AMMAR A. IDLIBI *v.* CONNECTICUT STATE DENTAL COMMISSION
(AC 47198)

Bright, C. J., and Elgo and Cradle, Js.*

Syllabus

The plaintiff, a dentist, appealed from the judgment of the trial court dismissing his administrative appeal from the decision of the defendant finding that his failure to comply with sanctions imposed by a prior decision of the defendant rendered him unfit or incompetent during the period of noncompliance and ordering further disciplinary sanctions with respect to his dental license. The plaintiff claimed, inter alia, that the defendant lacked jurisdiction to suspend his dental license because it failed to provide him with sufficient notice of the facts warranting suspension prior to initiating summary suspension proceedings. *Held*:

The plaintiff's failure to file an administrative appeal to the Superior Court within forty-five days of the defendant's summary suspension of his dental license as required by the statute (§ 4-183 (c)) governing such appeals, deprived this court of subject matter jurisdiction to consider the merits of his claim.

The trial court did not abuse its discretion in denying the plaintiff's motion for remand to introduce additional evidence before the defendant, as the additional evidence the plaintiff sought to present on remand was not sufficiently material to satisfy even the threshold requirements pursuant to § 4-183 (h).

The defendant's determination, as the governing medical board, that the plaintiff was unfit or incompetent during a period of noncompliance with sanctions that had been previously issued was reasonable and supported by sufficient evidence, and the defendant, in ordering additional sanctions against the plaintiff based on that determination, was acting under its express authority pursuant to statute (§ 20-114 (a) (2)).

Argued November 20, 2024—officially released March 11, 2025

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

Procedural History

Appeal from the decision of the defendant concluding that the plaintiff failed to meet the applicable standard of care while treating a patient and ordering disciplinary sanctions with respect to the plaintiff's dental license, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Hon. Henry S. Cohn*, judge trial referee; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Affirmed.*

Ammar A. Idlibi, self-represented, the appellant (plaintiff).

Shawn L. Rutchick, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (defendant).

Opinion

CRADLE, J. The self-represented plaintiff, Ammar A. Idlibi, appeals from the judgment of the Superior Court dismissing his administrative appeal from the decision of the defendant, the Connecticut State Dental Commission (commission), finding that the plaintiff's failure to comply with sanctions imposed by a prior decision of the commission rendered him unfit or incompetent during that period of noncompliance, and, accordingly, ordering further disciplinary sanctions with respect to the plaintiff's dental license. On appeal, the plaintiff claims that (1) the commission lacked jurisdiction to suspend his dental license, (2) the court abused its discretion in denying his motion for remand to introduce additional evidence, and (3) the commission's final decision was arbitrary and capricious in that it was unsupported by substantial evidence.[1] We affirm the

[1] The plaintiff also argues in conclusory fashion that the commission's decision violated his due process right to fundamental fairness in that the decision was arbitrary and capricious. However, his claim, essentially, restates his challenge to the sufficiency of the evidence supporting the commission's finding that he was unfit or incompetent, and he fails to advance any substantive or legal analysis in support of his due process

judgment of the Superior Court dismissing the plaintiff's administrative appeal.

By way of background, on September 7, 2017, the Department of Public Health (department) presented the commission,[2] as the relevant governing board, with a statement of charges against the plaintiff alleging that treatment he provided to a three year old patient failed to meet the standard of care pursuant to the guidelines of the American Academy of Pediatric Dentistry (AAPD). On September 5, 2018, the commission issued a final decision, finding that the department met its burden of proof with respect to its allegations against the plaintiff, and, accordingly, it ordered disciplinary sanctions with respect to the plaintiff's dental license, including the payment of a $10,000 civil penalty, placement of a reprimand on his license, and a three year probationary period from the date of the decision, dur-

claim. Moreover, we note that the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq., governed the underlying proceedings, and our Supreme Court repeatedly has held that "the procedures required by the UAPA exceed the minimal procedural safeguards mandated by the due process clause." (Internal quotation marks omitted.) *Pet* v. *Dept. of Health Services*, 228 Conn. 651, 661, 638 A.2d 6 (1994). "Although we are solicitous of the rights of [self-represented] litigants . . . [s]uch a litigant is bound by the same rules . . . and procedure as those qualified to practice law. . . . [W]e are not required to review claims that are inadequately briefed. . . . We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *Traylor* v. *State*, 128 Conn. App. 182, 185 n.2, 15 A.3d 1173, cert. denied, 301 Conn. 927, 22 A.3d 1276 (2011); see also *State* v. *Buhl*, 321 Conn. 688, 726, 138 A.3d 868 (2016) (briefing is also inadequate when it is "not only short, but confusing, repetitive, and disorganized"). Accordingly, because the plaintiff's due process claim is inadequately briefed, we decline to review it.

[2] The commission's enabling act, General Statutes § 20-103a, provides in relevant part: "(a) The State Dental Commission shall consist of nine members . . . six of whom shall be practitioners in dentistry residing in this state who are in good standing in their profession and three of whom shall be public members. . . .

"(b) . . . Said commission shall (1) hear and decide matters concerning suspension or revocation of licensure, (2) adjudicate complaints filed against practitioners and (3) impose sanctions where appropriate."

ing which his license would be subject to conditions. Specifically, as conditions to his probationary period, the plaintiff was required (1) to "successfully complete courses, preapproved by the department, in ethics, medical record documentation, and informed consent" within six months of the date of the decision and (2) to obtain a practice supervisor, preapproved by the department, to review his patient records and to create quarterly monitor reports, with the plaintiff responsible for submitting such reports directly to the department.

On September 10, 2018, the plaintiff appealed to the Superior Court from the September 5, 2018 decision of the commission and, on the same date, filed a motion to stay enforcement of the commission's decision during the pendency of his administrative appeal. On March 18, 2019, the court stayed the payment of the $10,000 civil penalty but denied the plaintiff's motion to stay with respect to the remaining sanctions. Thereafter, on October 13, 2020, the Superior Court dismissed the plaintiff's administrative appeal. This court, in *Idlibi* v. *State Dental Commission*, 212 Conn. App. 501, 532, 275 A.3d 1214, cert. denied, 345 Conn. 904, 282 A.3d 980 (2022), affirmed the Superior Court's judgment dismissing the plaintiff's administrative appeal.[3]

The present appeal arises from a subsequent decision of the commission issued on September 4, 2019, while the plaintiff's administrative appeal was pending. The following facts, as set forth by the Superior Court, and procedural history are relevant to this appeal. On February 21, 2019, the department presented the commission with a motion for summary suspension of the plaintiff's license and a statement of charges alleging that the

[3] We note that the Superior Court twice remanded the administrative appeal to the commission, which, in turn, issued second and third final decisions. *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 511–12. The commission's third and final decision, which was the operative decision on appeal to this court, imposed the same disciplinary sanctions against the plaintiff as the commission's original decision. Id., 511–13.

plaintiff had failed to comply with the terms and conditions of the commission's September 5, 2018 decision. Specifically, the department alleged that the plaintiff had not paid the civil penalty and that he had not obtained a practice supervisor and, thus, failed to submit to the department a monitoring report from a supervisor.

On March 20, 2019, the commission, pursuant to General Statutes §§ 4-182 (c) and 19a-17 (c),[4] summarily suspended the plaintiff's dental license, finding that the department had "allege[d] facts which show violations of [General Statutes] § 20-114 (a)[5] . . . and which imperatively require emergency action in that the public health, safety or welfare of the citizens of the State of Connecticut is in clear and immediate danger." (Footnote added.) On March 25, 2019, the department moved to amend its statement of charges, which the commission subsequently granted without objection, to allege additionally that the plaintiff failed to comply with the terms of the September 5, 2018 decision in that he had not submitted courses to the department for preapproval and had not provided documentation of successful completion of any such course within the required time frame.[6]

[4] General Statutes § 4-182 (c), regarding matters involving licenses, provides in relevant part: "If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. . . ."

General Statutes § 19a-17 (c) provides in relevant part: "[The] commission . . . may summarily suspend a practitioner's license or permit in advance of a final adjudication or during the appeals process if . . . [the] commission . . . finds that a practitioner or permittee represents a clear and immediate danger to the public health and safety if he is allowed to continue to practice."

[5] General Statutes § 20-114 (a) provides in relevant part: "The Dental Commission may take any of the actions set forth in section 19a-17 for any of the following causes . . .

"(2) proof that a practitioner has become unfit or incompetent or has been guilty of cruelty, incompetence, negligence or indecent conduct toward patients . . . ."

[6] Under the terms of the September 5, 2018 decision, the plaintiff was required to successfully complete the courses by March 5, 2019.

On March 28, 2019, the plaintiff moved to lift the suspension of his license on the basis that he was no longer in violation of the commission's September 5, 2018 decision. The department objected to the plaintiff's motion, and the commission scheduled the matter for April 2, 2019, before a hearing panel of the commission. At the outset of the April 2, 2019 hearing, the department withdrew its objection to the plaintiff's motion, stating that, as of earlier that morning, the plaintiff had become fully compliant with the terms of the commission's September 5, 2018 decision.[7] The hearing panel subsequently voted to vacate the summary suspension order, and the commission, pending the issuance of its final decision, reinstated the plaintiff's license to probation, pursuant to the same conditions set forth in its September 5, 2018 decision.

Thereafter, on September 4, 2019, the commission issued its final decision with respect to the department's amended statement of charges, finding that the plaintiff belatedly completed the required courses on March 30, 2019, several weeks after the March 5, 2019 deadline imposed by the commission's initial decision. The commission also found that the plaintiff, until March 27, 2019, "was out of compliance with the [commission's decision] of September 5, 2018 . . . [by failing] to secure a supervisor" to review and monitor his patients' records, and that the plaintiff only became fully compliant with that condition when he submitted the first monitoring report on April 2, 2019.[8] The commission

[7] Specifically, the plaintiff had completed the required courses on March 30, 2019, and submitted the first monitoring report from a supervisor on the morning of the hearing.

[8] We note that, although the September 5, 2018 decision of the commission did not set forth an express deadline for the plaintiff to comply with the supervisor monitoring condition, Lavita Sookram, the department nurse assigned to monitor the plaintiff's compliance with that order, testified at the April 2, 2019 hearing that the condition went into effect immediately. She further testified that, because the plaintiff failed to nominate a supervisor for department approval until March, 2019, he had failed to submit the

concluded that, "[b]y not complying with the terms of probation, [the plaintiff], for that period when he was out of compliance, was unfit or incompetent."[9] In addition, the commission found the plaintiff's noncompliance established good cause for disciplinary action, stating that "[the plaintiff's] testimony was not credible with regard to the reasons he failed to comply with the order."[10] The commission, acting pursuant to General Statutes §§ 19a-17 and 20-114,[11] placed a reprimand on the plaintiff's license and ordered a three year probationary period, subject to the same terms and conditions set forth in the commission's September 5, 2018 decision, from April 2, 2019, the date the plaintiff became compliant with the terms of that decision.

On September 6, 2019, the plaintiff, pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq., appealed to the Superior

required quarterly monitoring reports for the first two quarters of his probationary period.

[9] With respect to the plaintiff's failure to pay the $10,000 civil penalty, the commission found that the plaintiff was not in violation of the terms of its initial decision because the trial court had stayed the enforcement of that civil penalty pending the administrative appeal from that decision.

[10] Specifically, the commission stated that the petitioner testified at the April 2, 2019 hearing that he did not comply with the terms of the September 5, 2018 decision "because he was appealing it in Superior Court, he had filed a motion to stay the decision and he thought the motion to stay would be granted." The commission found the plaintiff's defense "meritless and not credible," because it concluded from the plaintiff's April 2, 2019 testimony that he "was aware that the court did not stay the decision of the [commission]."

[11] General Statutes § 20-114 (a) provides in relevant part: "The Dental Commission may take any of the actions set forth in section 19a-17 for any of the following causes . . .

"(2) proof that a practitioner has become unfit or incompetent . . . ."

General Statutes § 19a-17 (a) provides in relevant part that the commission "may take any of the following actions, singly or in combination . . . upon finding the existence of good cause . . .

"(4) Issue a letter of reprimand to a practitioner or permittee . . .

"(6) Place a practitioner or permittee on probationary status and require the practitioner or permittee to: (A) Report regularly to such board, commission or department upon the matters which are the basis of probation . . . (C) Continue or renew professional education until a satisfactory degree of

Court from the September 4, 2019 decision of the commission. On December 14, 2020, the court, *Hon. Henry S. Cohn*, judge trial referee, stayed the proceedings pending the resolution of the plaintiff's initial appeal. After this court disposed of that appeal; see *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 501; the court, on October 4, 2022, directed the plaintiff and the commission to confer regarding a potential resolution of the present case. The parties were unable to reach a settlement, and the case proceeded to trial. On March 31, 2023, the plaintiff filed a motion for remand to present additional evidence before the commission, which the court, on April 17, 2023, summarily denied.[12] Thereafter, on November 28, 2023, the court, following a hearing, dismissed the plaintiff's administrative appeal, finding that the commission's factual findings were supported by substantial evidence and that the commission had authority pursuant to § 20-114 (a) to impose additional sanctions against the plaintiff. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The plaintiff first claims that the commission lacked jurisdiction to order the summary suspension of his dental license because it failed to provide him with sufficient notice of the facts warranting suspension prior to initiating summary suspension proceedings. The plaintiff appears to argue in the alternative that the record did not support the commission's finding that

skill has been attained in those areas which are the basis for the probation . . . ."

[12] We note that, on July 26, 2023, the Superior Court, following a hearing on the merits of the plaintiff's appeal, remanded the present case to the commission for clarification on certain issues. On September 14, 2023, the commission responded to the court's request for clarification but made no revisions to its initial decision from which the plaintiff filed his administrative appeal, and, accordingly, the commission's final decision of September 4, 2019, is the operative decision on appeal.

the department had alleged facts demonstrating that emergency action was required. Conversely, the commission argues that the plaintiff's failure to timely appeal from the summary suspension order deprives this court of subject matter jurisdiction over the plaintiff's claim. We agree with the commission.

"Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . ." (Internal quotation marks omitted.) *Peters* v. *Dept. of Social Services*, 273 Conn. 434, 441, 870 A.2d 448 (2005). Under the UAPA, "[t]here is no absolute right of appeal to the courts from a decision of an administrative agency. . . . Appeals to the courts from administrative [agencies] exist only under statutory authority . . . . Appellate jurisdiction is derived from the . . . statutory provisions by which it is created, and can be acquired and exercised only in the manner prescribed." (Internal quotation marks omitted.) *Markley* v. *State Elections Enforcement Commission*, 339 Conn. 96, 106, 259 A.3d 1064 (2021). "The right to appeal from an agency decision to the Superior Court is governed by [General Statutes] § 4-183,[13] and the failure to file an appeal within the forty-five day period set forth in § 4-183 (c) deprives the court of subject matter jurisdiction to entertain an appeal." (Footnote added.) Id., 106–107; see also *Lewis* v. *Freedom of Information Commission*, 202 Conn. App. 607, 615–16, 246 A.3d 507 (2021) (plaintiff's failure to file administrative appeal within forty-five days of agency

[13] General Statutes § 4-183 provides in relevant part: "(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . .

"(c) (1) Within forty-five days after . . . the final decision . . . a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision . . . ."

decision deprived trial court of subject matter jurisdiction over appeal); *Pine* v. *Dept. of Public Health*, 100 Conn. App. 175, 183, 917 A.2d 590 (2007) (same).

On March 20, 2019, the commission issued a final decision ordering the summary suspension of the plaintiff's dental license. It is undisputed that the plaintiff never appealed from that decision.[14] Accordingly, his failure to file an administrative appeal within forty-five days of the commission's decision, as required by § 4-183 (c), deprives this court of subject matter jurisdiction to consider the merits of his claim.

II

The plaintiff next claims that the court abused its discretion in denying his motion for remand, pursuant to § 4-183 (h),[15] to present, as additional evidence before

[14] We note that, although the plaintiff concedes that he did not appeal from the summary suspension order, he erroneously relies on *Markley* v. *State Elections Enforcement Commission*, supra, 339 Conn. 111, for the premise that our Supreme Court, as a matter of policy, favors a finding of subject matter jurisdiction even when a plaintiff fails to timely file an administrative appeal pursuant to § 4-183 (c). Although the court in *Markley* concluded that the plaintiffs' failure to timely file an appeal from the agency's final decision within forty-five days did not deprive the court of subject matter jurisdiction over the appeal; id., 98–101; it did so in light of what the court described as an "extremely unusual factual scenario"; id., 109; and circumstances that were "not just unusual," but "likely unique . . . ." Id., 110. Specifically, the court appears to have attributed the plaintiffs' failure to timely file an appeal in *Markley* to the agency's own error in taking up the plaintiffs' petition for reconsideration at a special meeting, after the petition had been constructively denied due to the agency's inaction, under the mistaken belief that it remained pending. Id., 108–10. Our Supreme Court's decision in *Markley* is thus inapposite to the present case, in which the plaintiff himself is solely responsible for his failure to timely file an appeal from the commission's summary suspension order. We reiterate that our Supreme Court expressly held in *Markley* that the failure to timely file an appeal pursuant to § 4-183 (c) deprives the court of subject matter jurisdiction over the appeal; id., 106–107; and emphasized that *Markley*, "because of its truly sui generis factual circumstances, lacks any real precedential value." Id., 110 n.12.

[15] General Statutes § 4-183 (h) provides in relevant part: "If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the

the commission, the Superior Court's remand orders and the commission's third final decision. We disagree.

The following facts, as set forth by this court in the plaintiff's appeal from the Superior Court's dismissal, and procedural history are relevant to the plaintiff's claim. "On September 5, 2018, the commission issued a final decision finding that the plaintiff had failed to meet the standard of care [on five distinct grounds]."[16] *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 510. "On September 10, 2018, the plaintiff appealed to the Superior Court. . . . [O]n January 7, 2020, the court issued an order remanding the final decision for clarification of finding number twenty-six, concerning whether the plaintiff's [placement of stainless steel crowns] violated the AAPD standards. . . . On June 16, 2020, the commission issued a second final decision, this time determining that it was not a violation of the standard of care to place eight stainless steel crowns in the patient's mouth, but that the disciplinary orders contained in the initial decision were still appropriate on the basis of the other findings concerning the allegations against the plaintiff.

"On August 10, 2020, the court issued a second remand order related to the same charge. Specifically, the court ordered the commission to reconcile an inconsistency between the finding of fact that the plaintiff

satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. . . ."

[16] "Specifically, the commission found that the plaintiff (1) failed to obtain adequate informed consent from the patient's mother to place crowns on eight of the patient's teeth, (2) placed one or more crowns without adequate justification, (3) failed to chart findings of cervical decalcification adequately, (4) failed to attempt treatment of the cervical decalcification by other means, and (5) failed to chart caries or other dental disease adequately for one or more of the teeth that was crowned." *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 510.

'did not practice below the standard of care with respect to the placement of the stainless steel crowns' with a statement in its decision that 'the [department] sustained its burden of proof' with respect to this charge. . . . On September 16, 2020, the commission issued a third and final decision, which . . . stated that, '[w]ith regard to the allegations . . . of the charges that [the plaintiff] placed one or more crowns without adequate justification . . . the department did not sustain its burden of proof.' " (Footnote omitted.) Id., 511–12.

Because the foregoing remand orders and the commission's third and final decision were issued subsequent to the commission's final decision in the present case, the plaintiff moved to remand his administrative appeal in the present case to the commission in order to present the remand orders and the third final decision as additional evidence.[17] The plaintiff argued in his motion that the additional evidence was material in that it demonstrated that the commission had "reversed its most significant findings with regards to the appropriateness of [the] plaintiff's professional treatment," and, therefore, that "the extended probation for the purpose of monitoring [the] plaintiff's professional practice with skill and safety," as ordered by the commission in the present case, "would no longer be supported by evidence . . . ." On April 17, 2023, the Superior Court summarily denied the plaintiff's request.[18]

The following legal principles are relevant to the plaintiff's claim. "[Section] 4-183 (h) permits a party in

[17] Specifically, the plaintiff asserted in his motion: "Because the final revision of the [commission's] original order . . . was completed in June, 2020, there were good reasons for [the plaintiff's] failure to present the revised decision at the [April 2, 2019 administrative] hearing [in the present case]."

[18] We note that the court also denied the plaintiff's request to order supplemental briefing "due to significant changes during the stay [of the present case]," including the fact that the commission "had since revised its [September 5, 2018] decision twice and had reversed the most significant aspect of the disciplinary action, which is the treatment rendered by the plaintiff."

an administrative appeal to apply for leave to present additional evidence, as long as it is demonstrated that the additional evidence is material and that there are good reasons for the failure to present it in the proceeding before the agency." *Wakefield* v. *Commissioner of Motor Vehicles*, 90 Conn. App. 441, 443, 877 A.2d 1, cert. denied, 275 Conn. 931, 883 A.2d 1253 (2005). If a party satisfies both prongs, "the court may order that the additional evidence be taken before the agency upon conditions determined by the court." General Statutes § 4-183 (h). "The term 'may' acts as a grant of permissive authority, rather than as a directive, suggesting that a trial court has discretion regarding whether to grant or deny a motion brought pursuant to the statute." *Salmon* v. *Dept. of Public Health & Addiction Services*, 259 Conn. 288, 315, 788 A.2d 1199 (2002). Accordingly, we review the court's denial of the plaintiff's motion for an abuse of its discretion. Id. "In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Reversal is required only where an abuse of discretion is manifest or where injustice appears to have been done. . . . [O]ur appellate decisions emphasize that an abuse of discretion leading to reversal is rare." (Citation omitted; internal quotation marks omitted.) *Wakefield* v. *Commissioner of Motor Vehicles*, supra, 443–44.

In support of his claim, the plaintiff argues that he "pleaded and submitted to the [Superior Court] that both prongs [of § 4-183 (h) were] met." However, even if we were to agree with the plaintiff that his motion satisfied both prongs, it would not follow that the court abused its discretion in denying the motion. Although the plaintiff was required by § 4-183 (h) to demonstrate that the additional evidence is material and that there were good reasons for failing to present the evidence in the proceeding before the commission, these are

merely threshold evidentiary showings required by the statute. We reiterate that, once the moving party satisfies these requirements, the court, in its discretion, nonetheless may deny the motion.

We note that the plaintiff appears merely to reiterate on appeal the arguments he made in support of his motion before the Superior Court. Specifically, he asserts that the commission, by reversing its finding that the plaintiff's placement of steel crowns violated the standard of care, found that "the plaintiff's treatment [of] the [patient] was proper and did not fall below the standard of care." We construe the plaintiff's arguments as claiming that, had the court granted his motion, the commission in the present case would have been precluded from extending the plaintiff's probationary period, namely, because the additional evidence would have shown that there was no longer a basis to support the sanction in the first place. Any such claim, however, is belied by the record. The commission did not, as the plaintiff claims, find that his treatment of the patient "did not fall below the standard of care." Rather, by reversing its finding concerning the placement of steel crowns, the commission merely found that the plaintiff's treatment had violated the standard of care in four, rather than five, distinct ways.[19] Moreover, after the commission reversed that finding, it nonetheless determined that the probationary period and conditions "contained in the initial decision were still appropriate on the basis of the other findings concerning the allegations against the plaintiff" related to his violations of the standard of care. *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 512. On the basis of the foregoing, it does not appear that the additional evidence the plaintiff sought to present on remand was sufficiently material to satisfy even the

[19] See footnote 16 of this opinion.

threshold requirements pursuant to § 4-183 (h). Accordingly, we conclude that the court did not abuse its discretion in denying the plaintiff's motion for remand.

III

The plaintiff next claims that the commission's decision was arbitrary and capricious in that it was unsupported by substantial evidence. Specifically, the plaintiff does not challenge the commission's factual findings regarding his belated compliance with the terms of its initial decision, but, instead, argues that there was "no rational connection whatsoever between" those factual findings and his fitness or competency to practice dentistry. Accordingly, he claims that the commission's finding that he was unfit or incompetent, on the sole basis of his delayed compliance, was arbitrary and capricious in that it was unsupported by substantial evidence. We disagree.

