346 Conn. 360, 370, 290 A.3d 780 (2023); see also *Stewart* v. *Cendant Mobility Services Corp.*, 267 Conn. 96, 111, 837 A.2d 736 (2003) ("the plaintiff acknowledged that she was an at-will employee and, therefore, subject to discharge at any time"). Because there is no genuine issue of material fact that the decedent was an at-will employee, the plaintiff's claim that Rafley "breached its agreement with the [decedent] by terminating [her employment] without just cause" is untenable. We therefore conclude that the court properly rendered judgment in favor of Rafley on the breach of contract count.

The judgment is affirmed.

In this opinion the other judges concurred.

U.S. BANK, NATIONAL ASSOCIATION, CUSTODIAN *v.* PAUL ROSE ET AL.
(AC 46007)

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

Syllabus

In an action to foreclose a mortgage on certain real property owned by the named defendant, who died subsequent to the commencement of the foreclosure action, the estate of the named defendant was cited in as a party, and service was made on the named defendant's son, R, in his capacity as executor of the estate of the named defendant. R then filed an appearance as executor of the estate of his father in a self-represented capacity. The plaintiff filed a motion to strike R's appearance on behalf of the estate on the ground that an estate may not be represented by a nonlawyer individual, which the trial court granted. The trial court denied R's motions to intervene and to open the judgment. On R's appeal to this court, he asserted that, because he was the sole beneficiary of his father's estate, he had a substantial interest in the foreclosure matter and should have been made a party thereto. *Held* that, pursuant to this

court's decision in *Ellis* v. *Cohen* (118 Conn. App. 211) and for the reasons stated therein, the appeal was dismissed.

Submitted on briefs October 16—officially released November 21, 2023

Procedural History

Action to foreclose a mortgage, brought to the Superior Court in the judicial district of New Haven, where the court, *Cirello*, *J.*, denied the motions filed by Rahman Rose to open the judgment and to intervene and granted the plaintiff's motion to strike Rahman Rose's appearance, from which Rahman Rose appealed to this court. *Appeal dismissed.*

Rahman Rose, self-represented, the appellant, filed a brief (proposed intervenor).

Opinion

PER CURIAM. Rahman Rose, the proposed intervenor in this action to foreclose a mortgage on certain real property owned by his father, the defendant Paul Rose,[1] who died subsequent to the commencement of the foreclosure action, filed this appeal in a self-represented capacity challenging various rulings of the trial court, including its denial of his motion to open the foreclosure judgment to extend the sale date, its granting of the motion of the plaintiff, U.S. Bank, National Association, as custodian for Tower DBW IV Trust 2014-1, to strike an appearance that Rahman Rose filed to appear on behalf of the estate of Paul Rose, and its denial of his motion to intervene. On appeal, he asserts that, because he is the sole beneficiary of his father's estate, he has a substantial interest in the foreclosure matter and should have been made a party thereto. We dismiss the appeal.

We briefly set forth the following relevant procedural history. After the commencement of the foreclosure

[1] This foreclosure action was brought against a number of other defendants who are not relevant to or involved in this appeal.

action, the trial court rendered a judgment of foreclosure by sale, which was opened several times to extend the sale date. Thereafter, Paul Rose died, and his counsel withdrew her appearance in this matter. The trial court subsequently granted the plaintiff's motion to cite in as a party the estate of Paul Rose, and service was made on Rahman Rose, in his capacity as executor of the estate of Paul Rose. Rahman Rose, a nonlawyer, then filed an appearance on behalf of the estate, and the plaintiff filed a motion to strike that appearance on the ground that an estate may not be represented by a nonlawyer individual in a self-represented capacity. The trial court granted the plaintiff's motion to strike the appearance and denied Rahman Rose's motions to open the judgment and to intervene, and this appeal followed. We conclude that this appeal is governed by this court's prior decision in *Ellis* v. *Cohen*, 118 Conn. App. 211, 982 A.2d 1130 (2009), and, for the reasons stated therein, this appeal must be dismissed.

The appeal is dismissed.