IN RE ZAKARI W.*
(AC 48030)

Moll, Clark and Wilson, Js.

Syllabus

The respondent mother appealed from the judgment of the trial court terminating her parental rights with respect to her minor child. The mother claimed that the court erred in concluding that she failed to achieve a sufficient degree of personal rehabilitation within the meaning of the statute (§ 17a-112 (j) (3) (B)). *Held*:

The trial court properly concluded that the respondent mother failed to achieve a sufficient degree of rehabilitation such that, within a reasonable time and considering the age and needs of the minor child, she could assume a responsible position in his life, as the evidence adduced at trial, including evidence of the mother's repeated, ongoing failure to comply with her specific steps and her refusal to cooperate with the Department of Children and Families, was sufficient to support the court's finding by clear and convincing evidence as required by § 17a-112 (j) (3) (B).

Argued March 19—officially released June 6, 2025**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of New Haven, Juvenile Matters, where the case was tried to the court, *Conway, J.*; judgment terminating the respondents' parental

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

Moreover, 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.

** June 6, 2025, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

rights, from which the respondent mother appealed to this court. *Affirmed.*

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

Emily Barigye, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Nisa Khan*, assistant attorney general, for the appellee (petitioner).

Opinion

CLARK, J. The respondent mother, Tali B., appeals from the judgment of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights as to her minor child, Zakari W. (Zakari).[1] The respondent claims that the court erred in concluding that she failed to achieve a sufficient degree of personal rehabilitation within the meaning of General Statutes § 17a-112 (j) (3) (B). We disagree and, accordingly, affirm the judgment of the trial court.

The following facts, as found by the trial court or as are undisputed in the record, and procedural history, are relevant to our resolution of this appeal. Zakari was born in December, 2022, to the respondent and Zion W. (Zion). Zakari was born premature at thirty-three weeks and, as a result, needed assistance with breathing and feeding. Zakari spent twenty-four days hospitalized following his birth before being discharged.

The Department of Children and Families (department) first became involved with the family on the day of Zakari's birth after receiving a referral from staff at the hospital where he was born, which reported that

[1] The parental rights of Zakari's father, Zion W., were also terminated in the proceeding underlying this appeal, but he is not a party to this appeal. Accordingly, we refer to Zakari's mother as the respondent and to Zakari's father by his first name.

the respondent and Zion lacked stable and appropriate housing. Within one day of Zakari's birth, Kristine Florio, an investigative social worker for the department, attempted to meet with the respondent and Zion at the hospital. The respondent told Florio that she was not in a position to speak with her because she first needed to speak with Zion, who was asleep in the hospital room. Over the next few weeks, Florio had difficulty maintaining communication with the respondent; she had one brief telephone conversation with the respondent and communicated with her via text message approximately two or three times per week, but was unable to arrange an in-person meeting despite repeated attempts. In the telephone and text message communications, the respondent acknowledged that she lacked appropriate housing and indicated that she would like Zakari placed with a friend of her family upon discharge from the hospital. On or about December 27, 2022, Florio attempted to contact the respondent to discuss a plan for Zakari's discharge from the hospital but received no response.

Upon Zakari's discharge from the hospital, the petitioner filed a neglect petition and obtained an ex parte order of temporary custody that same day, and Zakari was placed in fictive kin[2] foster care with a friend of the respondent's godmother. On January 6, 2023, the respondent and Zion failed to appear at the hearing on the preliminary order of temporary custody, and the court, *Conway, J.*, sustained the order of temporary custody. The respondent and Zion also failed to appear at the plea hearing on the neglect petition on February 14, 2023, and the court, *Conway, J.*, entered a default

[2] General Statutes § 17a-114 (a) (3) provides that " 'fictive kin caregiver' means a person who is twenty-one years of age or older and who is unrelated to a child by birth, adoption or marriage but who has an emotionally significant relationship with such child or such child's family amounting to a familial relationship."

judgment and committed Zakari to the custody of the petitioner. On the same day, the court ordered specific steps to facilitate reunification, which required the respondent, inter alia, to keep all appointments set by the department and cooperate with all home visits, to let the department know where she resided and inform the department of any changes to her contact information, to participate in counseling, to submit to a substance abuse evaluation and follow any recommended treatment, to obtain and maintain adequate housing and a legal income, to visit Zakari as often as permitted, and to cooperate with service providers recommended by the department.