Our standard of review of the plaintiff's claim is well established. "Judicial review of an administrative decision in an appeal under the UAPA is limited. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the appellate] court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Citation omitted; internal quotation marks omitted.) *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 517. "It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to

law and in abuse of [its] discretion . . . . [A]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts . . . ."[20] (Internal quotation marks omitted.) Id., 517–18.

"The substantial evidence rule governs judicial review of administrative fact-finding under the UAPA. . . . An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . ." (Internal quotation marks omitted.) Id., 518. Additionally, "[i]t is well established that it is the exclusive province of the trier of fact to make determinations of credibility, crediting some, all, or none of a given witness' testimony. . . . We must defer to the trier of fact's assessment of the credibility of the witnesses that

[20] The plaintiff further argues that this appeal presents a pure question of law in that "the commission . . . failed to articulate and apply the correct legal standard that governs disciplinary actions pursuant to § 20-114 (a) (2)."

"[A]lthough we have noted that [a]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts . . . we have maintained that [c]ases that present pure questions of law . . . invoke a broader standard of review . . . ." (Internal quotation marks omitted.) *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 518. More specifically, "[t]he traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] a governmental agency's time-tested interpretation . . . . Even if time-tested . . . an agency's interpretation of a statute [is subject to deference] only if it is reasonable . . . [as] determined by [application of] our established rules of statutory construction." (Internal quotation marks omitted.) *Drumm* v. *Freedom of Information Commission*, 348 Conn. 565, 580, 308 A.3d 993 (2024).

The plaintiff concedes that "[statutory] construction" and "[statutory] interpretation" are not issues in this appeal and that "the commission clearly applied [§ 20-114 (a) (2)] to the actual circumstances of the case." Additionally, as we conclude herein, the commission acted reasonably and within its statutory authority in applying the statute in the present case. We therefore disagree with the plaintiff that this appeal presents a pure question of law.

is made on the basis of its firsthand observation of their conduct, demeanor and attitude." (Internal quotation marks omitted.) Id., 518–19. "Ultimately, [t]he question is not whether the trial court would have reached the same conclusion but whether the record before the [agency] supports the action taken." (Internal quotation marks omitted.) *Miko* v. *Commission on Human Rights & Opportunities*, 220 Conn. 192, 201, 596 A.2d 396 (1991).

In the present case, the commission found that the plaintiff belatedly complied with the coursework requirement on March 30, 2019, and the supervisor monitoring requirement on April 2, 2019. The plaintiff does not challenge these factual findings on appeal. Rather, the plaintiff claims that these uncontested factual findings were insufficient to support the commission's finding that he was unfit or incompetent. Specifically, he argues that the required coursework did not "pertain to 'competence' " and a supervisor retroactively reviewed his patients' files dating back to the initial decision and found no instances of incompetence, and, therefore, his delayed compliance with those conditions had no relevance to whether he was unfit or incompetent.

The plaintiff's arguments are unpersuasive. It is well established that the commission, as the governing medical board, has the authority to determine what renders a practitioner "unfit" or "incompetent."[21] "Our case law makes clear that a governing medical board is granted broad discretion, pursuant to its statutory authority,

[21] We further note that, even if the plaintiff's own interpretation of the statutory terms was relevant, his argument lacks merit. Specifically, he asserts that the word "incompetent," as used in § 20-114 (a) (2), means "unskillfulness," which he argues "only pertains to clinical performance where clinical skill is needed." (Emphasis omitted.) The plaintiff, however, fails to cite any authority in support of that definition, fails to address whether his noncompliance rendered him "unfit," and, moreover, cites no authority for the premise that we should interpret an express term of the statute to have a meaning that does not appear anywhere in the statute.

in determining the appropriate standard of care in an administrative, licensing procedure." *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 519. "Terms associated with the trade or business with which a given statute is concerned should be accorded the meaning which they would convey to an informed person in that trade or business. . . . We presume that members of a professional health licensing board are competent to decide on the basis of such terms whether certain conduct is in derogation of professional standards." (Citation omitted.) *Altholtz* v. *Dental Commission*, 4 Conn. App. 307, 314, 493 A.2d 917 (1985). Accordingly, "what constitutes unprofessional conduct and what renders a professional unfit or incompetent are to be determined by those standards which are commonly accepted by those practicing the same profession in the same territory." (Internal quotation marks omitted.) Id., 314–15; see also *Idlibi* v. *State Dental Commission*, supra, 527 ("it [is] well within the commission's authority to determine the meaning of the terms in § 20-114 (a) (2) relevant to the practice of dentistry").

The commission, with respect to its September 4, 2019 decision, "relied on the training and experience of its members in making its findings of fact and conclusions of law," and its decision was "based entirely on the record and the specialized professional knowledge of the commission in evaluating the evidence." The commission stated in its decision that "[t]he probationary period [and conditions] imposed by the commission in the prior matter [were] required in order to ensure that [the plaintiff] was fit and/or competent to practice dentistry with reasonable skill and safety." Pursuant to our governing law, the commission was well within its statutory authority to rely on its expertise in evaluating the evidence, including the uncontested evidence that the plaintiff failed to comply fully with those conditions until April 2, 2019, and reaching its conclusion that the

plaintiff was unfit or incompetent during the period of noncompliance. Accordingly, we conclude that the commission's determination that the plaintiff was unfit or incompetent was reasonable and supported by sufficient evidence. We further conclude that the commission, in ordering additional sanctions against the plaintiff based on that determination, was acting under its express authority pursuant to § 20-114 (a) (2).[22]

The judgment is affirmed.

In this opinion the other judges concurred.

---

[22] Notwithstanding this express grant of authority to order sanctions, the plaintiff argues that the commission lacked statutory authority to order additional sanctions in *this* case because he was in full compliance at the time of the April 2, 2019 hearing and any prior delay was "excusable" because he was waiting for the court to act on his motion to stay, particularly in light of the solicitous treatment our courts afford to self-represented parties.

We note that § 20-114 (a) contains no such exception, and, even if it did, the plaintiff's claim that his delayed compliance was "excusable" lacks merit. The UAPA expressly provides that "[t]he filing of an appeal shall not, of itself, stay enforcement of an agency decision." General Statutes § 4-183 (f). Moreover, we reiterate that "[w]e must defer to the trier of fact's assessment of the credibility of the witnesses that is made on the basis of its firsthand observation[s] . . . ." (Internal quotation marks omitted.) *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 518–19. The plaintiff raised the same argument before the commission, which found his alleged defense to be "meritless and not credible," and before the Superior Court, which also rejected the defense. Specifically, the commission found that, "[f]or a period of multiple months in late 2018, Lavita Sookram . . . communicated with the [plaintiff] in an attempt to obtain his compliance . . . ." In addition, we conclude that there is substantial evidence in the administrative record to support the commission's finding that the plaintiff's defense was meritless. This evidence includes Sookram's and the plaintiff's testimony during the April 2, 2019 hearing, and email correspondence between them, which the commission admitted as full exhibits, which indicated that Sookram began notifying the plaintiff in late 2018 that he was not in compliance with the commission's decision and that his pending motion to stay did not excuse his noncompliance.

MARGARITA O. *v.* FERNANDO I.*
(AC 45708)

Bright, C. J., and Moll and Suarez, Js.**

Syllabus

The defendant appealed, and the plaintiff cross appealed, from the trial court's judgment granting the defendant's postdissolution motion for contempt. The defendant claimed, inter alia, that the court incorrectly calculated his share of the sale proceeds of the marital residence by, inter alia, reducing his share by $25,000 in postsecondary educational support that the court improperly ordered him to pay to the plaintiff. The plaintiff claimed that the court improperly found her in contempt. *Held*:

The trial court properly found the plaintiff in contempt of its order to list the marital residence for sale at a price of $1.25 million, as the court determined that its order was clear and unambiguous and the plaintiff, although understanding the order and being fully capable of complying with it, intentionally disobeyed the order by listing the residence for sale at a higher price.

The trial court, in calculating the distribution of the proceeds from the sale of the marital residence, properly complied with the governing language in the dissolution judgment in accounting for the closing costs and the plaintiff's postdissolution mortgage principal payments.

The trial court did not err in declining to award the defendant sanctions against the plaintiff and to adjust the defendant's financial obligations to the plaintiff pursuant to a postdissolution stipulation between the parties, as the defendant did not suffer any financial losses as a result of the plaintiff's contempt.

The trial court properly rejected, pursuant to Connecticut law, the defendant's claim for attorney's fees as a self-represented attorney litigant.

The trial court erred in reducing the defendant's share of the sale proceeds from the marital residence by $25,000 in postsecondary educational support, thus, requiring the defendant to pay the plaintiff postsecondary educational support, as the court lacked jurisdiction to consider the issue of such support

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

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

and to order the defendant to pay such support pursuant to the clear and unambiguous terms of the parties' postdissolution stipulation.

Argued December 10, 2024—officially released March 11, 2025

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Dennis F. Harrigan*, judge trial referee; judgment dissolving the marriage and granting certain other relief; thereafter, the case was transferred to the judicial district of Fairfield, where the court, *Moukawsher*, *J.*, granted the defendant's postjudgment motion for contempt, from which the defendant appealed and the plaintiff cross appealed to this court; subsequently, the court, *Moukawsher*, *J.*, denied the defendant's motion to disqualify the judicial authority, and the defendant filed an amended appeal. *Reversed in part*; *judgment directed.*

Fernando I., self-represented, the appellant-cross appellee (defendant).

Kevin F. Collins, for the appellee-cross appellant (plaintiff).

Opinion

MOLL, J. The self-represented defendant, Fernando I., appeals from the postdissolution judgment of the trial court finding the plaintiff, Margarita O., in contempt of a court order, which concerned the listing of the parties' marital residence for sale, and distributing the proceeds from the sale of the residence, as well as from the court's denial of his postjudgment motion to disqualify the judicial authority. Additionally, the plaintiff cross appeals from the court's contempt finding. On direct appeal, we distill the defendant's claims to be that the court (1) incorrectly calculated his share of the sale proceeds in several ways, including by reducing his

share by $25,000 in postsecondary educational support that the court improperly ordered him to pay to the plaintiff, and (2) improperly denied his motion to disqualify. On cross appeal, the plaintiff claims that the court improperly found her in contempt because the order underlying the contempt finding was not clear and unambiguous. Turning first to the plaintiff's cross appeal, we conclude that the order at issue was clear and unambiguous, and, therefore, we reject the plaintiff's claim challenging the court's contempt finding. With respect to the defendant's direct appeal, we agree only with the defendant's claim that the court improperly ordered him to pay, and deducted from his share of the sale proceeds, $25,000 in postsecondary educational support. Accordingly, we reverse in part the judgment of the trial court.

The following facts, as found by the trial court and which are not in dispute, and procedural history are relevant to our resolution of this direct appeal and this cross appeal. The parties were married in New York in 1995. Three children were born of the marriage. In 2009, the plaintiff commenced the present action, initially seeking a legal separation, but later amending her complaint to request a dissolution of the marriage on the basis that it had broken down irretrievably. The defendant filed an amended answer directed to the plaintiff's original complaint, as well as an amended cross complaint seeking a dissolution of the marriage on the basis that it had broken down irretrievably.

On September 2, 2010, the court, *Hon. Dennis F. Harrigan*, judge trial referee, rendered a judgment dissolving the parties' marriage on the ground of irretrievable breakdown. The dissolution judgment ordered the following with respect to the parties' jointly owned marital residence in Greenwich (residence): "The [plaintiff] shall continue to have exclusive possession of the . . . residence. The [plaintiff] shall pay all monthly

expenses of the residence including maintenance and repairs except that the parties shall each pay one half of the property taxes pertaining to the residence. On or before April 1, 2021, the year in which the [parties'] youngest child reaches eighteen [years of age], the parties shall list the [residence] for sale with a real estate broker at the then fair market value of the [residence]. The [plaintiff] shall also have the right to list the [residence] for sale at any time between the date of the [dissolution judgment] and April 1, 2021, and the [defendant] shall cooperate. The [defendant] may demand an immediate sale upon the [plaintiff's] remarriage, or cohabitation without proof of change in finances as required by [statute]. At the closing of title regarding the sale of the . . . residence, the first mortgage, any broker's commissions and all normal closing costs shall be paid and the remaining proceeds shall be divided equally after a credit is paid to the [plaintiff] for the difference between the balance on the first mortgage on the date of the [dissolution judgment] and the balance of the mortgage on the date of the closing regarding the sale of the residence. Any sums due to the [plaintiff] pursuant to any orders of the court shall be paid to the [plaintiff] at the closing from the [defendant's] portion of the net closing proceeds." Additionally, pursuant to General Statutes § 46b-56c,[1] the court retained jurisdiction to enter educational support orders with respect to the parties' children. Neither party appealed from the dissolution judgment.

On December 15, 2015, the plaintiff filed a motion for contempt claiming that the defendant failed to pay

[1] Since the court rendered the dissolution judgment on September 2, 2010, § 46b-56c has been the subject of several amendments that, other than as noted in footnote 5 of this opinion, are not relevant to this appeal. See 2011 Public Acts, No. 11-214, § 6; 2015 Public Acts, No. 15-71, § 80; 2021 Public Acts, No. 21-104, § 19; 2022 Public Acts, No. 22-123, § 40. In the interest of simplicity, we refer to the current revision of the statute.

child support, real estate taxes, and other financial obligations as ordered pursuant to the dissolution judgment, as well as certain legal fees awarded to the plaintiff. On June 10, 2016, the parties executed a stipulation (2016 stipulation), which the court, *Tindill*, *J.*, approved that same day. The 2016 stipulation provided, inter alia, that (1) the defendant would pay the plaintiff $400,000, which would be credited to the plaintiff out of the defendant's share of the proceeds from the future sale of the residence, (2) "[i]n full satisfaction of [the] [p]laintiff's [December 15, 2015] [m]otion for [c]ontempt . . . and/or any financial claims of any nature whatsoever, the parties agree that the [d]efendant shall no longer be responsible to pay [the] [p]laintiff" various expenses, and (3) subject to a provision in the 2016 stipulation regarding postsecondary educational support, "[the] [p]laintiff hereby acknowledges that [the] [d]efendant by virtue of the terms set forth hereinbefore, shall be deemed to have satisfied in full all financial obligations set forth in [the 2016] [s]tipulation and the [dissolution judgment], and [the] [d]efendant shall have no further obligation to pay any sums to [the] [p]laintiff."

On January 31, 2022, the court, *Moukawsher*, *J.*, issued a memorandum of decision addressing disputes that had arisen between the parties regarding (1) the sale of the residence and (2) postsecondary educational support.[2] With respect to the sale of the residence, which, as the court found, had not occurred prior to April, 2021, as required by the dissolution judgment, the court interpreted the dissolution judgment to mandate that the residence be listed for sale at its fair market value on the date of the listing. The court recognized that the parties disagreed about the residence's

[2] On March 3, 2020, the plaintiff filed a motion seeking postsecondary educational support. On January 28 and April 23, 2021, the defendant filed motions for contempt asserting, inter alia, that the plaintiff had failed to cooperate with him in listing the residence for sale in compliance with the dissolution judgment.

fair market value, with (1) the defendant, relying on "his opinion . . . based on his knowledge of the area and most of all on what he claims a real estate broker told him," proposing a valuation of $1.8 million and (2) the plaintiff, relying on a professional appraisal dated January 4, 2022, which was admitted into evidence, valuing the residence at $1.25 million. The court determined that it "ha[d] little choice but to accept [the plaintiff's valuation of $1.25 million] as the fair market value. Using any other number would be guesswork." The court ordered the parties, within twenty-one days, to list the residence for sale for $1.25 million with a mutually agreed on real estate broker, with the court reserving the authority to select a broker if the parties were unable to choose one together.

Turning to the issue of postsecondary educational support, the court cited paragraph 10 of the 2016 stipulation, which provides: "The parties agree that if the [d]efendant were to have income as well as financial and patrimonial means comparable to the [p]laintiff, the [d]efendant will assume his equal share of the [postsecondary] educational expenses of their children paid by the [p]laintiff. [Subject][3] to the prior, if the [d]efendant were not to pay for those expenses, the [c]ourt shall retain jurisdiction over said issue pursuant to [§ 46b-56c][4] for all of the three . . . children of the marriage." (Footnotes added.) The court stated that, although the parties agreed that they did not have comparable incomes, they disputed whether, pursuant to paragraph 10, the court had jurisdiction to enter postsecondary educational support orders. The court determined that both parties had presented reasonable interpretations of paragraph 10, implicitly concluding that

[3] The second sentence of paragraph 10 of the 2016 stipulation begins with the word "Subjecto." The court deemed this to be a typographical error, as do we.

[4] The 2016 stipulation cites to General Statutes (Rev. to 2015) § 46b-56 (c), rather than to § 46b-56c. We construe this to be a typographical error.

the provision was ambiguous. Upon examining the language of paragraph 10 and evidence admitted into the record, the court concluded that it retained jurisdiction regarding postsecondary educational support. The court subsequently scheduled an evidentiary hearing to determine the appropriate amount of postsecondary educational support.

On April 7, 2022, the court issued a memorandum of decision further addressing the sale of the residence. The court stated that it "wishe[d] its [January 31, 2022] order to be interpreted as requiring the [residence] to be listed for $1.25 million but with a view toward selling the [residence] for the highest possible dollar amount. It knows from its recent experience with two hearings [that the defendant] boycotted that [the defendant], living in Argentina and nursing his grievances, will not cooperate in getting this job done. The [residence] is in [the parties'] joint names. As it stands now, [the defendant] could potentially block—and the court is convinced he would block—every attempt to try to carry out the sale. Therefore, it will make orders concerning the sale that reflect this unhappy conclusion . . . ." First, "[t]o effectuate the court-ordered sale of [the residence]," the court ordered that any interest in the residence held by the defendant was transferred to the plaintiff, "in trust, for the sole purpose of effectuating under the court's orders [of September 2, 2010, and January 31, 2022], the sale of the [residence] . . . ." The court further ordered, inter alia, that (1) by no later than April 21, 2022, the plaintiff would list the residence for sale with a particular real estate broker for $1.25 million, (2) the plaintiff would instruct the broker that, although there was a court-ordered $1.25 million listing price, she had been ordered by the court "to work with [the broker] to realize the maximum possible sales price," and (3) the plaintiff required the court's permission to sign any contract for the sale of the residence.

Additionally, in a separate memorandum of decision issued on April 7, 2022, the court further addressed the issue of postsecondary educational support. On the basis of the evidence adduced at the evidentiary hearing held by the court, and in consideration of the provisions of § 46b-56c (g),[5] the court determined that the total amount of postsecondary educational support subject to allocation was capped at $201,500. The court proceeded to award the plaintiff $25,000 in postsecondary educational support from the defendant, reasoning that, "[g]iven [the plaintiff's] real earning capacity, the evidence reflects a serious imbalance between the two parties but [that] does not warrant [the defendant]—who has paid none of the court's orders so far—to escape any responsibility for his children's college education given his potential earning capacity. Therefore, he will pay only a portion of what [the plaintiff] suggests as calculated by the court under the [University of Connecticut statutory] cap [of § 46b-56c (g)] or $25,000." The court ordered the $25,000 amount to be credited to the plaintiff out of the defendant's share of the proceeds from the future sale of the residence.

On April 25, 2022, the defendant filed a motion for contempt claiming that the plaintiff had listed the residence for sale for $1.6 million, rather than for $1.25 million as ordered by the court. As relief, the defendant sought, inter alia, "legal fees, expenses, monetary sanctions, and damages . . . ." On April 27, 2022, the plaintiff filed a motion requesting that the court approve the

[5] General Statutes § 46b-56c (g) provides: "The educational support order may include support for any necessary educational expense, including room, board, dues, tuition, fees, registration and application costs, but such expenses shall not be more than the amount charged by The University of Connecticut for a full-time in-state student at the time the child for whom educational support is being ordered matriculates, except this limit may be exceeded by agreement of the parents. An educational support order may also include the cost of books and medical insurance for such child."

The court cited to subsection (f) of § 46b-56c, which, prior to an amendment in 2021; see 2021 Public Acts, No. 21-104, § 19; set forth the language that is now contained in subsection (g).

sale of the residence pursuant to an appended offer to purchase, which reflected a proposed sale price of $1,671,000. On May 3, 2022, the court approved a proposed contract for the sale of the residence for $1,671,000 and authorized the plaintiff to execute the contract.

On July 26, 2022, the court issued a memorandum of decision resolving the defendant's April 25, 2022 motion for contempt and ordering the distribution of the proceeds from the sale of the residence.[6] The court found the plaintiff in contempt of its January 31, 2022 order, as expounded on by the court on April 7, 2022, concerning the sale of the residence, determining that (1) the order was clear and unambiguous in requiring that the residence be listed for sale for $1.25 million and (2) despite understanding the order and being fully capable of complying with it, the plaintiff intentionally disobeyed the order by listing the residence for sale for $1.6 million.

Turning to the appropriate remedy for the plaintiff's contempt, the court noted that the defendant was requesting "equitable adjustments to the closing proceeds that effectively [would] reopen [the] parties' prior agreement and adjust them to reflect his view of how they should have been handled." Iterating that, on a contempt motion, the court had the authority to order the contemnor to pay the opposing party for losses caused by the contempt, the court determined that the defendant did not suffer any losses as a result of the plaintiff having listed the residence for sale for $1.6 million but, rather, "[h]e gained money by her disobedience . . . ." The court further determined that the defendant was not entitled to attorney's fees because he had not been represented by counsel.

[6] The record reflects that the closing occurred on July 14, 2022.

The court proceeded to order a distribution of the sale proceeds. After performing several adjustments, including crediting the plaintiff $25,000 against the defendant's share of the sale proceeds for postsecondary educational support, the court awarded $1,154,554.97 to the plaintiff and $267,713.03 to the defendant. On August 2, 2022, the defendant filed a motion to reargue, which the court denied on August 5, 2022. On August 9, 2022, the defendant filed a direct appeal, and, on August 16, 2022, the plaintiff filed a cross appeal.[7]

On August 26, 2022, the defendant filed a motion to disqualify Judge Moukawsher, which the court denied on September 9, 2022. On September 19, 2022, the defendant filed a separate appeal from the denial of his motion to disqualify, which separate appeal this court treated as an amendment to this direct appeal pursuant to Practice Book § 61-9. Additional facts and procedural history will be set forth as necessary.[8]

I

On cross appeal, the plaintiff maintains that the trial court improperly found that she was in contempt of the January 31, 2022 order, as expounded on by the court on April 7, 2022, requiring that the residence be listed for sale for $1.25 million (January, 2022 order). The plaintiff asserts that the January, 2022 order was not clear and unambiguous in precluding her from listing the residence for sale for a price greater than $1.25 million. We disagree.

[7] On August 12, 2022, the plaintiff filed a motion to reargue, which the court, after having ordered reargument, denied on the merits on December 28, 2022.

[8] In their respective appellate briefs, each party contends that the other party's claims are inadequately briefed. See *McNamara* v. *McNamara*, 207 Conn. App. 849, 868, 263 A.3d 899 (2021) ("[i]t is well established that [w]e are not required to review claims that are inadequately briefed" (internal quotation marks omitted)). Except for certain claims addressed in footnotes 13 and 14 of this opinion, we conclude that the parties have adequately briefed their respective claims.

"Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. . . . [C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . In part because the contempt remedy is particularly harsh . . . such punishment should not rest upon implication or conjecture, [and] the language [of the court order] declaring . . . rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby. . . . To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. . . . The question of whether the underlying order is clear and unambiguous is a legal inquiry subject to de novo review. . . . If we answer that question affirmatively, we then review the trial court's determination that the violation was wilful under the abuse of discretion standard." (Internal quotation marks omitted.) *Walton* v. *Walton*, 227 Conn. App. 251, 257–58, 321 A.3d 1180 (2024), cert. granted, 351 Conn. 903, 329 A.3d 240 (2025).

The record reflects that, on January 31, 2022, the court ordered the parties to "list [the residence] for sale at a listing price of $1.25 million . . . ." Later, in its April 7, 2022 decision concerning the sale of the residence, the court stated that its January 31, 2022 order was "to be interpreted as requiring the [residence] to be listed for $1.25 million, but with a view toward selling the [residence] for the highest possible dollar amount." The court then issued additional orders (1) instructing the plaintiff to "list the [residence] for sale

with [a particular real estate broker] for the sum of $1.25 million" and (2) directing the plaintiff to "instruct [the broker] that while the court requires the [residence] to be listed for the sum of $1.25 million, the court has ordered her to work with [the broker] to realize the maximum possible sales price."

In its July 26, 2022 decision, the court explained that the January, 2022 order "explicitly reflected [two] aspects" of statements that it had made on the record. First, in agreement with an argument that the plaintiff had raised, the court determined that the dissolution judgment required the residence to be listed for sale at its fair market value, which the court found to be $1.25 million. Second, in response to protests by the defendant that the residence was worth more than $1.25 million, the court opined that, if the defendant's representation were true, "then the current market conditions would prompt a bidding war in which 'you're going to get all kinds of bids of people who are going to compete to get [the residence] and it will sell for more than $1.25 million . . . .' "

Turning to the substance of the January, 2022 order, the court stated: "[The plaintiff could not] possibly have interpreted an order 'requiring the [residence] to be listed for $1.25 million' as not requiring the [residence] to be listed for $1.25 million. Yet she listed the [residence] for $1.6 million, later claiming that she interpreted this sentence as permitting it to be listed at a price other than $1.25 million. Against the backdrop of the discussion on the record and the express words of the court's order, [the plaintiff] could not in good faith have concluded that she was free to list the [residence] for whatever amount she wished above $1.25 million."

The plaintiff concedes that she listed the residence for sale "substantially above" the court-ordered price of $1.25 million. The plaintiff maintains, however, that

the January, 2022 order was not clear and unambiguous because it required both that the residence be (1) listed for sale for $1.25 million *and* (2) sold " 'for the highest possible dollar amount,' " such that the order reasonably could be interpreted as having permitted her to list the residence for a higher sale price in "a good faith effort to sell the [residence] at the optimal price . . . ." We are not persuaded. The January, 2022 order clearly and unambiguously directed that the listing price for the sale of the residence was to be set at $1.25 million. We do not agree with the plaintiff that the additional language concerning the sale of the residence " 'for the highest possible dollar amount' " can be reasonably construed to have authorized her to list the residence for sale at a price greater than $1.25 million. Reading the January, 2022 order in its entirety, we interpret the order, in plain terms, to mandate listing the residence for sale for $1.25 million while authorizing the sale of the residence, once listed for the required price, for the highest possible price.

Our conclusion is further bolstered by the court's additional orders entered in its April 7, 2022 decision concerning the sale of the residence, which additional orders were not addressed expressly by the court in its July 26, 2022 decision or analyzed by the parties in their respective appellate briefs. On April 7, 2022, the court issued additional orders requiring the plaintiff (1) by no later than April 21, 2022, to list the residence for sale with a particular real estate broker for $1.25 million and (2) to instruct the broker that, although the residence had to be listed for sale for $1.25 million per court order, she had been ordered by the court "to work with [the broker] to realize the maximum possible sales price . . . ." These additional orders tracked the January, 2022 order in (1) requiring the residence to be listed for sale for $1.25 million while (2) allowing the residence to be sold for the highest possible price. In

no uncertain terms, however, the court ordered that the residence's listing price be set at $1.25 million.

In sum, we conclude that the January, 2022 order was clear and unambiguous in ordering that the residence be listed for sale for $1.25 million. Accordingly, we reject the plaintiff's claim on cross appeal.

II

On direct appeal, the defendant claims that the trial court committed various errors in calculating his share of the proceeds from the sale of the residence. The defendant maintains that the court improperly (1) failed to allocate to the plaintiff the entirety of (a) closing costs incurred in connection with the sale and (b) post-dissolution mortgage principal payments made by the plaintiff, (2) failed to award him, and to credit him in calculating his share of the sale proceeds, $250,000 as a sanction for purported misconduct by the plaintiff, (3) reduced his share of the sale proceeds by $400,000 for the payment owed by him to the plaintiff pursuant to the 2016 stipulation, which amount, the defendant posits, should have been "[l]egal[ly] and equitabl[y] adjust[ed]" to $185,000, (4) failed to award him, and to credit him in calculating his share of the sale proceeds, attorney's fees that he purportedly incurred in connection with his April 25, 2022 motion for contempt, and (5) ordered him to pay the plaintiff $25,000 for postsecondary educational support, which the court deducted from his share of the sale proceeds. We agree only with the defendant's claim that the court improperly ordered him to pay $25,000 in postsecondary educational support.[9]

[9] The defendant also contends that his constitutional rights to due process and to equal protection under the law were violated during the proceedings before the trial court, primarily referencing adverse rulings and comments made by Judge Moukawsher. We construe these assertions, in substance, to advance the defendant's claim that the court improperly denied his motion to disqualify Judge Moukawsher, which decision, as the defendant expressly acknowledges in his principal appellate brief, is at issue on direct appeal.

The following additional facts and procedural history are relevant to our resolution of the defendant's claims. According to a closing summary document appended as an exhibit to the July 26, 2022 decision, (1) the plaintiff sold the residence for $1,671,000, which, after subtracting a tax adjustment afforded to the buyer, left $1,670,677.64 in available funds, and (2) the net sale proceeds were $1,445,246.59, after various sums totaling $225,431.05 were deducted, including closing costs and a lien payoff in the amount of $18,420.97.

The court calculated the parties' respective shares of the sale proceeds as follows. First, the court determined that the amount available for distribution totaled $1,422,268, calculated by taking the $1,445,246.59 in net sale proceeds and (1) adding back the $18,420.97 lien, for which the defendant was solely responsible pursuant to the 2016 stipulation,[10] and (2) subtracting postdissolution mortgage principal payments made by the plaintiff, totaling $41,399.56. After dividing the distribution amount into equal shares of $711,134, the court reduced the defendant's share, and simultaneously increased the plaintiff's share, by (1) $400,000, the amount owed by the defendant to the plaintiff pursuant to the 2016 stipulation, (2) $18,420.97, the amount of the lien for which the defendant was responsible,[11] and (3) $25,000, the amount of the defendant's obligation for postsecondary educational support ordered by the

In denying the motion to disqualify, the court determined that "[t]he motion turns on disagreeing with the court's opinions and reflects no basis the court need consider under Practice Book § 1-22." On the basis of our careful review of the available record, we conclude that the defendant's claim is without merit.

[10] Paragraph 12 of the 2016 stipulation provides: "The . . . lien . . . shall be the sole responsibility of the [d]efendant, to be paid from his distribution of the net equity [realized] from the sale of the [residence] per the [dissolution judgment]."

[11] The defendant does not dispute that the court properly deducted the amount of the lien from his share of the sale proceeds. See footnote 10 of this opinion.

court on April 7, 2022. In sum, the court awarded $1,154,554.97 to the plaintiff and $267,713.03 to the defendant.

Before turning to the defendant's claims, we set forth the governing standard of review. "[T]he standard of review in family matters is well settled. An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Footnote omitted; internal quotation marks omitted.) *K. D.* v. *D. D.*, 214 Conn. App. 821, 825–26, 282 A.3d 528 (2022).

Additionally, some of the defendant's claims require us to construe the 2016 stipulation and/or the dissolution judgment. "In domestic relations cases, [a] judgment rendered in accordance with . . . a stipulation of the parties is to be regarded and construed as a contract. . . . It is well established that [a] contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect

according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms. . . . Contract language is unambiguous when it has a definite and precise meaning . . . concerning which there is no reasonable basis for a difference of opinion . . . . In contrast, an agreement is ambiguous when its language is reasonably susceptible of more than one interpretation. . . . Nevertheless, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Internal quotation marks omitted.) *Wethington* v. *Wethington*, 223 Conn. App. 715, 730–31, 309 A.3d 356 (2024). With respect to the dissolution judgment, "[a]s a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole. . . . [W]e are mindful that an opinion must be read as a whole, without particular portions read in isolation, to discern the parameters of its holding." (Internal quotation marks omitted.) *Buchenholz* v. *Buchenholz*, 221 Conn. App. 132, 138, 300 A.3d 1233, cert. denied, 348 Conn. 928, 304 A.3d 860 (2023).

A

The defendant contends that the court impermissibly failed to allocate to the plaintiff the entirety of the closing costs and the $41,399.56 in postdissolution mortgage principal payments remitted by the plaintiff. The defendant asserts that the plaintiff, pursuant to the 2016

stipulation, assumed sole responsibility for these costs and payments. We disagree.

The dissolution judgment expressly delineated how certain amounts, including closing costs and the plaintiff's postdissolution mortgage principal payments, were to be taken into account when distributing the proceeds from the future sale of the residence. As the dissolution judgment ordered, "[a]t the closing of title regarding the sale of the . . . residence, the first mortgage, any broker's commissions and all normal closing costs shall be paid and the remaining proceeds shall be divided equally after a credit is paid to the [plaintiff] for the difference between the balance on the first mortgage on the date of the [dissolution judgment] and the balance of the mortgage on the date of the closing regarding the sale of the residence." The court's calculations reflect that it complied with this provision by accounting for the closing costs and the plaintiff's postdissolution mortgage principal payments before dividing the sale proceeds equally between the parties, subject to adjustments.

Relying on paragraphs 2, 5, and 7 of the 2016 stipulation, the defendant, in substance, asserts that the 2016 stipulation superseded the aforementioned language in the dissolution judgment such that the court should have allocated the closing costs and the plaintiff's postdissolution mortgage principal payments solely to the plaintiff. We do not agree with the defendant's interpretation of the 2016 stipulation.

We first turn to paragraph 5 of the 2016 stipulation, which provides that the plaintiff acknowledged that, subject to an exception that is inapplicable here, "[the] [d]efendant by virtue of the terms set forth hereinbefore, shall be deemed to have satisfied in full all financial obligations set forth in [the 2016] [s]tipulation and the [dissolution judgment], and [the] [d]efendant shall have

no further obligation to pay any sums to [the] [p]laintiff." We are not persuaded by the defendant's proposition that the language in the dissolution judgment concerning the distribution of the sale proceeds burdened the defendant with "financial obligations" requiring payment to the plaintiff. The language at issue in the dissolution judgment mandated the deduction of certain sums, including closing costs and the plaintiff's postdissolution mortgage principal payments, from the sale proceeds before the proceeds were divided between the parties. In our view, such deductions cannot be reasonably construed to be akin to "financial obligations" subject to payment by the defendant. Accordingly, the defendant's reliance on paragraph 5 is misplaced.

We next consider paragraph 2 of the 2016 stipulation, which provides that, "[i]n full satisfaction of [the] [p]laintiff's [December 15, 2015] [m]otion for [c]ontempt . . . and/or any financial claims of any nature whatsoever, the parties agree that the [d]efendant shall no longer be responsible to pay [the] [p]laintiff any future or past due contributions for or on behalf of the minor children for child support, childcare expenses, medical expenses, children's activities, real property taxes, legal fees, private school tuition, summer camps and/or automobile related expenses for the minor children, among others." That provision makes no mention of closing costs or mortgage payments. Moreover, as we concluded with respect to paragraph 5, the dissolution judgment's language concerning closing costs and mortgage payments did not create a financial obligation requiring payment by the defendant, ergo, there was no financial responsibility for such expenses from which the defendant could have been released pursuant to paragraph 2.

Last, the defendant relies on paragraph 7 of the 2016 stipulation, which provides: "All of the obligations by

the [p]laintiff in terms of necessary repairs, maintenance and payments of mortgage and real property taxes of the [residence] shall be in compliance with the terms of the [dissolution judgment]." This provision iterated the plaintiff's obligations pursuant to the dissolution judgment and made no changes to the dissolution judgment's language providing instructions as to the distribution of the sale proceeds.

In sum, we conclude that the court, in calculating the distribution of the sale proceeds, properly complied with the governing language in the dissolution judgment in accounting for the closing costs and the plaintiff's mortgage principal payments. Accordingly, the defendant's claim fails.

B

The defendant next claims that the court improperly failed (1) to award him $250,000 in sanctions against the plaintiff for "overall procedural misconduct" and (2) to make "[l]egal and equitable adjustments" to reduce, from $400,000 to $185,000, the payment that he owed to the plaintiff pursuant to the 2016 stipulation, which amounts, the defendant contends, should have been credited to his share of the sale proceeds. We are not persuaded.

In its July 26, 2022 decision, the court stated the following with respect to the defendant's damages stemming from the finding of contempt against the plaintiff: "[The defendant] argues that [the plaintiff] was caught in her own trap. [The defendant] says [that the plaintiff] originally schemed to deflate the sales price of the [residence] as low as possible while inflating the reductions in [the defendant's] share of the proceeds as high as possible. This, [the defendant] claims, would have allowed [the plaintiff] to argue that the court could simply transfer [the defendant's] share to [the plaintiff] rather than list the [residence] for sale. [The defendant]

contends that this would have been a great windfall to [the plaintiff]. He believes the [residence] was worth $1.8 million and that [the plaintiff] intended to cheat him out of the difference between $1.8 million and $1.25 million, or $550,000. [The defendant] proposes equitable adjustments to the closing proceeds that effectively [would] reopen [the] parties' prior agreement and adjust them to reflect his view of how they should have been handled.

"The trouble is that this is a motion for contempt. [The plaintiff's] counsel sought quite expressly to make that quite clear, and with every opportunity to say otherwise, [the defendant] agreed that it was a motion for contempt concerning the higher listing price. This has implications. As our Appellate Court made clear in 2008 in *Edmond* v. *Foisey*, [111 Conn. App. 760, 769–70, 961 A.2d 441 (2008)], for this kind of contempt, the court has the power to order the party in contempt to pay the party not in contempt for losses caused by the disobedience.

"The disobedience here is [the plaintiff] listing the [residence] for $1.6 million when the court ordered her to list it for $1.25 million. If [the plaintiff] had obeyed the court's order, [the defendant] would have lost money. He gained money by her disobedience, so there is no direct link between her actions and any loss on [the defendant's] part.

"[The defendant] claims the court should see this disobedience as a component of the larger scheme he alleges did damage him and asks the court to equitably readjust the closing proceeds to reflect the harm he claims the scheme caused. He claims the [residence] was worth $1.8 million. Maybe he's right. But 'maybe' isn't enough in court, and it more clearly isn't enough when a party is asking the court to cause an opposing party to forfeit thousands of dollars as a consequence.

"[The defendant] bases his claim on his own opinion supported by his claim that a . . . Realtor recommended a $1.8 million listing price. He also points to various Zillow[12] listings. But those listings came into evidence because [the plaintiff] agreed to them coming in, and they came in because some of the information in them specifically supported her view, not his. [The defendant] is asking for an enormous consequence and bases this consequence on ground not firm enough to support it.

"Besides, if [the defendant] is correct, [the plaintiff's] plan backfired. If [the defendant] has lost thousands of dollars from a deflated sales price, so has [the plaintiff]. While [the defendant] complains about [the plaintiff's] maneuvering over the appraisal and her plan to gain possession of the [residence] without paying him anything, that effort failed. Perhaps if [the defendant] had offered expert testimony at the time the court valued the [residence] for sale it might have convinced the court that the [residence] was worth $1.8 million, and the court would have ordered a higher listing price. Based on the actual sales price [of $1,671,000], the court knows that original number [of $1.25 million] was wrong, but the court still can't say the [residence] would have sold for $1.8 million with enough conviction to base a sanction on it.

"In any case, the court remains convinced that it must measure the sanction by what [the defendant] lost because [the plaintiff] listed the [residence] for sale at

[12] "'Zillow is an online real estate marketplace website that offers comprehensive real estate market data, including estimated values of real property.' *Wahba* v. *JPMorgan Chase Bank, N.A.*, 349 Conn. 483, 490 n.3, 316 A.3d 338 (2024); see also *San Diego* v. *Invitation Homes, Inc.*, Docket No. 22-cv-260-L (MDD), 2023 WL 35217, *1 n.2 (S.D. Cal. January 3, 2023) (Zillow 'hosts a database of homes for sale, homes for rent, and homes not currently on the market as well as home value and rent estimates, among other home-related information')." *Mulvihill* v. *Spinnato*, 228 Conn. App. 781, 783–84 n.5, 326 A.3d 251, cert. denied, 350 Conn. 926, 326 A.3d 248 (2024).

a higher price than directed. It does not have the power to address the larger scheme [the defendant] claims. The loss is thus zero. Therefore, the court cannot award him anything based upon the failure to obey. . . .

"[The defendant's] requests are based on a mistakenly expansive view of the court's power. The court may be sitting in equity, but it is bound by the rules set by the upper courts on how to measure a sanction for contempt. [The defendant] also mistakenly believes that [the plaintiff's] effort to acquire the [residence] free of his claims is more worthy of censure than it is. Experts today usually aren't impartial, but [the defendant] hasn't proven that the appraisal at issue was the product of fraud. He suspects that [the plaintiff's] lawyer suggested they were looking for a low appraisal, but he hasn't proved anything other than that the appraisal was wrong. And even if the court thought what he claimed was possible, it doesn't make it probable, and it doesn't make it clearly and convincingly true—the standard by which courts find fraud. [The defendant's] evidence is not strong enough to support the relief he wants even if it were permissible." (Footnote added; footnote omitted.)

As an initial matter, it is pertinent that the court's finding of contempt against the plaintiff was predicated on the plaintiff having listed the residence for sale for $1.6 million, rather than for $1.25 million as ordered by the court. As the court aptly determined, "[i]f [the plaintiff] had obeyed the court's order, [the defendant] would have lost money. He gained money by her disobedience, so there is no direct link between her actions and any loss on [the defendant's] part." Without any financial losses suffered by the defendant as a result of the plaintiff's contempt, the court properly declined to impose the sanctions or make the "[l]egal and equita-

ble adjustments" proposed by the defendant.[13] See *Medeiros* v. *Medeiros*, 175 Conn. App. 174, 203, 167 A.3d 967 (2017) ("Judicial sanctions in civil contempt proceedings may, in a proper case, be employed . . . to compensate the complainant for losses sustained. . . . Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of [the] complainant's actual loss . . . . Civil contempt proceedings are not punitive—i.e., they are not imposed for the purpose of vindicating the court's authority—but are purely remedial.

[13] The defendant also maintains that the plaintiff should have been sanctioned for making several "false denials" in a January, 2022 response to a request for admission propounded by the defendant. See Practice Book § 13-25 ("If a party fails to admit the genuineness of any document or the truth of any matter as requested herein, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, such party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The judicial authority shall make the order unless it finds that such failure to admit was reasonable."); see also *White Sands Beach Assn., Inc.* v. *Bombaci*, 287 Conn. 302, 306 n.6, 950 A.2d 489 (2008) ("Section 13-25, by its terms, contemplates that motions to assess costs be considered and decided postjudgment. . . . Until the trial court determines what facts have been proven true or what documents have been shown to be genuine, any argument that a party wrongfully has refused to admit their truth or genuineness necessarily is premature." (Citation omitted.)). Although the defendant raised this claim in the trial court, the court made no findings as to whether (1) the plaintiff failed to admit to matters demonstrated by the defendant to be true or (2) any such failures were reasonable. In the defendant's motion to reargue, which the court summarily denied, the defendant argued that the court failed to address the purported false denials committed by the plaintiff. In his principal appellate brief, the defendant makes an isolated statement that the court failed to "address the issue of the plaintiff's overall procedural misconduct"; however, we do not construe this standalone statement to constitute a cognizable claim that the court erred in not addressing the defendant's § 13-25 claim. Insofar as the defendant has raised a cognizable claim in this regard, it is inadequately briefed and, therefore, we deem it to be abandoned. See *McNamara* v. *McNamara*, 207 Conn. App. 849, 868, 263 A.3d 899 (2021). Without findings made by the court pursuant to § 13-25 or a proper claim of error raised by the defendant with respect to the lack of such findings, we reject the defendant's reliance on § 13-25.

. . . [I]t is well settled . . . that the court may, in a proceeding for civil contempt, impose the remedial punishment of a fine payable to an aggrieved litigant as compensation for the special damages he may have sustained by reason of the contumacious conduct of the offender. . . . [S]uch a compensatory fine must necessarily be limited to the actual damages suffered by the injured party as a result of the violation . . . .'' (Emphasis omitted; internal quotation marks omitted.)); *Edmond* v. *Foisey*, supra, 111 Conn. App. 769 (''[s]anctions for civil contempt may be either a fine or imprisonment; the fine may be remedial or it may be the means of coercing compliance with the court's order and compensating the complainant for losses sustained'' (internal quotation marks omitted)).

Assuming that the sanctions and ''[l]egal and equitable adjustments'' sought by the defendant were legally viable, from what we can reasonably glean from the defendant's appellate briefs, at the core of his requests for such sanctions and adjustments was his contention that the plaintiff engaged in a ''criminal plot to defraud him'' by failing to cooperate with him, beginning in early 2021, in order to attempt to sell the residence for $1.8 million, the valuation that he proposed. The court determined, however, that the defendant failed to offer adequate evidence supporting that valuation. In its January 31, 2022 decision, the court determined that the defendant ''presented only his opinion . . . based on his knowledge of the area and most of all on what he claim[ed] a real estate broker told him. But he didn't give enough information about the former and the court can't consider what a nontestifying broker had to say.'' In its April 7, 2022 decision regarding the sale of the residence, in discussing its prior determination that the residence's fair market value was $1.25 million, the court stated that it had an ''obligation to set that fair market value in accord with the expert evidence rather

than to accept hearsay evidence or [the defendant's] opinion based on inadequate sales data." In its July 26, 2022 decision, the court further stated that "[the defendant] bases his claim on his own opinion supported by his claim that a . . . Realtor recommended a $1.8 million listing price. He also points to various Zillow listings, [which came into evidence without objection and which] came in because some of the information in them specifically supported [the plaintiff's view], not [the defendant's]. [The defendant] is asking for an enormous consequence and bases this consequence on ground not firm enough to support it. . . . Perhaps if [the defendant] had offered expert testimony at the time the court valued the [residence] for sale it might have convinced the court that the [residence] was worth $1.8 million, and the court would have ordered a higher listing price. Based on the actual sales price, the court knows that the original number was wrong, but the court still can't say the [residence] would have sold for $1.8 million with enough conviction to base a sanction on it."

The available record supports the court's determination that the defendant did not present sufficient evidence to support his $1.8 million valuation of the residence. First, we note that the defendant did not order transcripts of the underlying proceedings, whereas the plaintiff ordered one transcript of a June 17, 2022 hearing. The June 17, 2022 transcript does not reflect testimony concerning the defendant's $1.8 million valuation of the residence. Insofar as testimony was elicited during other proceedings before the court supporting the defendant's valuation, the defendant has failed to provide us with an adequate record of the same.[14] See

[14] The defendant makes a couple of fleeting references to the court "refus[ing]" to subpoena a real estate broker to testify in support of the $1.8 million valuation. On January 19, 2022, the defendant filed a motion requesting that, if deemed necessary, the court issue a subpoena for a certain broker to appear and to testify. The trial court file does not reflect a ruling by the court on that motion. In his motion to disqualify Judge Moukawsher, as

Practice Book § 61-10 (a) ("It is the responsibility of the appellant to provide an adequate record for review. The appellant shall determine whether the entire record is complete, correct and otherwise perfected for presentation on appeal.").