Kelly Thibault, a social worker for the department, took over the respondent's case on or about January 27, 2023. The trial court found that "Thibault attempted to meet with [the respondent] to assess [her] needs and to offer reunification services. Although . . . Thibault had text communications with [the respondent], [the respondent] did not make [herself] available for an in-person meeting with . . . Thibault until the end of March, 2023. Throughout all of 2023, and possibly into January, 2024, [the respondent] lived a transient life and . . . would not or could not keep the department up to date about where and with whom [she was] living. . . . Thibault's request to visit [the respondent] at [her] various temporary residences were denied; at times [the respondent] . . . reported [that her] hosts objected to department contact or involvement. . . . Thibault, not wanting to potentially jeopardize [the respondent's] fleeting housing by alienating [her] host, respected the [respondent's] wishes and representations and did not pursue gaining access to [her] residences, given that none of the homes were being proffered as potential homes for reunification purposes. Throughout 2023 and into January, 2024, [the respondent], often belatedly, provided the department with [her] city [or] town of

residence but [was] not forthcoming with a specific address.

"Retrospectively, at the termination trial, the [respondent and Zion] chronicled their 2022 through 2023 living situation in their trial testimony. While pregnant [with Zakari] in 2022, the respondent . . . and [Zion] resided with [Zion's father and his family] . . . in Waterbury. At some point, in late 2022 but before Zakari's . . . birth, [the respondent and Zion] left [that] residence and moved in with [Zion's mother] in New Haven. [The respondent and Zion] left that home in February, 2023, because of [their] ongoing arguments with [Zion's] mother. The [respondent and Zion] next resided for two weeks with [Zion's grandmother] in Ansonia before moving in March, 2023, to [the home of the respondent's mother] in Bridgeport. The [respondent and Zion] left that home in May, 2023, due to arguments . . . with [the respondent's mother]. In May, 2023, [the respondent and Zion] lived with [the respondent's] grandmother in Bridgeport for two weeks [until June, 2023, when they moved back in with Zion's mother] in New Haven. [The respondent and Zion] moved out of [that] home in New Haven in September, 2023, due to ongoing arguments with [Zion's mother]. In October, 2023, [the respondent and Zion] went to stay with [Zion's] cousin in Ansonia. From October to December, 2023, [or] January, 2024 . . . Thibault credibly testified [that] she believed the [respondent and Zion] were living back and forth between Ansonia and Waterbury. [The respondent and Zion] testified that, in very early December, 2023, they moved [back in with Zion's father and his family in Waterbury] . . . .

"[T]he predominant means of communication between . . . Thibault and [the respondent] throughout 2023 was via text messaging. . . . Thibault credibly testified that there were periods of time when [the

respondent] did not maintain even texting communication. [The respondent] credibly testified that in 2023 there were 'gaps' of time when [she and Zion] did not have operable cell phones and/or cell phone service. Reliable cell phone operability was most recently an issue for [the respondent] in April, 2024. At the time of the termination [of parental rights] trial, [the respondent] testified that she [had] just obtained a new cell phone and [that it was operable], and [that] she [was] in frequent contact with . . . Thibault. . . .

"In early 2023 . . . Thibault sought to refer [the respondent] for a substance abuse evaluation/assessment and . . . to submit to a mental health assessment. At the time, [the respondent was] residing in Bridgeport and therefore a referral was made for [her] to attend South West Behavioral Health Systems. The respondent . . . scheduled an intake . . . but [did not follow] through. . . .

"Thibault learned in May, 2023, [that] the [respondent was] residing in New Haven and she therefore referred [the respondent] to New Haven based State Street Counseling [(State Street)] and [Midwestern Connecticut Council of Alcoholism, Inc. (MCCA)]. State Street . . . offers treatment for dually diagnosed clients and therefore if [the respondent] had attended she could have been assessed for substance use/abuse and undergone a mental health assessment. [The respondent] did not engage with either State Street . . . or MCCA. . . . Thibault persevered in attempting to engage the [respondent] and she attempted to connect [the respondent] with Prosperity Counseling, an entity that offers mental health evaluation/assessment and treatment but also case management services, to assist in getting [the respondent] to engage with services and providers. [The respondent] failed to follow through with Prosperity Counseling.

"When . . . Thibault learned of [the respondent's] relocation to Ansonia, she discussed with [her] engaging with Behavioral Health Care. Once again, [the respondent] did not appear for the intake appointment. In January, 2024, the [respondent] informed . . . Thibault of [her] relocation [back] to the . . . Waterbury residence [of Zion's father]. . . . Thibault identified Waterbury based Wellmore Counseling Services [(Wellmore)] as an appropriate referral for [the respondent] and . . . informed [the respondent] about Wellmore's walk-in hours. It [was not] until mid-April, 2024, two days prior to the start of the . . . trial, that [the respondent] went to Wellmore . . . . Wellmore recommended [that the respondent] be assessed by Wheeler Clinic, [which] also offers walk-in hours. By the conclusion of the . . . trial on May 1, 2024, [the respondent] had yet to engage with Wheeler Clinic.

"The department attempted to assist [the respondent] with housing. [The respondent was] encouraged to call 211 and, as far back as March, 2023 . . . Thibault assisted [the respondent] in completing a referral for supportive housing services. . . . Thibault repeatedly tried to explain to and discuss with [the respondent] what [she] needed to do for supportive housing eligibility purposes and for reunification purposes. [The respondent] would respond that [she] would do what [she] needed to do but then not do it or become angry and abruptly end the discussion.

"[The respondent was] offered weekly supervised visitation with Zakari. Throughout 2023, [the respondent] reported a lack of reliable transportation. In March, 2023, [the respondent and Zion] resided in Bridgeport. . . . Thibault transported . . . Zakari to the [respondent's] Bridgeport residence [which was in the apartment building of the respondent's grandmother]. At the [respondent's] direction, apparently because the department was not welcome to come inside the apartment,

the supervised visit took place in the building's lobby. Subsequently, the department was successful in having Quality Parenting Center (QPC), a supervised visitation and parenting coaching/education provider . . . transport Zakari to visits in Bridgeport. However, once [the respondent] relocated to an undisclosed New Haven address . . . QPC deemed [the respondent] no longer eligible for QPC transport [due to the proximity of New Haven to QPC's location in Hamden and the availability of public transportation between the respondent's home and QPC's Hamden location]. From June [through] August, 2023, the respondent . . . attended five out of twelve scheduled visits . . . . [She was] unsuccessfully discharged from QPC on August 18, 2023, [due to inconsistency in attending visitation appointments]. . . . Supervised parent-child visits were then moved to the [department's] New Haven . . . office; [the respondent] attended approximately half of the scheduled visits [at that office].

"In the latter part of 2023 . . . Thibault understood the [respondent] to be living back and forth between Ansonia and Waterbury. In January, 2024 . . . Thibault referred [the respondent] to 'r Kids, an agency that provides professional supervised visitation services and parenting coaching/education services. [The respondent] failed to attend the January 22, 2024 'r Kids intake appointment. Nonetheless, from February 2, 2024, to April 16, 2024, (the first day of the termination [of parental rights] trial), there had been ten scheduled 'r Kids supervised visits. [The respondent] attended seven supervised 'r Kids visits . . . missed one visit due to [the respondent] oversleeping . . . missed [another visit] because [the respondent] did not confirm ahead of time [her] intent to attend, and . . . missed [a third visit due to a miscommunication between the respondent and the department's central transportation unit . . . driver].

"The department attempted to assist the respondent with transportation [for the supervised visits]. Throughout the case the [respondent was] offered bus passes. When public bus transportation was not feasible, the department was amenable to purchasing train tickets for [the respondent but was unable to do so because the respondent was] not forthcoming about [her] location and/or [was] too transient to know from what train station [she was] traveling to and from. . . . [From] early 2024 [through the time of trial] . . . the [respondent was] provided with department based . . . transportation to and from 'r Kids." (Citation omitted; footnotes omitted.)

On January 3, 2024, the petitioner filed a petition to terminate the respondent's parental rights, alleging that the department had made reasonable efforts to reunify the respondent with Zakari and that the respondent had failed to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j).[3] The court, *Conway, J.*, held a trial on April 16 and May 1, 2024. On the first day of trial, the respondent testified that she expected to reside at the home of Zion's father in Waterbury (Waterbury residence) long-term and that she had

[3] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b . . . (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . ."

a bed, clothes, and toys ready for Zakari at that home. On April 23, 2024, however, when Thibault attempted to meet with the respondent at the Waterbury residence, the respondent refused to let her inside the house.

On May 17, 2024, the court issued a memorandum of decision granting the petition. The court found by clear and convincing evidence that the department had made reasonable efforts to reunify the respondent with Zakari, that the respondent failed to achieve a sufficient degree of personal rehabilitation to encourage the belief that within a reasonable time she could assume a responsible position in Zakari's life, and that terminating the respondent's parental rights was in Zakari's best interest.