Additionally, the available record reflects that the only exhibits offered by the defendant, and admitted in full by the court, addressing his $1.8 million valuation during the underlying proceedings comprised correspondence in which the defendant personally attributed that valuation to the residence. It was well within the court's discretion to reject the defendant's proposed valuation predicated solely on the defendant's own opinion. See *Seder* v. *Errato*, 211 Conn. App. 167, 180, 272 A.3d 252 ("[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" (internal quotation marks omitted)), cert. denied, 343 Conn. 917, 274 A.3d 868 (2022). Insofar as the defendant relied on other documents to support his valuation of $1.8 million, the

well as in his motion to reargue, the defendant represented that the court stated on the record that the subpoena was " 'not necessary.' " (Emphasis omitted.) The defendant's representations of what occurred on the record, however, are not a permissible substitute for transcripts of the proceedings before the court. To the extent that the court addressed the defendant's January 19, 2022 motion on the record, the defendant has not provided us with the relevant transcript(s), leaving us to speculate as to the court's disposition of that motion. See Practice Book § 61-10 (a).

Additionally, in a "motion for order postjudgment" filed by the defendant on February 28, 2022, the defendant requested, among other things, that the court (1) order an updated market valuation of the residence and (2) issue a subpoena for the broker to testify. The court summarily denied the motion on the same day. The defendant does not expressly address this ruling in his appellate briefs. Thus, insofar as the defendant claims error with respect to the court's February 28, 2022 ruling vis-à-vis the issuance of a subpoena for the broker, the defendant has failed to adequately brief that claim, thereby abandoning it. See *McNamara* v. *McNamara*, 207 Conn. App. 849, 868, 263 A.3d 899 (2021).

available record reflects that no such documents were admitted into the record.[15]

In short, having failed to adduce adequate evidence that the fair market value of the residence was $1.8 million, the defendant's contention that the court improperly failed to award him sanctions and other "[l]egal and equitable adjustments" stemming from the plaintiff's purported misconduct in failing to pursue a sale of the residence for $1.8 million is untenable.[16]

In sum, we conclude that the court did not commit error in declining (1) to award the defendant, and to credit him in calculating his share of the sale proceeds, $250,000 as sanctions against the plaintiff and (2) to adjust the defendant's $400,000 financial obligation to the plaintiff pursuant to the 2016 stipulation to $185,000.

C

The defendant also contends that the court improperly failed to award him, and to credit him in calculating

[15] During the proceeding on June 17, 2022, the defendant offered into evidence a screenshot of a Zillow listing, which was represented as being dated June 2, 2022, reflecting that the residence had an estimated market value of $1,775,400; however, the court reserved judgment as to its admission and, ultimately, never admitted it as a full exhibit. Separately, the court admitted in full an exhibit offered by the defendant reflecting a Zillow listing indicating that the residence (1) had been listed for sale for $1.6 million on April 19, 2022, (2) had been listed on Zillow for eight days, and (3) had a current estimated market value of $1,637,300.

[16] The defendant also asserts that the plaintiff violated the 2016 stipulation by, inter alia, failing to engage in coparenting, thereby warranting the relief that he requests. The court made no findings in its July 26, 2022 decision concerning the plaintiff's alleged noncompliance with the 2016 stipulation. Thus, we lack any pertinent findings to review in connection with this assertion. Additionally, we note that the defendant's claims previously were considered, and rejected, by the court. In 2017, the defendant filed a motion for contempt claiming that the plaintiff, inter alia, refused to engage in coparenting in accordance with the dissolution judgment and the 2016 stipulation. On March 2, 2018, the court, *Heller*, *J.*, rejected those claims and denied the defendant's motion for contempt. The defendant appealed from that judgment, which this court affirmed. See *Margarita O.* v. *Fernando I.*, 187 Conn. App. 902, 200 A.3d 226, cert. denied, 331 Conn. 908, 203 A.3d 569, cert. denied, U.S. , 140 S. Ct. 80, 205 L. Ed. 2d 28 (2019).

his share of the sale proceeds, attorney's fees that he purports to have incurred in connection with his April 25, 2022 motion for contempt. This claim warrants little discussion.

In its July 26, 2022 decision, the court determined that the defendant was not entitled to attorney's fees in connection with his April 25, 2022 contempt motion, stating: "If [the defendant] had paid [attorney's fees] or owed any, the court might consider [awarding him attorney's fees]. But he owes nothing and has paid nothing. He hasn't been represented by an attorney—even one working for free—so the court can't order fees to be paid."

The defendant maintains that, although he is a self-represented party in the present action, he is an attorney licensed to practice law outside of Connecticut and, therefore, is entitled to recover attorney's fees. The defendant cites no legal authority to support this proposition. Moreover, our precedent demonstrates that, pursuant to Connecticut law, self-represented attorney litigants are barred from recovering attorney's fees. See *Jones* v. *Ippoliti*, 52 Conn. App. 199, 212, 727 A.2d 713 (1999) (plaintiffs, who were partners in law firm, could not recover attorney's fees for services provided by law firm because any representation by law firm "would have been of a pro se nature" and, under Connecticut law, "pro se litigants are not entitled to attorney's fees"); see also *Rosenthal Law Firm, LLC* v. *Cohen*, 190 Conn. App. 284, 294, 210 A.3d 579 (2019) ("[this] court's conclusion [in *Jones*] that self-represented attorney litigants cannot recover attorney's fees constitutes an alternative holding, not dictum"). Thus, we reject the defendant's claim.

D

Last, the defendant claims that the court improperly ordered him to pay the plaintiff $25,000 in postsecondary educational support, which the court deducted from

his share of the sale proceeds. The defendant maintains that, pursuant to the clear and unambiguous terms of the 2016 stipulation, the court lacked jurisdiction to order postsecondary educational support in light of the disparity between the parties' incomes and financial means. In contrast, the plaintiff argues that the 2016 stipulation was clear and unambiguous in authorizing the court to retain jurisdiction over postsecondary educational support even when the parties did not have comparable incomes and financial means. For the reasons that follow, we conclude that the court erred in requiring the defendant to pay the plaintiff $25,000 in postsecondary educational support.[17]

In the dissolution judgment, pursuant to § 46b-56c, the court expressly retained jurisdiction over postsecondary educational support for the parties' three children. In the 2016 stipulation, as approved by the court, the parties agreed to terms implicating, and constraining, the court's retention of jurisdiction over postsecondary educational support. Paragraph 5 of the 2016 stipulation

[17] In discussing the propriety of the court's award of postsecondary educational support to the plaintiff, the parties, as well as the court, refer to the court's "jurisdiction" to enter such an award pursuant to § 46b-56c. Although § 46b-56c does not contain the word "jurisdiction," our case law has described the nature of the court's powers under § 46b-56c in terms of jurisdiction. See, e.g., *Leonova* v. *Leonov*, 201 Conn. App. 285, 308, 242 A.3d 713 (2020) ("[b]ecause the statutory scheme anticipates that a dissolution may occur in advance of the time postsecondary educational decisions appropriately can be made, it provides a mechanism for the court *to retain jurisdiction* for the purpose of ordering educational support for adult children" (emphasis added)), cert. denied, 336 Conn. 906, 244 A.3d 146 (2021). As it does not affect the outcome of the issue before us, we leave for another day the question of whether an award of postsecondary educational support entered pursuant to § 46b-56c implicates the court's jurisdiction or its statutory authority to act. See *Amodio* v. *Amodio*, 247 Conn. 724, 727–30, 724 A.2d 1084 (1999) (addressing distinction between trial court's " 'jurisdiction' " and its " 'authority to act' " under particular statute). Nevertheless, because the parties and the court refer to the court's "jurisdiction," we use the same term for sake of ease, without attaching the significance that that word typically suggests.

provides: "*Subject to the proviso per* [*paragraph*] *10* . . . [the] [p]laintiff hereby acknowledges that [the] [d]efendant by virtue of the terms set forth hereinbefore, shall be deemed to have satisfied in full all financial obligations set forth in [the 2016] [s]tipulation and the [dissolution judgment], and [the] [d]efendant shall have no further obligation to pay any sums to [the] [p]laintiff." (Emphasis added.) Paragraph 10 provides: "The parties agree that if the [d]efendant were to have income as well as financial and patrimonial means comparable to the [p]laintiff, the [d]efendant will assume his equal share of the [postsecondary] educational expenses of their children paid by the [p]laintiff. [Subject] to the prior, if the [d]efendant were not to pay for those expenses, the [c]ourt shall retain jurisdiction over said issue pursuant to [§ 46b-56c] for all of the three . . . children of the marriage."

In its January 31, 2022 decision, in addressing the parties' dispute regarding the issue of postsecondary educational support, the court first observed that, for purposes of paragraph 10 of the 2016 stipulation, the parties did not contest that they did not have "comparable income[s]." The court then observed that the parties proposed conflicting interpretations of paragraph 10, with (1) the defendant arguing that he had no liability for postsecondary educational support under the provision and (2) the plaintiff contending that, pursuant to the provision, the court retained jurisdiction to determine the parties' respective obligations for such support. The court determined that both parties presented reasonable interpretations of paragraph 10 and, thereafter, permitted them to submit evidence as to the meaning of that ambiguous provision. After examining the language of paragraph 10 and the evidence admitted into the record, the court concluded that it retained jurisdiction regarding postsecondary educational support pursuant to the 2016 stipulation, with the court citing a

certain email in the record as "support[ing] the conclusion that the parties treated education as a separate topic" and "plainly reflect[ing] that [the defendant] expected to deal with college expenses again in the future." The court subsequently ordered the defendant to pay the plaintiff $25,000 in postsecondary educational support, which the court deducted from the defendant's share of the sale proceeds.

We disagree with the court's conclusion that paragraph 10 of the 2016 stipulation was ambiguous vis-à-vis the court's jurisdiction to entertain postsecondary educational support. Turning first to paragraph 5, that provision expressly states that, "[s]ubject to" the terms of paragraph 10, the defendant "shall be deemed to have satisfied in full all financial obligations set forth in [the 2016] [s]tipulation and the [dissolution judgment], and [the] [d]efendant shall have no further obligation to pay any sums to [the] [p]laintiff." Paragraph 10, in turn, sets forth the limited circumstances pursuant to which the defendant would remain liable for his financial obligations to the plaintiff. Specifically, paragraph 10 provides that (1) the defendant would "assume his equal share of the [postsecondary] educational expenses of [the parties'] children" that the plaintiff paid "if the [d]efendant were to have income as well as financial and patrimonial means comparable to the [p]laintiff," and (2) "[subject] to the prior, if the [d]efendant were not to pay for those expenses, the [c]ourt shall retain jurisdiction over said issue pursuant to [§ 46b-56c] . . . ."

We construe paragraph 10, in clear and unambiguous terms, to authorize the court to retain jurisdiction over postsecondary education support *only if* (1) the parties had comparable incomes, as well as "financial and patrimonial means," thereby triggering the defendant's obligation to share the cost of the children's postsecondary educational expenses, and (2) the defendant failed to

satisfy that obligation thereafter. Indeed, the second sentence in paragraph 10 begins with the clause "[subject] to the prior," which plainly references the preceding sentence describing the defendant's obligation to pay an equal share for postsecondary educational support only when, among other things, the parties' incomes were "comparable . . . ." Moreover, the second sentence in paragraph 10 provides that the court would retain jurisdiction over postsecondary educational support "if the defendant were not to pay for *those expenses* . . . ." (Emphasis added.) The phrase "those expenses" unequivocally refers to the expenses described in the preceding sentence, namely, postsecondary educational expenses for which the defendant would be liable in the event that, inter alia, the parties' incomes were "comparable . . . ." Put another way, pursuant to the 2016 stipulation, if the parties did not have "comparable incomes," and, consequently, the defendant was not obligated to pay an equal share of the children's postsecondary educational expenses, no dispute could arise as to the defendant's nonexistent support obligation, leaving the court with nothing over which to exercise its jurisdiction as to postsecondary educational support.

In the present case, as the court found, the parties agreed that their respective incomes were not comparable. Without that necessary factual predicate, we conclude that, pursuant to the clear and unambiguous terms of the 2016 stipulation, which limited the scope of the court's retention of jurisdiction over postsecondary educational support in the dissolution judgment, the court lacked jurisdiction to consider the issue of postsecondary educational support and to order the defendant to pay such support.[18] It necessarily follows that

[18] In light of our conclusion that the 2016 stipulation was clear and unambiguous with respect to the court's jurisdiction over postsecondary educational support, we need not address the court's conclusion construing the 2016 stipulation on the basis of extrinsic evidence. See *Murchison* v. *Waterbury*, 218 Conn. App. 396, 413, 291 A.3d 1073 (2023) ("[e]xtrinsic evidence

the court improperly reduced the defendant's share of the sale proceeds by $25,000 in postsecondary educational support.

The judgment is reversed only with respect to the award to the plaintiff of $25,000 in postsecondary educational support and the case is remanded with direction to vacate the portion of the July 26, 2022 distribution order reducing the defendant's share of the proceeds from the sale of the parties' marital residence by $25,000 for postsecondary educational support; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

DHATI COLEMAN *v.* COMMISSIONER OF CORRECTION (AC 46627)

Bright, C. J., and Westbrook and Eveleigh, Js.*

Syllabus

The petitioner, who had been convicted of possession of narcotics with intent to sell, appealed, on the granting of certification, from the habeas court's judgment dismissing his petition for a writ of habeas corpus. The petitioner claimed that the court improperly concluded that it lacked subject matter jurisdiction because he was not in the custody of the respondent, the Commissioner of Correction, when he filed his petition one month after completing the conditional discharge portion of his sentence while in federal custody on unrelated charges. *Held*:

The habeas court properly dismissed the petition for lack of subject matter jurisdiction, as the petitioner's period of conditional discharge had commenced by operation of law pursuant to statute (§ 53a-31 (a)) when he completed the incarceration portion of his sentence while in federal custody, and, despite his claim that the period of conditional discharge never commenced pursuant to § 53a-31 (a) because he remained continuously in either federal or state custody since his arrest on the narcotics charge, this court

---

may be considered in determining contractual intent *only if* a contract is ambiguous" (emphasis added; internal quotation marks omitted)).

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

concluded that "imprisonment" in § 53a-31 (a) unambiguously referred only to state imprisonment and did not encompass federal imprisonment.

Argued September 12, 2024—officially released March 11, 2025

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Bhatt, J.*, rendered judgment dismissing the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

Judie Marshall, assigned counsel, for the appellant (petitioner).

Alexander A. Kambanis, deputy assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, and *Craig P. Nowak*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

BRIGHT, C. J. The petitioner, Dhati Coleman, appeals, following the granting of his petition for certification to appeal, from the judgment of the habeas court dismissing his petition for a writ of habeas corpus for lack of subject matter jurisdiction. On appeal, the petitioner claims that the court improperly concluded that he was not in custody as a result of the conviction that he sought to challenge when the petition was filed. We disagree and, accordingly, affirm the judgment of the habeas court.

The following facts, either as found by the habeas court or as undisputed in the record, and procedural history are relevant to our resolution of this appeal. On September 9, 2014, the petitioner was arrested in New Haven and charged with possession of narcotics with intent to sell. The petitioner entered the custody of the respondent, the Commissioner of Correction, on September 10, 2014. On October 15, 2014, while incar-

cerated, the petitioner was arrested for a pending escape charge in Hartford pursuant to a warrant. On December 4, 2014, he pleaded guilty to escape in the first degree in Hartford (Hartford conviction) and was sentenced to serve one year of incarceration, execution suspended after six months, followed by one day of conditional discharge. On December 23, 2014, the petitioner pleaded guilty pursuant to the *Alford* doctrine[1] to the possession of narcotics charge in New Haven (New Haven conviction) and was sentenced to serve seven years of incarceration, execution suspended after two years, followed by three years of conditional discharge. The sentence was ordered to run concurrently with his sentence on the Hartford conviction.

On September 25, 2015, the petitioner was indicted on federal charges and transferred to federal custody, where he continued to serve his sentence on the New Haven conviction. In January, 2016, the petitioner pleaded guilty in the federal case,[2] and he was "discharged from [the respondent's] custody on November 10, 2016, having satisfied the incarceration portions of his [state] sentences." On December 29, 2016, a federal court sentenced the petitioner to thirty-two months of incarceration to be served consecutively to his New Haven conviction.[3]

[1] "A defendant who pleads guilty under the *Alford* doctrine does not admit guilt but acknowledges that the state's evidence against him is so strong that he is prepared to accept entry of a guilty plea. See generally *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)." *Love* v. *Commissioner of Correction*, 223 Conn. App. 658, 663 n.3, 308 A.3d 1040, cert. denied, 348 Conn. 958, 310 A.3d 960 (2024).

[2] "That indictment, handed up in the United States District Court for the District of Maine, charged him with the knowing and intentional distribution of a controlled substance." *United States* v. *Coleman*, 884 F.3d 67, 70 (1st Cir. 2018).

[3] The federal court "gave effect to an amended sentencing stipulation entered into between the parties, which authorized a time-served credit of [twenty-three] months (referable to the [petitioner's] Connecticut conviction) for a sentence served on relevant conduct." (Internal quotation marks omitted.) *United States* v. *Coleman*, 884 F.3d 67, 70–71 (1st Cir. 2018).

On August 30, 2017, the petitioner was returned to Connecticut pursuant to the Interstate Agreement on Detainers, General Statutes § 54-186 et seq., to resolve pending state charges against him.[4] *State* v. *Coleman*, 199 Conn. App. 172, 176, 235 A.3d 655, cert. denied, 335 Conn. 966, 240 A.3d 281 (2020). On June 1, 2018, the defendant resolved the outstanding state charges by entering conditional pleas of nolo contendere to assault in the first degree, robbery in the first degree, and criminal possession of a firearm. Id., 178. On August 9, 2018, the court imposed "a total effective sentence of nine years [of] incarceration, followed by five years of special parole, and ordered that [the petitioner] receive credit for jail time he had served since August 30, 2017, the date that he was returned to Connecticut to face the charges in [that] case." Id., 179. The petitioner was returned to federal custody, and he completed his federal sentence on March 8, 2019.

On December 18, 2019, the petitioner filed the underlying habeas petition challenging his New Haven conviction. In the operative amended petition dated December 20, 2022, the petitioner alleged that his counsel provided ineffective assistance in connection with his *Alford* plea. The respondent filed a return and asserted as a special defense that the petitioner had waived any claims of ineffective assistance of counsel arising from his plea deal. The petitioner filed a reply denying the respondent's special defense of waiver, and the matter proceeded to trial.

[4] "The purpose of the [Interstate Agreement on Detainers] is to establish a cooperative procedure for disposition of charges against a prisoner in one state who is wanted to respond to untried criminal charges in another state. . . . [It] is activated when the state seeking the prisoner (the receiving state) files written notice that he is wanted to answer charges in that state. This notice, referred to as a detainer, is simply a notification filed with the institution in which the prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." (Citation omitted; internal quotation marks omitted.) *State* v. *Smith*, 57 Conn. App. 478, 481–82, 749 A.2d 67 (2000).

At the start of the trial, the habeas court questioned whether it had jurisdiction to consider the petition because it appeared that the petitioner was not in custody as a result of the New Haven conviction. The court provided the parties an opportunity to file briefs addressing the jurisdictional issue, though only the petitioner filed a brief on the issue. The petitioner argued that, because he had remained continuously in either state or federal custody since he was arrested on September 9, 2014, his period of conditional discharge arising from the New Haven conviction never commenced within the meaning of General Statutes § 53a-31 (a), and, therefore, he still was in custody on that conviction.

The court was not persuaded and dismissed the petition for lack of subject matter jurisdiction. In its memorandum of decision, the court began its analysis with the text of § 53a-31 (a), which provides in relevant part that "[a] period of probation or conditional discharge commences on the day it is imposed, unless the defendant is imprisoned, in which case it commences on the day the defendant is released from such imprisonment. . . ." The court noted that, pursuant to General Statutes § 18-84,[5] "inmate" and "prisoner" include "any person in the custody of the" respondent and that "correctional institution," "state prison," "community correctional center" or "jail" mean "a correctional facility administered by the" respondent. General Statutes § 1-1 (w).[6] The court then briefly reviewed the relevant case law regarding § 53a-31 (a), from which the court distilled that, "in

[5] General Statutes § 18-84 provides: "The terms 'inmate' and 'prisoner', as used in this title and sections 54-125 to 54-129, inclusive, and 54-131, include any person in the custody of the Commissioner of Correction or confined in any institution or facility of the Department of Correction until released from such custody or control, including any person on parole."

[6] General Statutes § 1-1 (w) provides that " 'Correctional institution', 'state prison', 'community correctional center' or 'jail' means a correctional facility administered by the Commissioner of Correction."

order for a period of probation or conditional discharge to commence, the person must no longer be under the supervision or control of [the respondent] either by being in a Connecticut jail or on parole."

On the basis of the foregoing analysis, the court determined that the petitioner "was no longer serving any Connecticut sentence—and thus no longer subject to the custody and control of [the department]—from November 10, 2016. As of that day, he was 'released from *such* imprisonment' and deemed to have satisfied the incarceration portion of any sentence he was serving. After that day, [the respondent] did not have any authority over [the petitioner] until he reentered [the respondent's] custody on November 1, 2017. However, that means that the period of conditional discharge legally began to run on November 10, 2016. Given our case law, it was not tolled or stopped when [the petitioner] reentered [the respondent's] custody in 2017. It continued to run until it expired three years later on or about November 10, 2019. He was not charged with a violation of conditional discharge. Thus, the conditional discharge was satisfied and expired on or about November 10, 2019. The petition was filed on December 18, 2019, a month after [the petitioner] discharged the [New Haven] sentence in its entirety. Thus, he was not in 'custody' for jurisdictional purposes. The petition must, therefore, be dismissed." (Emphasis in original.) The habeas court granted the petitioner's petition for certification to appeal, and this appeal followed.

On appeal, the petitioner claims that the court misconstrued § 53a-31 (a) in concluding that his period of conditional discharge commenced while he remained imprisoned on a federal conviction. The petitioner argues that, because he has been imprisoned continuously since his arrest in September, 2014, he was never "released from such imprisonment" and, therefore, his

period of conditional discharge never commenced pursuant to § 53a-31. We are not persuaded.

We begin our analysis with the relevant legal principles regarding a habeas court's jurisdiction and the applicable standard of review. "General Statutes § 52-466 (a) (1) provides in relevant part that '[a]n application for a writ of habeas corpus . . . shall be made to the superior court, or to a judge thereof, for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of such person's liberty.' It is well established that, for a court to have jurisdiction to entertain a habeas petition seeking to challenge the legality of a criminal conviction, the petitioner must be in the custody of the respondent *as the result of that conviction* at the time that the petition is filed." (Emphasis in original.) *Goguen* v. *Commissioner of Correction*, 341 Conn. 508, 528, 267 A.3d 831 (2021). Both our Supreme Court and this court "consistently [have] construed the custody requirement in § 52-466 to require a petitioner [to] be in custody on the conviction under attack at the time the habeas petition is filed, and that the collateral consequences of an expired conviction, such as deportation, are insufficient to render a petitioner in custody within the meaning of the statute." (Footnote omitted; internal quotation marks omitted.) *Jobe* v. *Commissioner of Correction*, 334 Conn. 636, 653, 224 A.3d 147 (2020); see also *Richardson* v. *Commissioner of Correction*, 298 Conn. 690, 698, 6 A.3d 52 (2010); *McCarthy* v. *Commissioner of Correction*, 274 Conn. 557, 562–63, 877 A.2d 758 (2005); *Lebron* v. *Commissioner of Correction*, 274 Conn. 507, 530–31, 876 A.2d 1178 (2005), overruled in part on other grounds by *State* v. *Elson*, 311 Conn. 726, 91 A.3d 862 (2014); *Foote* v. *Commissioner of Correction*, 170 Conn. App. 747, 754–55, 155 A.3d 823, cert. denied, 325 Conn. 902, 155 A.3d 1271 (2017); *Fernandez* v. *Commissioner of Correction*, 139 Conn. App. 173, 179–80, 55 A.3d 588

(2012), cert. granted, 307 Conn. 947, 60 A.3d 960 (2013) (appeal withdrawn May 28, 2013).