On appeal, the respondent claims that the court erred in concluding that she failed to achieve a sufficient degree of personal rehabilitation.[4] The respondent argues that because her "rehabilitation was dependent on housing, and because whether the respondent's hous ing was suitable for [Zakari] was easily determined within a short period of time, the trial court erred in determining [that] the evidence was sufficient to terminate [her] parental rights . . . ." The petitioner argues to the contrary that the respondent faced "many obstacles to reunification with Zakari [that] spanned beyond housing and remained unaddressed at the time of trial," and that the court properly considered all of the relevant factors in determining that the respondent had failed to rehabilitate. We agree with the petitioner.

The following legal principles and standard of review govern the respondent's claim. "In the adjudicatory

[4] Pursuant to Practice Book §§ 67-13 and 79a-6 (c), the attorney for the minor child filed a statement adopting the brief of the petitioner and supporting the affirmance of the judgment terminating the respondent's parental rights.

phase of a termination of parental rights proceeding,[5] the court must determine whether one of the . . . statutory grounds that may serve as a basis for termination of parental rights exists. . . . Failure of a parent to achieve sufficient personal rehabilitation is one of [the] statutory grounds on which a court may terminate parental rights pursuant to § 17a-112. . . . That ground exists when a parent of a child whom the court has found to be neglected fails to achieve such a degree of rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, the parent could assume a responsible position in the life of that child." (Footnote added; internal quotation marks omitted.) *In re Aurora H.*, 222 Conn. App. 307, 317–18, 304 A.3d 875, cert. denied, 348 Conn. 931, 306 A.3d 1 (2023).

"Personal rehabilitation as used in [§ 17a-112] refers to the restoration of a parent to [her] former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [her] ability to manage [her] own life, but rather whether [she] has gained the ability to care for the particular needs of the child at issue. . . . An inquiry regarding personal rehabilitation requires us to obtain a historical perspective of the respondent's child-caring and parenting abilities. . . . Although the standard is not full rehabilitation, the parent must show more than any rehabilitation. . . . Successful completion of the petitioner's expressly articulated expectations is not sufficient to defeat the petitioner's claim

[5] "A hearing on a petition to terminate parental rights consists of two phases, adjudication and disposition. . . . If the trial court determines that a statutory ground for termination exists, it proceeds to the dispositional phase. In the dispositional phase, the trial court determines whether termination is in the best interest of the child." (Internal quotation marks omitted.) *In re Timothy B.*, 219 Conn. App. 823, 835, 296 A.3d 342, cert. denied, 349 Conn. 919, 318 A.3d 439 (2023).

that the parent has not achieved sufficient rehabilitation. . . . [E]ven if a parent has made successful strides in her ability to manage her life and may have achieved a level of stability within her limitations, such improvements, although commendable, are not dispositive on the issue of whether, within a reasonable period of time, she could assume a responsible position in the life of her children." (Citations omitted; internal quotation marks omitted.) *In re Zarirai S.*, 229 Conn. App. 239, 254–55, 326 A.3d 1148 (2024).

"A conclusion of failure to rehabilitate is drawn from *both* the trial court's factual findings and from its weighing of the facts in assessing whether those findings satisfy the failure to rehabilitate ground set forth in § 17a-112 (j) (3) (B). Accordingly . . . the appropriate standard of review is one of evidentiary sufficiency, that is, whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court." (Emphasis in original; internal quotation marks omitted.) *In re Shane M.*, 318 Conn. 569, 587–88, 122 A.3d 1247 (2015).[6]

In the present case, our careful review of the record leads us to conclude that the court's determination that

[6] "Prior to *In re Shane M.*, supra, 318 Conn. 569, courts had applied the clear error standard of review both to a trial court's determination that a parent failed to rehabilitate and to that court's subordinate factual findings." *In re Kyreese L.*, 220 Conn. App. 705, 720 n.8, 299 A.3d 296, cert. denied, 348 Conn. 901, 300 A.3d 1166 (2023). In her principal appellate brief, the respondent argues that "the standard of review as established by our Supreme Court in *In re Shane M.*, should be replaced by the former clear error standard." As the respondent acknowledges, however, this court "is bound by the precedent from our Supreme Court and is unable to modify it." *In re Denzel W.*, 225 Conn. App. 354, 380 n.14, 315 A.3d 346, cert. denied, 349 Conn. 918, 317 A.3d 1 (2024).

the respondent failed to achieve a sufficient degree of rehabilitation is well supported by the evidence. The respondent's specific steps required her to obtain adequate housing, to keep the department informed about where and with whom she resided, and to "cooperate with home visits, announced or unannounced . . . ." As the court found, the respondent was transient from the time of Zakari's birth in December, 2022, until December, 2023, or January, 2024, around the time of the filing of the petition. Thibault testified that for most of that time the respondent refused to provide her with the address of her residence or the names of people with whom she resided but, instead, would only tell her in which town she was living and that she was staying with "family or friends." Although the respondent testified that she moved to the Waterbury residence in early December, 2023, Thibault testified that the respondent did not inform the department of the move or provide the address until the end of January, 2024.