"[W]hether the petitioner is in custody for purposes of a habeas petition implicates the habeas court's subject matter jurisdiction." *Pentland* v. *Commissioner of Correction*, 200 Conn. App. 296, 302, 238 A.3d 778, cert. denied, 335 Conn. 973, 241 A.3d 129 (2020). A determination regarding a habeas court's subject matter jurisdiction is a question of law over which we exercise plenary review. See id. In the present case, to determine whether the petitioner was in custody on the New Haven conviction at the time he filed the underlying habeas petition, we must determine whether the habeas court properly interpreted § 53a-31 (a), which also is subject to our plenary review. See *Felder* v. *Commissioner of Correction*, 348 Conn. 396, 405, 306 A.3d 1061 (2024) (construction of statute subject to plenary review).

Pursuant to General Statutes § 1-2z, "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." Accordingly, "we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction. . . . In addition, because [i]t is a basic tenet of statutory construction that the legislature [does] not enact meaningless provisions, we must construe [§ 53a-31 (a)] if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Citation omitted; internal quotation marks omitted.) *State* v. *B.B.*, 300 Conn. 748, 757, 17 A.3d 30 (2011). "Only if we determine that the statute is not plain and unambiguous or yields absurd or unworkable results

may we consider extratextual evidence of its meaning such as the legislative history and circumstances surrounding its enactment . . . [and] the legislative policy it was designed to implement . . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . In determining whether the plain language of [a statute] leads to an absurd or unworkable result, we are limited to considering its plain language and its relationship to other statutes." (Citations omitted; internal quotation marks omitted.) *State* v. *Barnes*, 227 Conn. App. 760, 765, 323 A.3d 1166, cert. denied, 350 Conn. 922, 325 A.3d 1093 (2024).

"In construing § [53a-31 (a)], we do not write on a clean slate, but are bound by our previous judicial interpretations of this language and the purpose of the statute." (Internal quotation marks omitted.) *Boardwalk Realty Associates, LLC* v. *M & S Gateway Associates, LLC*, 340 Conn. 115, 126, 263 A.3d 87 (2021); see also *State* v. *Lopez*, 341 Conn. 793, 802, 268 A.3d 67 (2022) ("[w]e have previously construed the meaning of the [statutory] phrase . . . and are guided by that precedent"). "[A]though we draw on case law interpreting § [53a-31 (a)] that predates the enactment of § 1-2z, we still apply § 1-2z to the extent that those cases do not fully resolve the issues presented in this appeal." *Kasica* v. *Columbia*, 309 Conn. 85, 94 n.10, 70 A.3d 1 (2013).

We previously have concluded that "released from such imprisonment" in § 53a-31 (a) "includes physical release from custody . . . and that probation commences by operation of law on the date of the actual release from imprisonment." *State* v. *McFarland*, 36 Conn. App. 440, 448, 651 A.2d 285 (1994), cert. denied, 232 Conn. 916, 655 A.2d 259 (1995). In so concluding, we explained that "neither the judicial system nor the [D]epartment of [C]orrection has an affirmative duty to inform the defendant when probation commences

because the termination of custody provides the demarcation between service of a sentence and the beginning of a probation period." Id., 446. In *State* v. *Strickland*, 39 Conn. App. 722, 728, 667 A.2d 1282 (1995), cert. denied, 235 Conn. 941, 669 A.2d 577 (1996), we further concluded "that once a period of probation has commenced, there is no statutory authority to suspend or toll that probation. A court may, however, allow a defendant's probation to continue during a period of incarceration for separate charges or may revoke probation if warranted. Id., 728–29. A person, therefore, can be in prison and on probation at the same time." *State* v. *Moore*, 85 Conn. App. 7, 11–12, 855 A.2d 1006, cert. denied, 271 Conn. 937, 861 A.2d 510 (2004).

In *State* v. *Outlaw*, 60 Conn. App. 515, 760 A.2d 140 (2000), aff'd, 256 Conn. 408, 772 A.2d 1122 (2001), "the defendant's sentence of probation . . . was attached to a period of incarceration that was to be executed before probation commenced. Id., 517. While [he] was serving his initial period of imprisonment, he was convicted of various prison offenses, the sentences for which were to run consecutively to the original sentence. Id., 518." (Footnote omitted.) *State* v. *Moore*, supra, 85 Conn. App. 12. This court determined that, because "unrelated consecutive sentences were imposed on the defendant *before* he completed the incarceration portion of his [original] sentence," his probation did not commence until he completed those additional periods of incarceration. (Emphasis in original.) *State* v. *Outlaw*, supra, 523. We explained that, "[a]lthough probation may continue during a period of incarceration, it does not commence pursuant to § 53a-31 (a) unless the defendant is released from imprisonment." Id., 523–24.

We subsequently concluded that a period of probation must be "attached to a period of related incarceration" in *State* v. *Moore*, supra, 85 Conn. App. 12. In that

case, the defendant was serving a one year sentence on a drug conviction when he pleaded guilty to a charge of burglary in the third degree. Id., 9. The court "sentenced the defendant to three years [of] imprisonment, execution suspended, with two years of probation" and stayed the commencement of the defendant's probation "until he was released from the one year sentence of imprisonment on the drug conviction." Id. After the defendant completed the one year sentence, he was arrested twice for drug possession, and the court found that, by virtue of those arrests, he had violated his probation. Id., 9–10. The court sentenced the defendant to serve a portion of his three year suspended sentence, and the defendant appealed, claiming that "§ 53a-31 (a) mandates that a period of probation commence on the day the sentence is imposed and allows probation to be stayed only until the completion of incarceration for the same crime to which the probation applies." Id., 10. The state, in contrast, argued that, "pursuant to [this court's] holding in *State* v. *Outlaw*, [supra, 60 Conn. App. 515], a court may order a sentence of probation to commence after a defendant is released from prison." *State* v. *Moore*, supra, 12. This court agreed with the defendant in *Moore*, finding that *Outlaw* was distinguishable from *Moore* "because the defendant's sentence of probation in [*Outlaw*] was attached to a period of incarceration that was to be executed before probation commenced"; id.; whereas the defendant's term of probation in *Moore* "was not attached to a period of related incarceration." Id. Thus, we held that the sentencing court in *Moore* "misapplied § 53a-31 (a) when it attempted to stay [the defendant's] probation." Id., 13.

At the time these cases were decided, § 53a-31 (a) provided in relevant part that "[a] period of probation or conditional discharge commences on the day it is imposed, *except that, where it is preceded by a sentence of imprisonment with execution suspended after a*

period of imprisonment set by the court, it commences on the day the defendant is released from such imprisonment. . . .'' (Emphasis added.) General Statutes (Rev. to 1993) § 53a-31 (a). In 2015, the legislature amended this subsection. See Public Acts 2015, No. 15-211, § 1 (P.A. 15-211). Following that amendment, § 53a-31 (a) now provides that ''[a] period of probation or conditional discharge commences on the day it is imposed, *unless the defendant is imprisoned, in which case it commences on the day the defendant is released from such imprisonment*. . . .'' (Emphasis added.) Although P.A. 15-211 abrogated our holding in *State* v. *Moore*, supra, 85 Conn. App. 12, by eliminating the requirement that the period of probation or conditional discharge be preceded by a sentence of imprisonment set by the court, it did not alter our precedent regarding the meaning of ''released'' in § 53a-31 (a).

Indeed, following P.A. 15-211, we reaffirmed our holdings in both *State* v. *Outlaw*, supra, 60 Conn. App. 523, and *State* v. *McFarland*, supra, 36 Conn. App. 448. See *State* v. *Galberth*, 175 Conn. App. 789, 170 A.3d 132 (2017). In *Galberth*, we explained that whether additional, unrelated sentences are ordered to run concurrently or consecutively to a defendant's original sentence ''is not pertinent'' to determining when a period of probation commences under § 53a-31 (a) because ''[t]his court's analyses in *Outlaw* and *McFarland* indicate that whether the defendant is in the custody of the [respondent] is the key consideration in determining whether the defendant has been released for the purposes of § 53a-31 (a).'' Id., 798 n.7.

Although this precedent involves the commencement of probation under § 53a-31 (a),[7] we conclude, and the

[7] The most salient difference between the alternative dispositions is that a defendant who is serving a period of conditional discharge is subject to no supervision; whereas a defendant who is serving a period of probation is subject to supervision by the Office of Adult Probation. See General Statutes § 53a-29 (b) (''[t]he court may impose a sentence of conditional

parties agree, that the same principles apply to the commencement of a period of conditional discharge, which is addressed in tandem with probation throughout the relevant statutes. See General Statutes §§ 53a-28 through 53a-32. The parties disagree, however, as to whether "imprisoned" and "imprisonment" in § 53a-31 (a) include *federal* imprisonment.

The petitioner contends that, although our precedent "deals with additional periods of confinement in Connecticut, the reasoning nevertheless applies to the present case where the petitioner was confined federally." He argues that § 53a-31 "provides appropriate context for interpretation of the phrase 'released from such imprisonment.' The statute refers to release from imprisonment. It does not refer to release from the custody of the [respondent], nor does it specify the Department of Correction, which would presumably refer to a Connecticut sentence. . . . It would have made specific reference to Connecticut custody had it intended for the statute to reference only a Connecticut period of incarceration."

Conversely, the respondent argues that, "[a]lthough § 53a-31 (a) does not explicitly limit 'imprisoned' to mean imprisonment as part of a sentence imposed by a Connecticut court, this limitation must be presumed" in accordance with our Supreme Court's holding in *Felder* v. *Commissioner of Correction*, supra, 348 Conn. 396, in which the court reasoned that, "[b]ecause state legislatures regulate state processes, we presume, particularly within a statutory scheme that governs how courts of this state handle habeas procedures, that, when the legislature refers to certain procedures, it is speaking about state procedures." (Emphasis omitted.) Id., 407. The respondent argues that, "[b]y extension,

discharge for an offense . . . if it is of the opinion that . . . *probation supervision is not appropriate*" (emphasis added)).

because our General Assembly is tasked solely with regulating Connecticut law, which includes defining crimes within the state of Connecticut and assigning certain corresponding punishments for said crimes, 'unless the defendant is imprisoned' as used in § 53a-31 (a) presumptively refers to imprisonment imposed by a Connecticut sentencing court." (Footnote omitted.)

In his reply brief, the petitioner argues that "*Felder* provides guidance for . . . whether a federal [habeas] petition constitutes a prior petition within the context of General Statutes § 52-470 to toll the statute of limitations for filing state habeas corpus petitions. The issue in this case can be distinguished, since it has nothing to do with the narrow issue of tolling a filing deadline. . . . While the legislature may be referring to state [habeas corpus] procedures in the context of that case, the statute at issue [in *Felder*] is entirely different from the statute here. Further, the statute here refers neither to a state [n]or a foreign period of incarceration; presumably, the legislature would have specified if it had intended that meaning." (Citations omitted.) Notwithstanding the differences between the statutory schemes for habeas corpus and sentencing in criminal cases, we find the reasoning in *Felder* instructive and conclude that imprisonment under § 53a-31 (a) unambiguously refers only to state imprisonment.

In *Felder* v. *Commissioner of Correction*, supra, 348 Conn. 401, the petitioner was convicted of larceny in 2004, and the judgment denying his first state habeas petition challenging that conviction became final on May 9, 2012. "Pursuant to § 52-470 (d), the petitioner had until October 1, 2014, to file a second state habeas petition challenging the same conviction before the rebuttable presumption of untimeliness applied." Id. The petitioner filed a federal habeas petition challenging his 2004 conviction on April 30, 2012, which was denied, and the federal judgment became final on June

1, 2015. Id. In May, 2017, the petitioner filed a second state habeas petition challenging the same conviction, and the habeas court issued an order to show cause for the delay in filing the second petition after the October 14, 2014 deadline. Id., 402. At the ensuing evidentiary hearing, "[t]he petitioner's counsel argued that § 52-470 (d) does not expressly limit 'prior petition challenging the same conviction' to state habeas petitions, and, therefore, the phrase includes both prior state habeas petitions and prior federal habeas petitions challenging the same conviction." (Emphasis omitted.) Id., 403. "The habeas court dismissed the second state habeas petition, concluding that the presumption of unreasonable delay applied because the petitioner's interpretation of § 52-470 was inconsistent with the plain and unambiguous language of the statute. The court also found that the petitioner had not established good cause to excuse the untimely second state habeas petition." Id., 404.

Upon the granting of certification, the petitioner appealed to this court, "which affirmed the judgment of the habeas court. . . . [We] concluded that the phrase 'prior petition' does not include federal habeas petitions . . . . On appeal to [our Supreme Court], the petitioner claim[ed] that [this court] erred in concluding that . . . a federal habeas petition is not a 'prior petition' as contemplated by § 52-470 (d) . . . ." (Citations omitted.) Id. He argued that "the unambiguous language of the statute" demonstrated that "prior petition" included both state and federal habeas petitions "because, if the legislature had intended to refer only to state habeas petitions, it would have more precisely stated so." Id., 404–405. Our Supreme Court disagreed, concluding that " 'prior petition' unambiguously refers only to prior state habeas petitions." Id., 405.

In so concluding, the court acknowledged that § 52-470 (d) does not specify whether it "refers solely to

state habeas petitions"; id., 406; but it also observed "that silence does not necessarily equate to ambiguity." (Internal quotation marks omitted.) Id. Accordingly, in accordance with § 1-2z, the court examined the "challenged statutory language, not in isolation, but in relation to the text and statutes surrounding it." Id. The court reasoned that "[t]he meaning of the term 'prior petition' is elucidated by examining the text of § 52-470 generally, as well as the statute's placement within the General Statutes. The statute is contained within title 52, which governs civil actions brought in state court, and specifically within chapter 915, which establishes the procedural framework that applies to habeas petitions in our state courts. Chapter 915 contains the requirements a petitioner must follow when filing a state habeas petition, including where it must be filed and what it must include. . . . This chapter also mandates the procedures for Superior Court judges to follow when certifying habeas petitions. . . . Finally, the chapter defines the circumstances that demand the summary disposal of a habeas petition and the procedures that our courts must employ to do so. . . .

"In each section of chapter 915, the legislature does not make explicit that it is referring solely to state habeas applications, proceedings, or petitions. Because state legislatures regulate state processes, we presume, particularly within a statutory scheme that governs how courts of this state handle habeas procedures, that, when the legislature refers to certain procedures, it is speaking about state procedures. Indeed, when the legislature intends to reference a federal procedure, it does so explicitly, or the context would necessarily imply it. . . . Thus, the statutory reference to 'application,' 'proceedings,' or 'petition' is a reference to a state habeas application, state habeas proceedings, or a state habeas petition.

"This is underscored by the language of § 52-466, which specifies that the application must be made to the Connecticut Superior Court. . . . Superior courts have jurisdiction over only state habeas petitions, whereas federal courts have jurisdiction over federal habeas petitions involving state judgments. . . . Additionally, in the provisions of chapter 915, the legislature provides the process by which judges of the Superior Court must handle habeas petitions filed in our state courts. The entire statutory scheme in which § 52-470 is placed deals exclusively with state habeas petitions. If the legislature had intended any portion of that statute to address federal habeas petitions, it would have specifically stated so, or the context would necessarily imply it. . . .

"In addition to its relationship with the general statutory scheme, it is also helpful to look to other subsections of § 52-470. . . . Section 52-470 contains several other references to 'petition,' each time indisputably referencing only state habeas petitions. . . . In each of these examples, the legislature has dictated the procedures for, and the treatment of, a 'petition' filed and adjudicated in the Superior Court. Because the legislature is empowered to dictate neither the procedures for federal habeas petitions nor when a federal court must dismiss a petition, it cannot be credibly maintained that these other references to 'petition' encompass federal habeas petitions. Reading the statute within the context of chapter 915 of the General Statutes and giving identical meaning to identical terms, we thus understand 'prior petition' in § 52-470 (d) to unambiguously refer only to state habeas petitions." (Citations omitted; emphasis omitted.) *Felder* v. *Commissioner of Correction*, supra, 348 Conn. 406–409.

The petitioner's attempts to distinguish the present case from *Felder* are unavailing. First, the fact that § 52-470 (d) concerns the tolling of a filing deadline, whereas

§ 53a-31 (a) does not, is a distinction without a difference, as the tolling of a filing deadline had no bearing on the court's reasoning in *Felder*. Second, although the petitioner contends that § 52-470 (d) "is entirely different from" § 53a-31 (a), he ignores the evident similarity between the statutes. That is, just as § 52-470 (d) does not specify whether it refers solely to state habeas petitions, § 53a-31 (a) also does not specify whether it refers solely to state imprisonment. Thus, as our Supreme Court concluded with regard to § 52-470 (d) in *Felder*, although § 53a-31 (a) does not expressly refer to *state* imprisonment, this silence does not render the statute ambiguous; instead, the meaning of "imprisonment" is "elucidated by examining the text of § [53a-31] generally, as well as the statute's placement within the General Statutes." *Felder* v. *Commissioner of Correction*, supra, 348 Conn. 406.

Section 53a-31 (a) is codified in title 53a, the state Penal Code, in part II of chapter 952, which establishes the sentencing procedures for Connecticut courts and designates the authorized sentences that judges of the Superior Court may impose on defendants convicted of Connecticut offenses. Pursuant to § 53a-28 (a), "every person convicted of an offense shall be sentenced in accordance with this title." Section 53a-28 (b) sets forth the authorized sentences, which include "[a] term of imprisonment; or . . . a term of imprisonment, with the execution of such sentence of imprisonment suspended, entirely or after a period set by the court, and a period of probation or a period of conditional discharge . . . ." General Statutes § 53a-29 (b) provides that "[t]he court may impose a sentence of conditional discharge for an offense . . . if it is of the opinion that: (1) Present or extended institutional confinement of the defendant is not necessary for the protection of the public; and (2) probation supervision is not appropriate." General Statutes § 53a-30 (a) sets forth various

conditions that a court may order a defendant to comply with when imposing a sentence of probation or conditional discharge. Pursuant to General Statutes § 53a-38 (b), "[a] definite sentence of imprisonment commences when the prisoner is received in the custody to which he was sentenced." Section 53a-38 (d), in turn, provides that, "[w]hen a person who is serving a sentence of imprisonment escapes, the escape shall interrupt the sentence and such interruption shall continue until the return of such person to the custody of the Commissioner of Correction."

These statutes, although referencing the custody of the respondent, do not expressly reference state imprisonment or state court in every instance. Notwithstanding that legislative silence, however, we presume that the legislature is speaking about state procedures in the part of our state Penal Code that establishes the authorized sentences and sentencing procedures for our state courts. "Indeed, when the legislature intends to reference a federal procedure, it does so explicitly, or the context would necessarily imply it." *Felder* v. *Commissioner of Correction*, supra, 348 Conn. 407. In addition to examples of express statutory references to federal procedures cited in *Felder*,[8] the legislature also has referenced expressly "federal offenses" and "federal correctional institution" in title 53a. See, e.g., General Statutes § 53a-40 (a) (defining persistent dangerous felony offender as person who, among other

[8] "See, e.g., General Statutes § 3-10b (a) ('[t]he Governor is authorized to request the head of any *federal* department administering a grant-in-aid program under any *federal* law' . . .); General Statutes § 17b-3 (b) ('[t]he commissioner may enter into contracts with the *federal* government concerning the use and repayment of such funds under any such *federal* act' . . .); General Statutes § 17b-105f (a) ('[t]he program shall provide for the receipt of *federal* matching funds . . . for employment and training activities that qualify for such matching funds under *federal* law and regulations' . . .)." (Emphasis in original.) *Felder* v. *Commissioner of Correction*, supra, 348 Conn. 407.

things, has been convicted of certain crimes and "*imprisoned* [for] more than one year . . . *in this state or in any other state or in a federal correctional institution*" (emphasis added)); General Statutes § 53a-46a (i) (setting forth aggravating factors for imposition of sentence for capital felony committed prior to April 25, 2012, including that "the defendant committed the offense after having been convicted of two or more state offenses or two or more *federal offenses*" (emphasis added)). These express references to imprisonment "in a federal correctional institution" and "federal offenses" demonstrate that the legislature knows how to convey its intent to include federal imprisonment. See *William W. Backus Hospital* v. *Stonington*, 349 Conn. 713, 726, 321 A.3d 1117 (2024) ("[i]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so" (internal quotation marks omitted)). Consequently, if the legislature intended to include federal imprisonment within the ambit of § 53a-31 (a), it would have stated that intention expressly, as it does in other sections of title 53a.

As to the other subsections of § 53a-31, subsection (d) provides in relevant part that, "[i]n any case where a person who is under a sentence of probation or of conditional discharge is also under an indeterminate sentence of imprisonment . . . imposed for some other offense *by a court of this state*, the service of the sentence of imprisonment shall satisfy the sentence of probation or of conditional discharge . . . ." (Emphasis added.) The petitioner emphasizes that the legislature expressly references state imprisonment in subsection (d)[9] and argues that, because "[t]he legislature did

[9] We note that subsection (d) of § 53a-31 applies only to a defendant serving an *indeterminate* sentence, which our legislature abolished in favor of definite sentencing in 1980. See *Mead* v. *Commissioner of Correction*, 282 Conn. 317, 325, 920 A.2d 301 (2007) (observing that No. 80-442 of the 1980 Public Acts "comprehensively revised this state's sentencing structure

not make such a specification with respect to the phrase 'released from [such] imprisonment' [in § 53a-31 (a)], we must presume that it would have done so if that was its intent." We are not persuaded that the juxtaposition of the reference to "by a court of this state" in subsection (d) of § 53a-31 with the omission of such a limitation in subsection (a) supports the petitioner's interpretation.

To be sure, "[w]hen a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed." (Internal quotation marks omitted.) *William W. Backus Hospital* v. *Stonington*, supra, 349 Conn. 726–27; see also *Felder* v. *Commissioner of Correction*, supra, 348 Conn. 408 ("[i]t is a fundamental principle of our jurisprudence that [a]n identical term used in [statutory provisions] pertaining to the same subject matter should not be read to have differing meanings unless there is some indication from the legislature that it intended such a result" (internal quotation marks omitted)). Nevertheless, the petitioner's interpretation ignores the express references to federal imprisonment and federal offenses in §§ 53a-40 (a) and 53a-46a (i). Indeed, neither of those statutes employs the "inclusion by omission" structure advanced by the petitioner in the present case. Instead, the legislature expressly included the phrases "in a federal correctional institution" and "federal offenses" to bring federal matters within the ambit of our state statutes. See General Statutes § 53a-40 (a); General Statutes § 53a-46a (i). The omission of such an express reference to

by abolishing indeterminate sentencing and creating definite sentencing"); see also General Statutes § 53a-35a ("[f]or any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence"). Under the indeterminate sentencing scheme in existence when § 53a-31 (d) was enacted, a determinate sentence of imprisonment was limited to one year or less.

federal imprisonment in § 53a-31 (a) is more significant than the omission of an express reference to state imprisonment because references to federal procedures in our state statutes are the exception—not the rule. Thus, in the absence of an express reference to federal imprisonment in our state Penal Code, we presume that the legislature is referring to state imprisonment only. See *Felder* v. *Commissioner of Correction*, supra, 407.[10]

In sum, the habeas court properly interpreted the phrase "such imprisonment" in § 53a-31 (a) in determining that the petitioner's conditional discharge commenced by operation of law on November 10, 2016, when he completed the incarceration portions of his state sentences. As a result, in November, 2019, the petitioner had completed his period of conditional discharge and thus was not in custody on the New Haven

[10] To the extent that the reference to "a court of this state" in § 53a-31 (d) creates any ambiguity as to the meaning of "imprisonment" in § 53a-31 (a), our conclusion that § 53a-31 (a) refers only to state imprisonment is bolstered by the limited legislative history regarding § 53a-31 (a). As previously noted in this opinion, subsection (a) was amended pursuant to P.A. 15-211. In written testimony in support of P.A. 15-211, the Division of Criminal Justice (division) explained that the bill was "one of the [d]ivision's 2015 [l]egislative [r]ecommendations and [was] the result of [its] ongoing review of criminal statutes conducted with input from prosecutors and other [d]ivision employees throughout the [s]tate." Conn. Joint Standing Committee Hearings, Judiciary, Pt. 9, 2015 Sess., p. 4952. As to the specific change to subsection (a), the division explained that the amendment "addresses the issue raised by [this court] in *State* v. *Moore*, [supra, 85 Conn. App. 7] and clarifies that when a court imposes a sentence that includes a period of incarceration and a period of probation the probation does not begin until the individual has completed his or her incarceration. Since the purpose of probation is to provide supervision in the community, a period of probation should not be allowed to be substantially reduced or run out entirely when the probationer is in custody of the [respondent]." (Emphasis added.) Conn. Joint Standing Committee Hearings, supra. Thus, the only meaningful discussion of subsection (a) in the legislative history reinforces this court's prior interpretation of § 53a-31 (a), which provides that "whether the defendant is in the custody of the [respondent] is the key consideration in determining whether the defendant has been released for the purposes of § 53a-31 (a)." *State* v. *Galberth*, supra, 175 Conn. App. 798 n.7.

conviction when he filed the underlying habeas petition in December, 2019. Therefore, the court properly dismissed the habeas petition for lack of subject matter jurisdiction.

The judgment is affirmed.

In this opinion the other judges concurred.

CZESLAW LUKASIK *v.* KAROLINA KOPINSKA
(AC 46578)

Moll, Westbrook and Bear, Js.

Syllabus

The plaintiff father appealed from the judgment of the trial court, which had awarded him joint legal and physical custody of the parties' minor child, with respect to its award of child support. The plaintiff claimed, inter alia, that the court's child support award was arbitrary and not in accordance with the state child support guidelines (§ 46b-215a-1 et seq.) because the court's application of the deviation criteria set forth in the applicable state regulation (§ 46b-215a-5c (b)) was improper. *Held*:

The trial court improperly deviated from the child support guidelines in its award of child support, as it failed to provide an explanation as to why the presumptive amount of child support as determined under the guidelines was inequitable or inappropriate and why a deviation was necessary to meet the needs of the minor child, and, accordingly, the judgment was reversed with respect to the child support order and the case was remanded for further proceedings.

The trial court improperly deviated from the child support guidelines on the basis of the coordination of total family support criterion in § 46b-215a-5c (b) because, in the present case, the parties were never married, and, accordingly, there was no alimony or division of property addressed in the court's decision.

The trial court improperly used the best interest of the minor child and the disparity of the parties' incomes as bases for its deviation from the presumptive amount of child support in the child support guidelines, as it failed to provide any reasons why a deviation on these bases was necessary to meet the needs of the minor child.

Argued September 19, 2024—officially released March 11, 2025

Procedural History

Application for custody of the parties' minor child, and for other relief, brought to the Superior Court in the judicial district of Danbury and tried to the court, *Hon. Heidi G. Winslow*, judge trial referee; judgment granting joint legal and physical custody of the minor child to the parties and issuing certain orders, from which the plaintiff appealed to this court. *Reversed in part*; *further proceedings*.

Alexander Copp, with whom was *Neil R. Marcus*, for the appellant (plaintiff).

Christopher P. Norris, for the appellee (defendant).

Opinion

BEAR, J. The plaintiff, Czeslaw Lukasik, appeals from the judgment rendered by the trial court in this child custody action filed against the defendant, Karolina Kopinska. On appeal, the plaintiff claims that (1) the court abused its discretion by failing to make a specific finding of the presumptive child support amount before applying the deviation criteria, and (2) its child support award of $600 per week was arbitrary and not in accordance with the child support guidelines (guidelines). We agree with the plaintiff's second claim and conclude that the court improperly deviated from the guidelines. Accordingly, we reverse the judgment with respect to the order of child support and remand the case for further proceedings on that issue. We affirm the judgment in all other respects.

The following facts and procedural history are necessary for our resolution of the plaintiff's appeal. The plaintiff and the defendant, who never were married, became parents to a son in December, 2015. After living together for several years, the plaintiff filed the present action seeking joint legal custody of the parties' child

on January 19, 2022.[1] He requested that the primary residence of the child be with him and sought an order regarding a parental physical access schedule and visitation. The plaintiff also sought a parenting responsibility plan for the parental decision-making regarding the child and an order of child support. On the same day, the plaintiff filed an application for an emergency ex parte order of custody, in which he requested an order directing the defendant not to remove the child from Connecticut. In his affidavit in support of the application, the plaintiff averred that the defendant had planned to take the child to live in her studio apartment in New York City and also "threatened to take the . . . child to Florida." The plaintiff further averred: "The [defendant] keeps threatening to take my son away from me and I believe she and her mother are making plans to take him against his and my will, so I am afraid to say anything to her." The court denied the plaintiff's application for an emergency ex parte order of custody. The parties subsequently agreed that the child would continue to reside in Brookfield until they reached an additional written agreement or any change by order of the court. The parties' agreement was approved and made an order of the court on February 14, 2022.

The court, *Hon. Heidi G. Winslow*, judge trial referee, held a trial on May 25, 2023, to resolve the issues of custody and child support. At this proceeding, both parties testified. Additionally, each party submitted two worksheets regarding child support. The plaintiff stated

[1] In his child custody application, the plaintiff identified Connecticut as the home state of the child at the time of the filing of the child custody action and further indicated that the child had lived in Connecticut for the past six months, that the child and at least one parent had a significant connection to Connecticut, that there was substantial evidence in Connecticut concerning the child's present or future care, protection, training, and personal relationships, that no other state had an interest in this case, and that it was in the best interest of the child for a Connecticut court to hear the case. The court subsequently found these statements to be true.

that he owned and managed various properties. He further testified that he had purchased a house in Brookfield that he offered as a residence to the defendant rent free for one year, so that the child could remain in the same school and community. The plaintiff claimed that, if he were to rent this property, which he owned outright, he would receive $2500 per month. The defendant testified that she did not accept this offer due to her concerns about the plaintiff setting up surveillance cameras and the resulting lack of privacy.

Following the presentation of evidence, the court issued an oral decision. At the outset, it noted that the parties had lived together for seven years, including for eighteen months following the commencement of the child custody action. The court ordered that the parties would have joint legal custody of the child and that the defendant would have the "final say . . . in the areas of medical, dental, and health issues." It further ordered the parties to share physical custody[2] of the child as follows: "The plaintiff will have physical custody of the child every Thursday, Friday, and Saturday. . . . The defendant will have physical custody of the child every Sunday, Monday, and Tuesday. The parties will alternate Wednesdays with the drop-off at school and the pickup from school." It further stated that the child would continue to attend school in Brookfield until such a time that neither parent lived there or further order of the court.

As to the matter of child support, the court ordered the plaintiff to pay $600 per week, which constituted a deviation from the guidelines. This deviation was based

[2] Section 46b-215a-1 (23) of the Regulations of Connecticut State Agencies provides: " 'Shared physical custody' means a situation in which the physical residence of the child is shared by the parents in a manner that ensures the child has substantially equal time and contact with both parents. An exactly equal sharing of physical care and control of the child is not required for a finding of shared physical custody."

on the coordination of total family resources, the best interest of the child, and the extraordinary disparity between the parties' incomes. Payment of child support was to commence the following day.[3] This appeal followed. Additional facts will be set forth as necessary.

On appeal, the plaintiff claims that the court abused its discretion by failing to make a specific finding of the presumptive support amount[4] before applying the deviation criteria[5] and that its child support award of $600 per week was arbitrary and not in accordance with the guidelines. With respect to the former, he specifically contends that the "court never made a finding regarding the presumptive amount; it merely recited the gross incomes of the parties as set forth on the plaintiff's worksheet." As to the latter, the plaintiff argues, inter alia,[6] that the court improperly based its support award on his offer to provide housing to the defendant for a period of one year, improperly applied the deviation criteria, and failed to support this deviation on the basis of the needs of the child. The defendant counters that the court indicated that it was relying on

[3] On July 19, 2023, the court noted that it had reviewed the judgment file drafted by the clerk and determined it to be correct as ordered.

[4] Section 46b-215a-1 (21) of the Regulations of Connecticut State Agencies provides: " 'Presumptive support amounts' means the child support award components calculated under sections 46b-215a-2c and 46b-215-3a of the Regulations of Connecticut State Agencies, prior to consideration of the deviation criteria specific in section 46b-215a-5c of the Regulations of Connecticut State Agencies."

[5] Section 46b-215a-1 (10) of the Regulations of Connecticut State Agencies provides: " 'Deviation criteria' means those facts or circumstances specified in section 46b-215a-5c of the Regulations of Connecticut State Agencies, which may justify an order different from the presumptive support amounts."

[6] The plaintiff further contends that the court improperly awarded child support that was "grossly excessive," failed to impute income to the defendant, and failed to calculate her earning capacity. The defendant counters that the record is inadequate to reach the issue of earning capacity, as the plaintiff failed to seek an articulation with respect to that issue. On the basis of our resolution of this appeal, we need not address the parties' arguments regarding these issues.

a specific guidelines worksheet, which contained the net income of the parties and, therefore, the "record is clear as to which guidelines the court was utilizing."[7] She further disagrees with the plaintiff's arguments regarding the basis and amount of the deviation. We agree with the plaintiff that the court's award of child support that deviated from the presumptive amount was improper.

"As a preliminary matter, we note the well settled standard of review applicable in domestic relations cases. [T]his court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts. . . . [T]he foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . *With respect to child support, however, the parameters of the court's discretion have been somewhat limited by the factors set forth in the child support guidelines*." (Citation omitted; emphasis added; internal quotation marks omitted.) *Battistotti* v. *Suzanne A.*, 182 Conn. App. 40, 44, 188 A.3d 798, cert. denied, 330 Conn. 904, 191 A.3d 1000 (2018); see also *Pencheva-Hasse* v. *Hasse*, 221 Conn.

[7] The defendant asserts that this appeal should be "dismissed" because the plaintiff failed to raise the issues presented in his appellate brief to the trial court in a postjudgment motion. We disagree. Putting aside that dismissal would be not the appropriate procedural outcome for such a failure, in his proposed orders, the plaintiff requested that he pay child support in accordance with the guidelines, whereas the defendant sought any amount of support from the plaintiff that constituted an upward deviation from the guidelines. Moreover, the parties submitted guidelines worksheets listing varying amounts of support. We disagree, therefore, with the defendant's contention that the plaintiff raised the issue of the determination of the child support for the first time on appeal.

App. 113, 121–22, 300 A.3d 1175 (2023); *Gentile* v. *Carneiro*, 107 Conn. App. 630, 636, 946 A.2d 871 (2008). "The question of whether, and to what extent, the child support guidelines apply, however, is a question of law over which this court . . . exercise[s] plenary review." (Internal quotation marks omitted.) *Dowling* v. *Szymczak*, 309 Conn. 390, 399, 72 A.3d 1 (2013).

The following additional facts are necessary for the resolution of this appeal. As a precursor to its consideration of the issue of child support, the court expressed its concern regarding "controlling behaviors by [the plaintiff]. He has a hard time convincing me that placing cameras throughout the house is anything other than a controlling behavior as to [the defendant]. Trying to set up her home in the near vicinity that he owns is on the one hand generous, on the other hand controlling." It then stated: "So, what will happen is that the court, when I get to the parenting schedule of this, will be deviating from the child support guidelines so that, instead of providing a home that's worth whatever—$2600 a month—[the plaintiff] will provide the equivalent of that in child support so that [the defendant] can find a place of her own to live in a comparable price. He can then happily rent out that house and make up that loss so all will be satisfactory."

The court subsequently explained: "The plaintiff has a house in Brookfield [that is] apparently in move-in condition at this point that could be rented at [$2500], $2600 a month, which is sitting there to accommodate his desire to have the defendant move into that house. She may still choose to do so and pay him $2600 a month—whatever—but she deserves the independent decision-making on that . . . ."

The court then ordered the plaintiff to pay $600 per week to the defendant as child support. It further observed that this award constituted a "clear deviation

from the guidelines" and was the equivalent of $2600 per month. It then stated: "The court believes that . . . the guidelines reflect the incomes as reported by the parties, today—and I'm referring to the guidelines submitted by the plaintiff in this action, which place the obligation of the plaintiff at $221 per week and that of the defendant at $66 per week." The court noted that the parties appeared to minimize their current income and resources on their financial affidavits. It continued as follows: "However, for the purposes of these proceedings, I'm accepting the numbers that I stated as far as the guidelines are concerned, and those are the income numbers that will prevail for purposes of future examination of child support should it become necessary to reexamine her income of $400 a week and his income of $1759 per week. *The deviation is based on the coordination of the total family resources as well as the best interests of the parties' child and the extraordinary disparity between the parties' incomes.*' [8] (Emphasis added.)

We begin our analysis with the observation that "[t]he fundamental purpose of child support . . . is to provide for the care and well-being of minor children . . . ." (Internal quotation marks omitted.) *Blondeau* v. *Baltierra*, 337 Conn. 127, 172, 252 A.3d 317 (2020); see also *Tomlinson* v. *Tomlinson*, 305 Conn. 539, 555, 46 A.3d 112 (2012); *LeSueur* v. *LeSueur*, 186 Conn. App. 431, 464, 199 A.3d 1082 (2018). Connecticut courts have been cautioned to avoid wealth transfers or disguised alimony when awarding child support. *Flood* v. *Flood*,

[8] We note that the court, in its oral decision, did not specifically find that applying the presumptive amount of child support would be inequitable or inappropriate under the circumstances. See, e.g., *Tuckman* v. *Tuckman*, 308 Conn. 194, 208, 61 A.3d 449 (2013); *Moore* v. *Moore*, 216 Conn. App. 179, 193–96, 283 A.3d 994 (2022); *Righi* v. *Righi*, 172 Conn. App. 427, 434–41, 160 A.3d 1094 (2017). The judgment file, which the court subsequently reviewed and signed, did explicitly contain this necessary finding.

199 Conn. App. 67, 85, 234 A.3d 1076, cert. denied, 335 Conn. 960, 239 A.3d 317 (2020).

Next, we turn to the child support guidelines, which are based on an income share model, which requires an accurate and complete determination of the parties' respective incomes. *Kirwan* v. *Kirwan*, 185 Conn. App. 713, 729, 197 A.3d 1000 (2018). "We begin with the child support guidelines; Regs., Conn. State Agencies § 46b-215a-1 et seq.; and our case law interpreting the guidelines. . . . General Statutes § 46b-215a provides for a commission to oversee the establishment of child support guidelines, which must be updated every four years, to ensure the appropriateness of criteria for the establishment of child support awards. General Statutes § 46b-215b provides in relevant part: (a) The . . . guidelines issued pursuant to section 46b-215a . . . and in effect on the date of the support determination shall be considered in all determinations of child support award amounts . . . . In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered. A specific finding on the record at a hearing, or in a written judgment, order or memorandum of decision of the court, that the application of the guidelines would be inequitable or inappropriate in a particular case, as determined under the deviation criteria established by the Commission for Child Support Guidelines under section 46b-215a, shall be required in order to rebut the presumption in such case. . . .

"The guidelines consist of the rules, schedule and worksheet established under [the applicable sections] of the Regulations of Connecticut State Agencies for the determination of an appropriate child support award . . . . Regs., Conn. State Agencies § 46b-215a-1 (5). The guidelines are accompanied by a preamble that is not part of the regulations but is intended to

assist in their interpretation. See Child Support and Arrearage Guidelines (2015), preamble. The preamble states that the primary purpose of the guidelines is [t]o provide uniform procedures for establishing an adequate level of support for children . . . and [t]o make awards more equitable by ensuring the consistent treatment of persons in similar circumstances. . . .

"Moreover, [§] 46b-215a-5c (a) of the Regulations of Connecticut State Agencies provides in relevant part: The current support . . . contribution amounts calculated under [the child support guidelines] . . . are presumed to be the correct amounts to be ordered. The presumption regarding each such amount may be rebutted by a specific finding on the record that such amount would be inequitable or inappropriate in a particular case. . . . Any such finding shall state the amount that would have been required under such sections and include a factual finding to justify the variance. Only the deviation criteria stated in . . . subdivisions (1) to (6), inclusive, of subsection (b) of this section . . . shall establish sufficient bases for such findings.

"Our courts have interpreted this statutory and regulatory language as requiring three distinct findings in order for a court to properly deviate from the child support guidelines in fashioning a child support order: (1) a finding of the presumptive child support amount pursuant to the guidelines; (2) a specific finding that application of such guidelines would be inequitable and inappropriate; and (3) an explanation as to which deviation criteria the court is relying on to justify the deviation." (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *Renstrup* v. *Renstrup*, 217 Conn. App. 252, 260–62, 287 A.3d 1095, cert. denied, 346 Conn. 915, 290 A.3d 374 (2023); see also *Tuckman* v. *Tuckman*, 308 Conn. 194, 205–207, 61 A.3d 449 (2013); *Becue* v. *Becue*, 185 Conn. App. 812,

844–45, 198 A.3d 601 (2018), cert. denied, 331 Conn. 902, 201 A.3d 403 (2019).

In the present case, the court determined the presumptive amount of child support to be $221 per week, payable by the plaintiff to the defendant.[9] This determination was based on a child support guidelines worksheet filed by the plaintiff on May 25, 2023, that listed the defendant's gross weekly income at $400 and her net weekly income at $362. The plaintiff's gross weekly income was listed at $1759 and his net weekly income at $1193. The parties' total net weekly income was listed at $1555, with the defendant's share as 23 percent and the plaintiff's as 77 percent. This worksheet provided that the defendant's share of the basic child support obligation was $66 per week, and the plaintiff's was $221. Section 46b-215a-2c (c) (7) (B) of the Regulations of Connecticut State Agencies provides in relevant part: "In a shared physical custody situation, as defined in section 46b-215a-1 (23) of the Regulations of Connecticut State Agencies, the presumptive current support order shall equal the presumptive current support amount of the parent with the higher net weekly income, payable to the parent with the lower net weekly income. . . ." The court's child support award, however, deviated from the presumptive amount. Specifically, the court ordered the plaintiff to pay the defendant $600 per week, which was "clearly a deviation from the guidelines."

[9] "The Supreme Court has determined that stating [this finding] on the record will facilitate appellate review. *Favrow* v. *Vargas*, [supra, 231 Conn. 29]." *Tracey* v. *Tracey*, 97 Conn. App. 122, 126–27, 902 A.2d 729 (2006). "In other words, the finding will enable an appellate court to compare the ultimate order with the guideline amount and make a more informed decision on a claim that the amount of the deviation, rather than the fact of a deviation, constituted an abuse of discretion." (Internal quotation marks omitted.) *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 550, 53 A.3d 1039, cert. denied, 308 Conn. 937, 66 A.3d 500 (2012); see also *K. S.* v. *R. S.*, 350 Conn. 692, 735–36, 326 A.3d 187 (2024).

The judgment file prepared by the clerk, which the court subsequently approved on July 19, 2023, noting that it has been "[r]eviewed and determined to be correct as ordered," did not include the presumptive amount of child support. This document simply stated that a deviation was ordered and articulated the following reasons for such an award: "The plaintiff will pay $600 per week to the defendant for child support. Wage withholding shall apply. This deviation from the child support guidelines is because of the disparity in the parties' incomes, the additional income resources available to the plaintiff and the coordination of total family resources. It would be inappropriate and inequitable NOT to deviate from the guidelines in this case. The child support payments are to commence on [May 26, 2023]."

The plaintiff contends that the court's child support award of $600 per week was arbitrary and not in accordance with the guidelines. Specifically, he argues, inter alia, the court improperly applied the deviation criteria and failed to justify the deviation based on the needs of the child. We agree.

At the outset, we note that, "[n]otwithstanding the great deference accorded the trial court in [child custody] proceedings, a trial court's ruling . . . may be reversed if . . . the trial court applies the wrong standard of law. . . . The question of whether, and to what extent, the child support guidelines apply . . . is a question of law over which this court should exercise plenary review." (Internal quotation marks omitted.) *Wald* v. *Cortland-Wald*, 226 Conn. App. 752, 761, 319 A.3d 769 (2024).

We iterate that all child support awards must be made in accordance with the principles established in the relevant statutes and guidelines to ensure that such awards promote equity, uniformity, and consistency for

children at all income levels. *Tuckman* v. *Tuckman*, supra, 308 Conn. 206; *Deshpande* v. *Deshpande*, 142 Conn. App. 471, 477–78, 65 A.3d 12 (2013). Additionally, the support amount calculated under the guidelines is presumed to be the correct amount to be ordered. *Renstrup* v. *Renstrup*, supra, 217 Conn. App. 262; see also Regs., Conn. State Agencies § 46b-215a-5c (a). This presumption may be rebutted by a specific finding on the record that such amount would be inappropriate or inequitable in a particular case. *Renstrup* v. *Renstrup*, supra, 262. "Only the deviation criteria . . . shall establish sufficient bases for such findings." (Internal quotation marks omitted.) Id.; see also *Pencheva-Hasse* v. *Hasse*, supra, 221 Conn. App. 123.

"The criteria enumerated in § 46b-215a-5c (b) of the regulations are: (1) Other financial resources available to a parent . . . (2) [e]xtraordinary expenses for care and maintenance of the child . . . (3) [e]xtraordinary parental expenses . . . (4) [n]eeds of a parent's other dependents . . . (5) [c]oordination of total family support . . . [and] (6) [s]pecial circumstances . . . ." (Internal quotation marks omitted.) *Renstrup* v. *Renstrup*, supra, 217 Conn. App. 262 n.7; see also *Y. H.* v. *J. B.*, 224 Conn. App. 793, 803, 313 A.3d 1245 (2024); *Becue* v. *Becue*, supra, 185 Conn. App. 845. We are mindful that "[o]ur Supreme Court has instructed that [t]he deviation criteria are narrowly defined and require the court to make a finding on the record as to why the guidelines are inequitable or inappropriate." (Internal quotation marks omitted.) *Kavanah* v. *Kavanah*, 142 Conn. App. 775, 781, 66 A.3d 922 (2013).

The court first explained that its deviation was based on the coordination of the total family support criterion. Section 46b-215a-5c (b) (5) of the Regulations of Connecticut State Agencies provides in relevant part: "In some cases, child support is considered in conjunction with a determination of total family support, property

settlement, and tax implications. When such consideration will not result in a lesser economic benefit to the child, it may be appropriate to deviate from the presumptive support amounts for the following reasons only: (A) division of assets and liabilities, (B) provision of alimony, and (C) tax planning considerations."

In the present case, however, the parties never were married. Accordingly, there was no alimony or division of property addressed in either the court's oral decision or the written judgment file. Furthermore, there was no evidence or discussion of tax considerations, aside from which party would claim the dependency tax exemption.[10] We conclude, therefore, that the court improperly deviated from the guidelines on the basis of the coordination of total family support criterion.

The court next stated that the deviation was based on the extraordinary disparity between the parties' incomes. Section 46b-215a-5c (b) (6) of the Regulations of Connecticut State Agencies provides in relevant part: "In some cases, there may be special circumstances not otherwise addressed in this section in which deviation from presumptive support amounts may be warranted for reasons of equity. Such circumstances are limited to the following . . . (B) When the custodial parent has high income, resulting in an extraordinary disparity between the parents' net incomes, it may be appropriate to deviate from presumptive support amounts if: (i) such deviation would enhance the lower income parent's ability to foster a relationship with the child; and (ii) sufficient funds remain for the parent receiving support to meet the basic needs of the child after deviation."

In *Zheng* v. *Xia*, 204 Conn. App. 302, 253 A.3d 69 (2021), the trial court ordered the plaintiff to pay 13

[10] The court ordered the parties to claim the dependency tax exemption in alternate years.

percent of his net bonus income as additional child support annually. Id., 312. The trial court noted that this constituted a deviation from the guidelines on the basis of the coordination of total family support and significant disparity in the parties' incomes, but aside from the allusion to this disparity, failed to include specific findings as to why the guidelines amount would be inequitable and inappropriate. Id. We concluded that the trial court's award was improper, stating: "That reason to deviate from the child support guidelines, i.e., disparity between the incomes of the parties, fails as a matter of law. Our Supreme Court has stated that [i]ncome disparity may be considered . . . only when the custodial parent has the higher income and deviation from the presumptive support amount would enhance the lower income [noncustodial] parent's ability to foster a relationship with the child . . . . This consideration is unambiguously intended to protect the noncustodial parent in circumstances where the income of the custodial parent far exceeds the income of the parent obligated to pay child support . . . ." (Emphasis omitted; internal quotation marks omitted.) Id. This is not the situation in the present case, as the parties share custody of the child on an equal basis. Further, there was no evidence that this deviation from the guidelines would enhance the defendant's ability to foster a relationship with the child. The court, therefore, improperly considered the disparity between the parties' incomes when it ordered the plaintiff to pay $600 per week as child support. See id.

Finally, the court in the present case stated that the deviation from the presumptive amount of child support as determined by the guidelines was based on the best interest of the child. We agree with the plaintiff that the court failed to explain why a deviation on this basis was necessary to meet the needs of the child. See *Maturo* v. *Maturo*, 296 Conn. 80, 95–96, 995 A.2d 1

(2010); *Ray* v. *Ray*, 177 Conn. App. 544, 567, 173 A.3d 464 (2017); *Chowdhury* v. *Masiat*, 161 Conn. App. 314, 323, 128 A.3d 545 (2015). Accordingly, the court improperly used the best interest of the child as a basis to deviate from the presumptive amount of support.

The plaintiff further argues that, "[i]n the present matter, there was no evidence as to the needs and expenses of the minor child, and, in any event, the trial court failed to tie the deviation criteria to those needs. There was no testimony from the defendant regarding her care and the expenses of the child warranting a higher support order based on the needs of the child." We agree. The court failed to provide any reasons for why a deviation from the presumptive amount of child support was appropriate. See *Chowdhury* v. *Masiat*, supra, 161 Conn. App. 323. Rather, the court merely mentioned various criteria as its basis for doing so. As we recently explained, merely citing a specific criterion as a reason for deviation from the guidelines and failing to make a specific finding to justify such an action is improper. *Wald* v. *Cortland-Wald*, supra, 226 Conn. App. 767–68. "Without the specific findings that would support a deviation based on the shared physical custody of the minor child, it is impossible to ascertain how the court determined that application of the child support guidelines was inequitable and inappropriate due to this criterion." Id., 768. Stated differently, "[a]ny deviation from the schedule or the principles on which the guidelines are based must be accompanied by the court's explanation as to why the guidelines are inequitable or inappropriate and why the deviation is necessary to meet the needs of the child." (Internal quotation marks omitted.) *Kirwan* v. *Kirwan*, supra, 185 Conn. App. 744; see also *Zheng* v. *Xia*, supra, 204 Conn. App. 311 (any deviation must be accompanied by court's explanation as to why guidelines are inequitable or inappropriate and why deviation is necessary to meet needs of

child); *Ross* v. *Ross*, 200 Conn. App. 720, 733, 239 A.3d 1280 (2020) (court must explain how application of deviation criteria justifies variance); *Fox* v. *Fox*, 152 Conn. App. 611, 639–40, 99 A.3d 1206 (same), cert. denied, 314 Conn. 945, 103 A.3d 977 (2014); see generally *Barcelo* v. *Barcelo*, 158 Conn. App. 201, 216–17, 118 A.3d 657, cert. denied, 319 Conn. 910, 123 A.3d 882 (2015).

Here, the court failed to provide an explanation as to why the presumptive amount of child support as determined under the guidelines was inequitable or inappropriate and why a deviation was necessary to meet the needs of the child. In awarding weekly support of $600, the court appeared to have been concerned with providing a solution to the plaintiff's "controlling behaviors" with regard to the defendant and her housing situation.[11] The use of child support constitutes an improper remedy for those issues. Accordingly, we conclude that the judgment must be reversed only with respect to the child support order and the case must be remanded for a new hearing on that issue.

The judgment is reversed only as to the child support order and the case is remanded for further proceedings on that issue; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

---

[11] Specifically, the court stated: "So, what will happen is that the court, when I get to the parenting schedule of this, will be deviating from the child support guidelines so that, instead of providing a home that's worth whatever—$2600 a month—[the plaintiff] will provide the equivalent of that in child support so that [the defendant] can find a place of her own to live in a comparable price. He can then happily rent out that house and make up that loss so all will be satisfactory."

It is unclear whether the court considered whether the $2600 per month constituted gross or net rental income. See, e.g., *Kirwan* v. *Kirwan*, supra, 185 Conn. App. 738–41 (child support guidelines worksheet and calculation of presumptive amount of support use net income).

ROBERT STEVENSON *v.* COMMISSIONER OF CORRECTION (AC 47086)

Suarez, Westbrook and Keller, Js.

Syllabus

The petitioner, who had been convicted of felony murder, appealed after the denial of his petition for certification to appeal from the habeas court's judgment dismissing his petition for a writ of habeas corpus. The petitioner claimed that the court erred in raising the issue of whether good cause existed for trial pursuant to statute (§ 52-470 (b) (1)) before the pleadings were closed. *Held*:

The habeas court abused its discretion in denying the petitioner's petition for certification to appeal to this court, as the issue of whether the habeas court properly considered the issue of good cause under § 52-470 (b) (1) before the pleadings were closed was debatable among jurists of reason, a court could resolve the issue in a different manner and the question was adequate to deserve encouragement to proceed further.

The habeas court violated the petitioner's due process right to a fair trial when it considered whether good cause existed for a trial under § 52-470 (b) (1) prior to the close of the pleadings and while the petitioner still had an opportunity to amend his habeas petition, and, accordingly, the judgment was reversed and the case was remanded for further proceedings.

Argued November 13, 2024—officially released March 11, 2025

Procedural History

Petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Newson*, *J.*, rendered judgment dismissing the petition; thereafter, the court denied the petition for certification to appeal, and the petitioner appealed to this court. *Reversed*; *further proceedings*.

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

Linda F. Rubertone, senior assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, and *Susan Campbell*, assistant state's attorney, for the appellee (respondent).

Opinion

SUAREZ, J. The petitioner, Robert Stevenson, appeals from the judgment of the habeas court dismissing his petition for a writ of habeas corpus for lack of good cause pursuant to General Statutes § 52-470 (b). The petitioner claims that the court improperly (1) denied his petition for certification to appeal and (2) raised the issue of good cause under § 52-470 (b) before the pleadings were closed.[1] We conclude that the court abused its discretion in denying the petition for certification to appeal and improperly dismissed the petition under § 52-470 (b) before the pleadings were closed. Accordingly, we reverse the judgment of the habeas court and remand the case to the habeas court for further proceedings consistent with this opinion.

The following undisputed procedural history is relevant to the claims raised on appeal. In September, 2014, the petitioner, then aged sixteen, was arrested and charged with felony murder among other offenses. In August, 2015, pursuant to a plea agreement reached with the state, the petitioner pleaded guilty to one count of felony murder in violation of General Statutes § 53a-54c. The court, *Alexander*, *J.*, canvassed the petitioner and accepted the plea. In October, 2015, the court, in accordance with the plea agreement, sentenced the petitioner to serve a term of incarceration of thirty-two years.

On November 2, 2018, the petitioner, as a self-represented litigant, filed a petition for a writ of habeas corpus on a state supplied form. In his petition, he alleged that his conviction is illegal because he neither

[1] The petitioner also claims that, in connection with its dismissal of his petition for a writ of habeas corpus, the court improperly concluded that the claims raised in the petition were frivolous as a matter of law. In light of our disposition of the other claims raised on appeal, we need not reach the merits of this claim.

committed nor pleaded guilty to any of the underlying felonies that are necessary to support a conviction for felony murder, his trial attorney did not properly advise him of the essential elements of felony murder, and his sentence was imposed in violation of his right to due process as guaranteed by the fourteenth amendment to the United States constitution. The petitioner also alleged that his incarceration is illegal because his conviction is null and void in light of the fact that he neither committed nor pleaded guilty to any of the underlying felonies that are necessary to support a conviction for felony murder. By way of relief, the petitioner sought a release from custody.

Thereafter, the court granted the petitioner's request for appointment of counsel and his application for waiver of fees. On November 8, 2018, the court issued an initial scheduling order. On August 27, 2019, the petitioner, then represented by counsel, agreed to a scheduling order, approved by the court, *Newson*, *J.*, that afforded the petitioner an opportunity to file an amended petition by May 30, 2022, and required that a certificate of closed pleadings be filed no later than August 8, 2022. In its order, the court also stated that the case shall be claimed to the trial list.

On May 26, 2022, the petitioner, through counsel, filed a motion to modify the scheduling order of August 27, 2019. The respondent, the Commissioner of Correction, consented to the granting of the motion. The modified scheduling order, which the court, *Oliver*, *J.*, granted on May 31, 2022, afforded the petitioner the opportunity to file an amended petition by June 30, 2022, and required that a certificate of closed pleadings be filed no later than September 9, 2022.

On June 29, 2022, the petitioner, through counsel, filed a motion to modify the scheduling order of May 31, 2022. The respondent consented to the granting of

the motion. The modified scheduling order, which the court, *Oliver*, *J.*, granted on July 5, 2022, afforded the petitioner the opportunity to file an amended petition by July 29, 2022, and required that a certificate of closed pleadings be filed no later than October 13, 2022.

The petitioner did not file an amended petition. On July 25, 2022, the petitioner's court-appointed counsel filed under seal a motion to withdraw as the petitioner's court-appointed counsel along with a brief submitted to the court pursuant to *Anders* v. *California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).[2] On April 27, 2023, the court, *Newson*, *J.*, issued a memorandum of decision in which it concluded that there were no nonfrivolous issues to be tried and granted the motion

[2] "In *Anders*, the United States Supreme Court determined that, in order to effectuate and safeguard an indigent defendant's constitutional right to the effective assistance of counsel, counsel [who] finds his case [on appeal] to be wholly frivolous, after a conscientious examination of it . . . should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished [to] the indigent [defendant] and time allowed [for] him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned . . . ." (Internal quotation marks omitted.) *State* v. *Francis*, 322 Conn. 247, 256–57, 140 A.3d 927 (2016).

"From one vantage point, *Anders* attempted to resolve the conflicting professional duties facing appointed counsel, who is bound to advocate zealously for the interests of the indigent client but who is simultaneously prohibited from presenting frivolous arguments on appeal. From the standpoint of the client, *Anders* serves a range of purposes when appointed counsel can find no potentially meritorious grounds for appeal and seeks to withdraw. . . . The *Anders* procedure (1) ensures that counsel has, in fact, diligently reviewed the record for potential errors, (2) provides a possible appellate road map for the client should he or she choose to proceed on a self-represented basis, and (3) may lead counsel, through the process of researching and drafting, to conclude that the client's appeal is not without merit after all. In addition, submission of the brief facilitates and potentially expedites the independent judicial review that *Anders* requires." (Citation omitted.) *In re Taijha H.-B.*, 333 Conn. 297, 329, 216 A.3d 601 (2019).

to withdraw. The court noted that, if the petitioner wanted to pursue the habeas petition, he had the right to retain counsel or to represent himself at the habeas trial. On June 2, 2023, the petitioner filed an appearance as a self-represented litigant.

On June 7, 2023, the court, *Newson*, *J.*, issued an order of hearing in which it first observed that "the petitioner has filed an appearance indicating a desire to continue litigation of the matters alleged within the petition." The court then ordered an evidentiary hearing to be held to address whether, in light of its findings made in connection with the motion to withdraw, it should dismiss the petition under Practice Book § 23-29 (2)[3] because it fails to state a claim upon which relief may be granted or under Practice Book § 23-29 (5)[4] because a legally sufficient ground for dismissal of the petition exists, namely, (1) it has been judicially determined that the claims presented are wholly frivolous and that there are no additional nonfrivolous claims to present pursuant to Practice Book § 23-24 (a) (2),[5] (2) there is no genuine issue of material fact between the parties requiring a trial pursuant to Practice Book § 23-37,[6] and (3) on the basis of the evidence and exhibits

[3] Practice Book § 23-29 provides: "The judicial authority may, at any time, upon its own motion or upon the motion of the respondent, dismiss the petition, or any count thereof, if it determines that . . . (2) the petition, or a count thereof, fails to state a claim upon which habeas corpus relief can be granted . . . ."

[4] Practice Book § 23-29 provides: "The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that . . . (5) any other legally sufficient ground for dismissal of the petition exists."

[5] Practice Book § 23-24 (a) provides: "The judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ unless it appears that . . . (2) the petition is wholly frivolous on its face . . . ."

[6] Practice Book § 23-37 provides: "At any time after the pleadings are closed, any party may move for summary judgment, which shall be rendered if the pleadings, affidavits and any other evidence submitted show that there is no genuine issue of material fact between the parties requiring a trial and the moving party is entitled to judgment as a matter of law."

submitted, there is no "good cause" for a trial on this matter pursuant to § 52-470 (b) (1).[7] The court stated that, at the hearing, the parties would "have the opportunity to present any *new evidence or information not previously argued to or considered by this court* in granting the motion to withdraw in support of any contention that the matter should not be dismissed." (Emphasis in original.)

On June 30, 2023, the court held an evidentiary hearing pursuant to the court's order of June 7, 2023. The petitioner, as a self-represented party, and counsel for the respondent appeared at the hearing. At the outset, the court noted that "[t]he question the court raised in its motion is, why shouldn't the habeas [petition] be dismissed as opposed to allowing a case [to proceed] where there has been a legal determination that any claims that could be brought would be frivolous? The court has raised the issue of why the petition should not be dismissed." The court noted that the purpose of the hearing was not to relitigate the matters that were raised and considered in the motion to withdraw and the accompanying *Anders* brief, but that the petitioner nonetheless had the opportunity "to offer the court anything that has not already been considered by the court . . . as to why the court shouldn't dismiss the petition."

At the evidentiary hearing, the petitioner offered arguments in connection with a claim that was not alleged in his petition. Specifically, the petitioner represented that, at the time of his plea, he believed that he had a pending offer of thirty-two years of incarceration suspended after nineteen years, not an offer of thirty-two years to serve. The petitioner argued that his attorney was ineffective for failing to bring to the court's

[7] General Statutes § 52-470 (b) (1) provides: "After the close of all pleadings in a habeas corpus proceeding, the court, upon the motion of any party or, on its own motion upon notice to the parties, shall determine whether there is good cause for trial for all or part of the petition."

attention the fact that the prosecutor had mischaracterized the state's offer before the trial court. The petitioner further represented that, despite the characterization of the offer during the proceedings before the trial court, he agreed to the offer because his attorney told him to do so. The petitioner acknowledged that, at the time that he filed his petition, he did not raise this claim. He said that he had decided to focus on the claims raised in his petition because he believed that those claims would be more advantageous to him, but that he now wanted to raise a different claim and amend his petition.

On August 25, 2023, the court issued a memorandum of decision on what it captioned as a "court motion to dismiss pursuant to Practice Book § 23-29." Therein, the court stated that, "[a]t the hearing on the motion to dismiss, the petitioner provided nothing new for this court to consider. He reiterated the substance of claims which were addressed thoroughly in the *Anders* motion by prior counsel and found to be frivolous by the court upon reviewing the record, such as a claim that he did not understand that he was pleading to a 'flat' thirty-two year sentence but believed he was accepting a split sentence that, according to the petitioner's claim, would have been facially illegal because it would have required less prison time than the minimum mandatory sentence required by law. The petitioner's claim was also directly refuted by the plea and sentencing transcripts. In the end, the petitioner failed to present any new evidence, arguments or claims during the motion to dismiss that had not been considered by counsel and the court already within the *Anders* motion."[8] (Footnote omitted.)

The court also stated that, "[t]he question that must now be answered is, where an *Anders* motion has been

[8] We understand the court's reference to a "claim" based on the petitioner's alleged lack of understanding, at the time of his plea or sentencing, that he was to be sentenced to a flat thirty-two year term of incarceration, rather

granted—where there has been a judicial determination . . . that the only remaining claims a petitioner could bring to challenge his/her convictions would be frivolous after review of the record, the evidence, and considering all possible claims that could be raised—and the petitioner is unable to present any new evidence or nonfrivolous claims to proceed on, should the petitioner be allowed to proceed to trial and maintain frivolous litigation? This court answers that question in the negative."

In dismissing the petition, the court invoked Practice Book § 23-29 (5), which permits dismissal at any time if "any . . . legally sufficient ground for dismissal of the petition exists," on the ground that, in light of its granting of the motion to withdraw, the petitioner was unable to demonstrate good cause to proceed to trial under § 52-470 (b) (1). In relying on § 52-470 (b) (1) as the legal basis for its dismissal, the court first set forth the language of the statute. Second, it stated that a certificate of closed pleadings, "which is mandatory before a court engages in consideration of whether there is 'good cause' to proceed to trial under § 52-470 (b)," had been filed in this case on August 27, 2019. Third, the court analyzed the issue of good cause for trial, the touchstone of an analysis under § 52-470 (b). The court determined that, "[d]espite being provided two opportunities, first in the context of any objection he had to the *Anders* motion, and now in this hearing, the petitioner has been unable to present any additional facts or evidence that would support a finding that there is 'good cause' to proceed to trial. Again, the granting of the *Anders* [motion] represents a judicial determination that, after a thorough review of the record, claims specifically raised by the petitioner, and other claims that

than a split sentence, to be a reference to a potential claim that was raised in the *Anders* brief filed in this case. In his petition for a writ of habeas corpus, the petitioner did not allege a claim of this nature. At the hearing on the motion to dismiss, the petitioner discussed this issue as a potential

may be supported independently by the record or investigation, there were no claims that could be brought that would not be frivolous. Said another way, counsel found no claims in the record or after independent investigation that could be pursued in 'good faith.' "[9] Thus, the court concluded that, in connection with both the *Anders* motion and the present hearing, the petitioner had failed to demonstrate that any of the claims he wanted to litigate "would amount to anything more than the use of precious judicial resources for a self-represented individual to have the opportunity to air frivolous grievances unsupported by any credible evidence or claims that warrant being tried." On the basis of the foregoing, the court dismissed the petition.[10]

Subsequently, the petitioner filed a petition for certification to appeal, which the court denied.[11] This appeal followed.[12]

ground for his habeas action, noting that it is a claim that he would like to raise in an amended petition.

[9] In its discussion of Practice Book § 23-29 (5), the court also observed that, even though it lacked the authority to raise sua sponte a motion for summary judgment; see Practice Book § 23-37; the respondent would be entitled to judgment in his favor as a matter of law because the petitioner is unable to demonstrate that a genuine issue of material fact exists that would support a legally cognizable habeas claim. We do not view the court's brief discussion in this regard, however, to amount to an independent ground on which the court's dismissal rests. Indeed, the court stated that its discussion of summary judgment was "just another way to analyze that there is no 'good cause' for the petitioner's claims to proceed to trial."

[10] The petitioner does not claim that it was improper for the same judge to have dismissed the petition and granted the motion to withdraw. Accordingly, we do not consider whether the procedure that was followed in this case was appropriate.

[11] The petitioner filed his handwritten petition for certification to appeal as a self-represented litigant. The petitioner challenged the court's judgment of August 25, 2023, and, consistent with his arguments at the hearing on the motion to dismiss, argued that his trial counsel had rendered ineffective assistance by failing to adequately communicate to him the fact that the court could impose a "flat" sentence of thirty-two years of incarceration. In his application for waiver of fees, costs and expenses and appointment of counsel on appeal, the petitioner stated that he "[had] evidence that there was a[n] offer of suspended time . . . ."

[12] Although, as noted previously in this opinion, the petitioner appeared before the habeas court at times as a self-represented litigant, the court

I

First, we address the petitioner's claim that the court erred in denying his petition for certification to appeal. We agree with the petitioner.

Section 52-470 (g) provides: "No appeal from the judgment rendered in a habeas corpus proceeding brought by or on behalf of a person who has been convicted of a crime in order to obtain such person's release may be taken unless the appellant, within ten days after the case is decided, petitions the judge before whom the case was tried or, if such judge is unavailable, a judge of the Superior Court designated by the Chief Court Administrator, to certify that a question is involved in the decision which ought to be reviewed by the court having jurisdiction and the judge so certifies."

It is well settled that, "[f]aced with the habeas court's denial of certification to appeal, a petitioner's first burden is to demonstrate that the habeas court's ruling constituted an abuse of discretion. . . . A petitioner may establish an abuse of discretion by demonstrating that the issues are debatable among jurists of reason . . . [a] court could resolve the issues [in a different manner] . . . or . . . the questions are adequate to deserve encouragement to proceed further. . . . The required determination may be made on the basis of the record before the habeas court and applicable legal principles. . . . If the petitioner succeeds in surmounting that hurdle, the petitioner must then demonstrate that the judgment of the habeas court should be reversed on its merits. . . .

"In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of

granted the petitioner's application for appointment of counsel and waiver of fees on appeal. Thus, the petitioner is represented by counsel in connection with the present appeal.

the petitioner's underlying [claim] to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous. In other words, we review the petitioner's substantive [claim] for the purpose of ascertaining whether [that claim satisfies] one or more of the three criteria . . . adopted by [our Supreme Court] for determining the propriety of the habeas court's denial of the petition for certification." (Citations omitted; internal quotation marks omitted.) *Ayuso* v. *Commissioner of Correction*, 215 Conn. App. 322, 332, 282 A.3d 983, cert. denied, 345 Conn. 967, 285 A.3d 736 (2022).

For the reasons set forth in part II of this opinion, we agree with the petitioner that the issue of whether the court properly considered the issue of good cause under § 52-470 (b) before the pleadings were closed is debatable among jurists of reason, a court could resolve the issue in a different manner, and the question is adequate to deserve encouragement to proceed further.[13] Accordingly, we conclude that the court abused its discretion in denying the petition for certification to appeal.

II

Next, we consider the petitioner's claim that the court erred in raising the issue of good cause under § 52-470 (b) before the pleadings were closed. We agree with the petitioner.

Before considering the merits of this claim, we must address the respondent's contention that the claim is unreviewable not only because the court properly

[13] The petitioner devotes a portion of his argument to his belief that "it would be an abuse of discretion for the habeas court to have denied the petition for certification [to appeal] because it was filed late." We agree with the respondent that the record is devoid of any indication that the court denied the petition on this ground. Accordingly, we need not consider untimeliness as a ground for the court's ruling.

declined to grant certification to appeal, but because the petitioner did not preserve the claim in the habeas court and he is not entitled to extraordinary review of the claim. In part I of this opinion, we considered and rejected the former argument, concluding that the claim as to the court's misapplication of § 52-470 (b) (1) is not frivolous. With respect to the latter argument, we note that the petitioner argues that the issue of whether it was appropriate for the court to have relied on § 52-470 (b) (1) is properly before this court because "it was raised and considered sua sponte by the habeas court." Alternatively, the petitioner argues that he is entitled to review of the claim under the bypass rule set forth in *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015), the plain error doctrine codified in Practice Book § 60-5, or in the exercise of this court's supervisory authority over the administration of justice.

The record reflects that the habeas court provided the parties with notice of its intent to dismiss the petition. In its notice of hearing, the court specifically questioned whether there was a legally sufficient ground to dismiss the petition in that there was no good cause for a trial pursuant to § 52-470 (b) (1). The petitioner, in a self-represented capacity, appeared at the hearing and argued against dismissing the petition on the ground that he believed he could present one or more nonfrivolous claims at trial, specifically, a claim that his trial counsel rendered ineffective assistance in connection with his decision to plead guilty. Following the issuance of the court's written decision, in which it relied on § 52-470 (b) (1) in dismissing the petition, it is not at all clear that the petitioner needed to take any further steps to preserve the present claim for appellate review. This court has not required appellants, following an

adverse decision, to file a motion seeking either reconsideration or reargument to preserve claims related to the grounds on which a lower court unambiguously has relied in a memorandum of decision. See, e.g., *Moye* v. *Commissioner of Correction*, 168 Conn. App. 207, 227, 145 A.3d 362 (2016), cert. denied, 324 Conn. 905, 153 A.3d 653 (2017). Accordingly, we conclude that the claim is reviewable without the need to resort to an extraordinary level of review.[14]

"The conclusions reached by the [habeas] court in its decision to dismiss [a] habeas petition are matters of law, subject to plenary review. . . . [When] the legal conclusions of the court are challenged, [the reviewing court] must determine whether they are legally and logically correct . . . and whether they find support in the facts that appear in the record. . . . To the extent that factual findings are challenged, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous . . . ." (Citation omitted; internal quotation marks omitted.) *Rice* v.

[14] Even if we were to determine that the claim was not preserved, it would nonetheless be reviewable under *Golding*. See *Banks* v. *Commissioner of Correction*, 347 Conn. 335, 350–51, 297 A.3d 541 (2023) (describing limited circumstances under which reviewing court may consider unpreserved claims under *Golding* following habeas court's denial of petition for certification to appeal). "Pursuant to *Golding*, a [defendant] can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the [defendant] of a fair trial; and (4) if subject to harmless error analysis, the [state] has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. . . . The first two steps in the *Golding* analysis address the reviewability of the claim, [whereas] the last two steps involve the merits of the claim." (Emphasis in original; internal quotation marks omitted.) *In re Gabriella M.*, 221 Conn. App. 827, 836, 303 A.3d 319, cert. denied, 348 Conn. 925, 304 A.3d 443 (2023). The record is adequate to review the alleged claim of error, and the petitioner has alleged a colorable claim of the violation of a constitutional right due to the actions of the habeas court. As the petitioner asserts, the claim implicates his "state and federal constitutional rights to due process, habeas corpus, and access to the courts."

Commissioner of Correction, 204 Conn. App. 513, 518, 251 A.3d 1009, cert. denied, 337 Conn. 906, 252 A.3d 365 (2021). Here, there are no disputed factual findings. Rather, the issue is one of law, namely, whether the court properly considered good cause under § 52-470 (b) (1) at the time that it did. The court unambiguously relied on § 52-470 (b) (1), which provides: "*After the close of all pleadings in a habeas corpus proceeding*, the court, upon the motion of any party or, on its own motion upon notice to the parties, shall determine whether there is good cause for trial for all or part of the petition."[15] (Emphasis added.) We need not undertake a statutory analysis of § 52-470 (b) (1), for our Supreme Court has squarely addressed its meaning: "That subsection authorizes the habeas court to render a 'summary dismissal without a trial' of all or part of a habeas petition if the court determines, either on motion by a party or sua sponte, that there is no good cause for trial. . . . In order to establish 'good cause for trial,' the petitioner must 'allege the existence of specific facts which, if proven, would entitle the petitioner to relief under applicable law . . . .' General Statutes § 52-470 (b) (3). Section 52-470 (b) (1) expressly requires that

[15] The respondent argues that the petitioner incorrectly focuses his argument on the court's discussion of § 52-470 (b) (1) and that the court actually dismissed the petition under Practice Book § 23-29 (2) and (5) "on the ground that it failed to state a claim upon which relief could be granted and no other nonfrivolous claims existed." We do not interpret the court's decision in a similar manner. Although, as we have stated previously in this opinion, the court referred to Practice Book § 23-29, both in the caption of its decision and several times in its analysis, it is clear that the legal reason for its dismissal was its application of § 52-470 (b) (1) to the facts of this case. The court did not conclude under Practice Book § 23-29 (2) that the petitioner failed to state a legally cognizable claim. To the contrary, the court stated that, "while the allegations [in the petition] technically read as some legally cognizable habeas claims, the substantive evidence and exhibits required to prove those claims [have] been determined to be nonexistent." Second, the court, mirroring the language of Practice Book § 23-29 (5), stated in its decision that a habeas court may dismiss a petition if "any other legally sufficient ground" exists to do so. It then relied exclusively on its analysis of good cause under § 52-470 (b) (1).

the habeas court's 'good cause for trial' determination be made '[a]fter the close of all pleadings' in the proceeding. The plain language of the statute, accordingly, makes clear that prior to the close of all pleadings, a habeas court would lack discretion to take action on a respondent's motion—or to act sua sponte—to issue an order to show good cause for trial pursuant to § 52-470 (b) (1).

"This constraint on the court's discretion is consistent with the nature of the court's inquiry. In order to determine whether there is good cause for trial, the court must by necessity wade—albeit in a preliminary manner—into the merits of the petition. The determination of whether good cause exists turns on the ultimate question of whether the petitioner would be entitled to relief under applicable law. As a practical matter, because that inquiry is a substantive one, the question would be premature prior to the close of all pleadings. Addressing the question of whether good cause for trial exists on the basis of incomplete information would, in turn, be inconsistent with the requirement of § 52-470 (a) that the court 'dispose of the case as law and justice require.' " (Citation omitted.) *Kelsey* v. *Commissioner of Correction*, 329 Conn. 711, 717–18, 189 A.3d 578 (2018).

In the present case, it appears as though the habeas court correctly recognized this limitation on its authority to dismiss the petition pursuant to § 52-470 (b), for the court noted that it was *mandatory* for a certificate of closed pleadings to be filed before it could consider the issue of good cause. It also appears, however, that the court misinterpreted the procedural posture of the case. The court, referring to docket entry #105.00 on the case detail sheet, stated that a certificate of closed pleadings had been filed in this case. As the parties correctly recognize, however, a certificate of closed pleadings was not filed in this case. Docket entry

#105.00 on the case detail sheet, dated August 27, 2019, appears as "Certificate of Closed Pleadings and Claim for Trial List." The petitioner speculates that this "ambiguously labeled docket entry" led the court to the mistaken belief that the pleadings had been closed. The respondent speculates that this entry "seems to be a clerical error because both this entry and the scheduling order . . . were filed simultaneously on August 27, 2019." (Citation omitted.)

Regardless of the cause, the court mistakenly believed that a certificate of closed pleadings had been filed in this case. Despite the court's error in this regard, the respondent argues that the dismissal nonetheless was appropriate because "the habeas court reasonably could not have permitted the petitioner to proceed with a patently defective claim in the absence of any legally sufficient ground after appointed counsel moved for leave to withdraw from the case on the basis that no nonfrivolous issues existed. . . . Once the habeas court granted the *Anders* motion and appointed counsel withdrew, it defies reason and logic that the habeas court should have required the [respondent] to file a return to the petitioner's pro se petition . . . prior to scheduling a hearing in the matter. This would contravene the goal of conserving judicial resources by failing to avert frivolous habeas petitions." (Citation omitted; footnote omitted.)

Our Supreme Court's interpretation of § 52-470 (b) (1) in *Kelsey* controls our disposition of this issue. On the basis of our plenary review and pursuant to *Kelsey*'s requirement that the determination of whether good cause exists may occur only after the close of pleadings, we conclude that the petitioner's due process right to a fair trial was violated when the court considered the issue of good cause prior to the close of the pleadings and while the petitioner still had an opportunity to amend his petition for a writ of habeas corpus. Indeed,

after the court granted the motion to withdraw in this case, the petitioner availed himself of the opportunity to appear as a self-represented litigant. The proper remedy is to remand the case to the habeas court with direction to set aside the judgment of dismissal and for further proceedings according to law.

The judgment is reversed and the case is remanded for further proceedings in accordance with this opinion.

In this opinion the other judges concurred.

MARCELO CERVANTES *v.* COMMISSIONER OF CORRECTION
(AC 46947)

Bright, C. J., and Moll and Westbrook, Js.*

Syllabus

The petitioner, who had been convicted, on a conditional plea of nolo contendere, of the crimes of sexual assault in the first degree and home invasion, appealed after the habeas court denied his petition for certification to appeal from the court's judgment denying his petition for a writ of habeas corpus. The petitioner claimed, inter alia, that the habeas court improperly concluded that the sentencing court did not violate his right to due process by imposing a lengthier sentence than it offered him previously because he had pursued and failed to prevail on a motion to suppress certain statements he made to the police. *Held*:

The habeas court did not abuse its discretion in denying the petitioner certification to appeal, the court having properly determined that he was not denied his right to due process as a result of the imposition of the lengthier sentence, and, given clear precedent on that issue, this court was not persuaded that the issue was debatable among jurists of reason, that it reasonably could have been resolved differently or that it raised questions that deserved further appellate scrutiny.

Argued January 14—officially released March 11, 2025

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district

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

of Tolland, where the petition was withdrawn in part; thereafter, the case was tried to the court, *Newson*, *J.*; judgment denying the petition; subsequently, the court denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Chad L. Edgar, assigned counsel, for the appellant (petitioner).

Rocco A. Chiarenza, senior assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, and *Craig P. Nowak*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

WESTBROOK, J. The petitioner, Marcelo Cervantes, appeals following the denial of his petition for certification to appeal 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 abused its discretion by (1) denying him certification to appeal and (2) improperly rejecting his claim that the sentencing court violated his right to due process by imposing a lengthier sentence because he had pursued a motion to suppress. We disagree and, accordingly, dismiss the petitioner's appeal.

The following facts, as found by the habeas court, and procedural history are relevant to our resolution of this appeal. On April 14, 2013, a woman called the Hamden Police Department to report that she had been sexually assaulted in her home by an unknown Hispanic male. The police identified the petitioner as a suspect and went to speak with him at his place of employment. Following some initial conversation, the petitioner was transported to the police station. During transport, the petitioner admitted to some of the conduct that the victim alleged occurred at her house. At the station,

the police provided the petitioner with *Miranda* warnings. See *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). The petitioner thereafter provided additional statements to the police and was subsequently arrested and charged with sexual assault in the first degree in violation of General Statutes § 53a-70,[1] burglary in the first degree in violation of General Statutes § 53a-101,[2] home invasion in violation of General Statutes § 53a-100aa,[3] and strangulation in the second degree in violation of General Statutes (Rev. to 2013) § 53a-64bb.[4]

On May 31, 2013, the petitioner filed a motion to suppress the statements that he had made while in transport to the police station. In about November, 2013, the state conveyed to the petitioner a plea offer of sixteen years of incarceration. Defense counsel, however, was negotiating for incarceration of less than ten

[1] General Statutes § 53a-70 (a) provides in relevant part: "A person is guilty of sexual assault in the first degree when such person (1) compels another person to engage in sexual intercourse by the use of force against such other person or a third person, or by the threat of use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person . . . ."

[2] General Statutes § 53a-101 (a) provides in relevant part: "A person is guilty of burglary in the first degree when (1) such person enters or remains unlawfully in a building with intent to commit a crime therein and is armed with explosives or a deadly weapon or dangerous instrument . . . ."

[3] General Statutes § 53a-100aa (a) provides in relevant part: "A person is guilty of home invasion when such person enters or remains unlawfully in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with intent to commit a crime therein, and, in the course of committing the offense . . . [a]cting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a felony against the person of another person other than a participant in the crime who is actually present in such dwelling . . . ."

[4] General Statutes (Rev. to 2013) § 53a-64bb (a) provides: "A person is guilty of strangulation in the second degree when such person restrains another person by the neck or throat with the intent to impede the ability of such other person to breathe or restrict blood circulation of such other person and such person impedes the ability of such other person to breathe or restricts blood circulation of such other person."

years, believing that, if the petitioner's pre-*Miranda* statements were suppressed, the state's case would be significantly weakened. On December 16, 2013, the court, *Clifford*, *J.*, held a hearing during which it offered the petitioner a plea bargain under which he would serve thirteen years of incarceration, which the petitioner rejected. During the court's canvass of the petitioner, the following exchange took place:

"The Court: And you understand that I'm going to withdraw that offer. This is my attempt to work this case out short of a hearing. I know there's an issue on a motion to suppress [an] alleged confession or inculpatory statement that you made, and I know the next step will be to have that hearing. But, obviously, if the state prevails at that hearing, this offer is not out there anymore. The case, in my opinion, depending on how the hearing goes, if it's not suppressed, your statement, then the state [is] in a stronger position and most likely the number would be—is going to be higher than the thirteen years that I'm offering. Do you understand that?

"[The Petitioner]: Yes.

"The Court: This offer is not out there for [you] to accept at some later time. I'll be withdrawing it today. Do you understand that?

"[The Petitioner]: Yes.

"The Court: And, obviously, if you prevail on the motion to suppress that would be the end of the case, I believe. I think—I don't believe the state could go forward, although I'm not binding them to that, but that is the strength of their case. So, if you win that motion, most likely that would be the end of the case. You understand that?

"[The Petitioner]: Yes, I understand that."

On June 10, 2014, after a hearing on the petitioner's motion to suppress his statements, the court, *Vitale*, *J.*, denied the motion. Because the petitioner did not prevail in suppressing his statements to the police, the prosecutor believed that the state had a strong case and offered the petitioner a sentence of twenty years of incarceration, ten of which were mandatory, in exchange for the petitioner's pleading guilty to sexual assault in the first degree and home invasion. After a pretrial conference on the matter, however, the court, *Clifford*, *J.*, offered a sentence of eighteen years of incarceration. Subsequently, pursuant to General Statutes § 54-94a,[5] the petitioner entered a plea of nolo contendere, conditional on the right to appeal from the court's denial of his motion to suppress, to sexual assault in the first degree in violation of § 53a-70 and home invasion in violation of § 53a-100aa. The court sentenced him to eighteen years of incarceration in accordance with its offer.[6] The petitioner then appealed

[5] General Statutes § 54-94a provides: "When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress or motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law provided a trial court has determined that a ruling on such motion to suppress or motion to dismiss would be dispositive of the case. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. A plea of nolo contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution."

[6] We note that the petitioner, in his reply brief, implies that it may have been improper for the same court involved in his plea negotiations to later preside over his sentencing. Although the petitioner states that this issue is "lurking in the background," he did not raise this issue as a claim in his principal appellate brief and, therefore, we do not address it. See *State* v. *Torell*, 223 Conn. App. 21, 50, 307 A.3d 280 (2023) ("[i]t is also a well established principle that arguments cannot be raised for the first time in a reply brief" (internal quotation marks omitted)), cert. denied, 348 Conn. 960, 312 A.3d 36 (2024); see also *State* v. *Thompson*, 98 Conn. App. 245, 248, 907 A.2d 1257 ("[a]lthough the function of the appellant's reply brief is to respond to the arguments and authority presented in the appellee's brief, that function does not include raising an entirely new claim of error" (internal quotation marks omitted)), cert. denied, 280 Conn. 946, 912 A.2d 482 (2006).

to this court, challenging the denial of his motion to suppress. See *State* v. *Cervantes*, 172 Conn. App. 74, 158 A.3d 430, cert. denied, 325 Conn. 927, 169 A.3d 231 (2017). This court affirmed the judgment of the trial court; see id.; and our Supreme Court denied the petitioner's request for certification to appeal. See *State* v. *Cervantes*, 325 Conn. 927, 169 A.3d 231 (2017).

On October 10, 2017, the petitioner filed a petition for a writ of habeas corpus, claiming ineffective assistance of counsel[7] and violation of his due process rights. Before trial, however, he withdrew his ineffective assistance of counsel claims, leaving only his freestanding due process claim. Specifically, he claimed that the sentencing court deprived him of due process by unlawfully increasing the original plea offer of a prison sentence of thirteen years to a sentence of eighteen years.

The habeas court, *Newson*, *J.*, held a trial on the petition for a writ of habeas corpus on June 6, 2023. On July 17, 2023, the court issued a memorandum of decision denying the petition. In its memorandum of decision, the court concluded that the petitioner was not deprived of due process because "there were clearly factors other than the mere fact that he went forward with the suppression hearing involved in the decision to increase the sentence." On July 28, 2023, the petitioner filed a petition for certification to appeal, which the court denied on August 1, 2023. This appeal followed. Additional facts will be set forth as necessary.

We begin by setting forth the applicable standard of review. "Faced with a habeas court's denial of a petition for certification to appeal, a petitioner can obtain appellate review of the dismissal of his petition for habeas corpus only by satisfying the two-pronged test enunci-

[7] In counts one and two of his habeas petition, the petitioner raised claims of ineffective assistance against trial counsel and appellate counsel, respectively.

ated by our Supreme Court in *Simms* v. *Warden*, 229 Conn. 178, 640 A.2d 601 (1994), and adopted in *Simms* v. *Warden*, 230 Conn. 608, 612, 646 A.2d 126 (1994). First, he must demonstrate that the denial of his petition for certification constituted an abuse of discretion. . . . To prove an abuse of discretion, the petitioner must demonstrate that the [resolution of the underlying claim involves issues that] are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further. . . . Second, if the petitioner can show an abuse of discretion, he must then prove that the decision of the habeas court should be reversed on the merits. . . . In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling . . . [and] [r]eversal is required only where an abuse of discretion is manifest or where injustice appears to have been done. . . . In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of the petitioner's underlying claims to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous." (Citation omitted; internal quotation marks omitted.) *McClain* v. *Commissioner of Correction*, 188 Conn. App. 70, 74–75, 204 A.3d 82, cert. denied, 331 Conn. 914, 204 A.3d 702 (2019). "In other words, we review the petitioner's substantive claims for the purpose of ascertaining whether those claims satisfy one or more of the three criteria . . . adopted by [our Supreme] [C]ourt for determining the propriety of the habeas court's denial of the petition for certification." (Internal quotation marks omitted.) *Vega* v. *Commissioner of Correction*, 224 Conn. App. 652, 658, 312 A.3d 1142, cert. granted, 349 Conn. 914, 315 A.3d 300 (2024).

On appeal, the petitioner claims that the habeas court abused its discretion by denying his petition for certification to appeal from its decision regarding his claim that the sentencing court deprived him of due process. Specifically, the petitioner argues that the habeas court should have concluded that the sentencing court violated his due process rights by imposing a lengthier sentence than it had previously offered to punish him for pursuing a motion to suppress. We disagree.

"[A] habeas court's findings of fact are reviewed under the clearly erroneous standard of review . . . . Whether the petitioner's right to due process of law was violated . . . however, is a mixed question of law and fact that warrants plenary review. . . . When our review is plenary, we must determine whether [the court's legal conclusions] are legally and logically correct and whether they find support in the facts set out in the court's [ruling] . . . ." (Citation omitted; internal quotation marks omitted.) *Council* v. *Commissioner of Correction*, 114 Conn. App. 99, 103, 968 A.2d 483, cert. denied, 292 Conn. 918, 973 A.2d 1275 (2009).

"To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." (Internal quotation marks omitted.) *State* v. *Revelo*, 256 Conn. 494, 508, 775 A.2d 260, cert. denied, 534 U.S. 1052, 122 S. Ct. 639, 151 L. Ed. 2d 558 (2001). Indeed, the law plainly allows parties to pursue motions to suppress evidence. See id., 514 (noting that defendant had "right to a judicial ruling on his motion to suppress"). At the same time, however, "a court generally is not prohibited from denying leniency to a defendant who elects to exercise a statutory or constitutional right." *State* v. *Angel M.*, 337 Conn. 655, 669, 255 A.3d 801 (2020). It is not "improper for [a] court, upon learning of [a] defendant's decision to reject [a plea] offer, to inform the defendant of the potential

for a greater sentence in the event his motion [to suppress is] denied. In such circumstances, however, it also would be incumbent upon the court to explain why a greater sentence might be appropriate . . . to dispel any suggestion that the court was prepared to punish the defendant merely for exercising his right to a judicial determination of his motion." (Citation omitted.) *State* v. *Revelo*, supra, 516. Therefore, the court may properly inform "the defendant of the possibility of a greater sentence if he pressed and lost his motion to suppress because, in that event, the prosecutor's hand would be strengthened considerably, and, in addition, the defendant arguably would be entitled to less consideration for his plea than if he had chosen to accept responsibility for the offense at an earlier stage of the proceedings." Id., 515 n.28.

In *Revelo*, our Supreme Court "concluded that the trial court had increased the sentence of the defendant . . . solely because he elected to exercise his right to challenge the constitutionality of a police search of his home that had resulted in the seizure of a substantial quantity of cocaine. . . . After [the defendant] was charged with certain drug and related offenses stemming from that search, he filed a motion to suppress the cocaine on the ground that the facts alleged in the search warrant on which the seizure of the cocaine was predicated did not support a finding of probable cause. . . . At a pretrial hearing, the trial court announced that, although [the defendant] had been offered a plea bargain pursuant to which he would be permitted to plead guilty and to receive a sentence of eight years of imprisonment, he elected to have a hearing and a ruling on his motion to suppress. . . . The court further stated that, if [the defendant] pressed his motion and, after the hearing, it was denied, he could then enter a guilty plea and receive a sentence of nine years instead of eight years. . . . [The defendant] chose the second

option, and, in accordance with that election, a hearing was conducted on his motion to suppress, following which the motion was denied. . . . Shortly thereafter, [the defendant] entered a plea of nolo contendere to the charge of selling illegal drugs, and, as the court previously had promised him, he received a sentence of nine years. . . . On appeal, [the defendant] maintained that the nine year sentence violated his right to due process because he received that sentence, instead of the eight year sentence that he had been offered originally, solely for exercising his right to a judicial resolution of his motion to suppress. . . . [Our Supreme Court] agreed with [the defendant], explaining . . . that, in certain circumstances, it may be difficult to draw a meaningful distinction between enhancing the punishment imposed on an accused who exercises a constitutional right and denying him the leniency that he claims he would deserve if he waived that right. . . . Although the distinction between refusing to show leniency to an accused who insists on asserting a constitutional right and punishing an accused for asserting that right may, at times, be a fine one, there is no difficulty in discerning what occurred in [the defendant's] case: the trial court imposed a more severe sentence on [the defendant] solely because he asserted his right to a judicial ruling on his motion to suppress." (Citations omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Angel M.*, supra, 337 Conn. 673–74.

This case stands in stark contrast to what occurred in *Revelo*. In the present case, after the petitioner informed the trial court that he was rejecting the court's initial plea offer, the court canvassed him to ensure he understood that, if he lost his motion to suppress, the state would be in a stronger position, and it was likely that any subsequent plea offer would be higher than the state's original offer of sixteen years and the court's

offer of thirteen years. The court went a step further, informing the petitioner of the potential benefits of pursuing the motion to suppress. Specifically, it stated: "[I]f you prevail on the motion to suppress that would be the end of the case, I believe. . . . I don't believe the state could go forward, although I'm not binding them to that, but that is the strength of their case. So, if you win that motion, most likely that would be the end of the case." With those considerations in mind, the petitioner pursued his motion to suppress and was unsuccessful. Because questions surrounding the admissibility of the petitioner's confession had been formally decided, and the state's case thereby strengthened, the state increased its offer to twenty years of incarceration, and, in response, the court offered the petitioner a sentence of eighteen years of incarceration.

The court's remarks when canvassing the petitioner did not suggest that a lengthier sentence would be imposed because he was deciding to pursue a motion to suppress but, rather, served as a warning that any subsequent offers would likely increase if he lost the motion, given the increased strength of the state's case. The court's warning was entirely consistent with our Supreme Court's guidance in *Revelo* that a court may inform a defendant "of the possibility of a greater sentence if he pressed and lost his motion to suppress because, in that event, the prosecutor's hand would be strengthened considerably . . . ." *State* v. *Revelo*, supra, 256 Conn. 515 n.28. On the basis of our own review of the record, we conclude that the habeas court properly determined that the trial court did not deprive the petitioner of his due process rights by imposing a lengthier sentence after the petitioner pursued and lost a motion to suppress his statements.

Given the clear precedent on this issue, we are not persuaded that the issue, as presented by the petitioner, is debatable among jurists of reason, that it reasonably

could be resolved differently, or that it raises questions deserving further appellate scrutiny. Accordingly, we conclude that the habeas court did not abuse its discretion in denying the petition for certification to appeal.

The appeal is dismissed.

In this opinion the other judges concurred.