In addition, despite the respondent offering the Waterbury residence as a permanent home for Zakari, there was evidence in the record that called into question the permanency of that arrangement. As the court noted in its memorandum of decision, the respondent and Zion previously moved out of the Waterbury residence shortly before Zakari's birth, and the respondent did not provide a plausible explanation why they were welcome to reside there permanently at the time of trial but not at the time of Zakari's birth. Moreover, Thibault testified that, as of the first day of trial, the respondent still had not allowed her inside the residence to assess whether it was a suitable home. As the court found, although "the [respondent] testified that [she] understood the need to permit the department access to any residence proffered as a suitable home for Zakari," Thibault was "denied access to the [Waterbury residence]

by the respondent . . . allegedly because [Zion's father] was not comfortable with the department coming into his home. On April 23, [2024, approximately one week after the first day of trial] . . . Thibault went back to [the Waterbury residence] with releases to be signed by the [respondent]," but "[the respondent] refused . . . Thibault access to the home, notwithstanding that the termination trial was scheduled to resume to conclusion on May 1."

The respondent's specific steps also required her to "visit [Zakari] as often as permitted," but the evidence indicates that the respondent repeatedly missed scheduled visits. A social study submitted by Thibault in support of the termination petition, which was admitted into evidence, indicates that the respondent attended only six of seventeen weekly visits that were scheduled at the department's New Haven office. Thibault testified that, when the department referred the respondent to QPC for visitation and parent coaching, she was unsuccessfully discharged after attending only five of twelve scheduled visits. Thibault further testified that, when the department referred the respondent to 'r Kids for visitation services after she moved to the Waterbury residence, she failed to attend the intake appointment and then missed three of ten scheduled visits. As Thibault testified, the department took various steps to address the respondent's transportation issues, including transporting Zakari to Bridgeport so that the respondent could visit with him close to home, arranging to provide the respondent with bus passes and train tickets, and providing transportation to and from visits via the department's centralized transportation unit. Despite these efforts, the respondent continued to miss scheduled visits with Zakari throughout the pendency of the case.

Thibault further testified that the respondent's lack of cooperation with the department and failure to

engage in recommended services prevented the department from fully assessing the respondent's needs. Thibault testified that the respondent had reported feeling depressed and was concerned about possible postpartum depression. The respondent's specific steps required her to "[t]ake part in counseling and make progress toward the identified treatment goals" and indicated that those goals were "[to be determined] upon further assessment." In addition, the specific steps required the respondent to "[s]ubmit to a substance abuse evaluation and follow the recommendations about treatment . . . ." Thibault testified that between March, 2023, and January, 2024, she referred the respondent to several different service providers depending on where the respondent was living at the time, but the respondent repeatedly failed to attend her intake appointments. During her testimony, the respondent acknowledged that she did not engage with any of the recommended service providers until four days before the first day of trial when she went for an initial assessment at Wellmore, which referred her to Wheeler Clinic. Although Wheeler Clinic offers walk-in hours, the respondent acknowledged that she had not followed up on that referral as of the conclusion of the trial.

The respondent's specific steps also required her to "[k]eep all appointments set by [the department] . . . ." Thibault testified, however, that the respondent attended only one of three scheduled administrative case reviews, which are held to discuss the progress of the case and explain the department's expectations with respect to the reunification plan. Thibault further testified that when she attempted to discuss with the respondent the importance of engaging with recommended services, the respondent would resist those efforts by either stating that she did not need the services or abruptly ending the conversation. The social

study submitted by Thibault in support of the termination petition indicates that, as of December 18, 2023, the respondent "ha[d] not met with [Thibault] since [May 5, 2023] to discuss the case despite numerous requests made by the [d]epartment."

We disagree with the respondent's contention that the court could not conclude that she failed to rehabilitate merely because she claimed to have obtained permanent housing by the time of trial. First, the court was not required to credit the respondent's testimony concerning the suitability or permanency of her residence at the time of trial. On the contrary, given the respondent's long history and pattern of transience throughout the period of the department's involvement in the case and the respondent's continuing refusal to grant the department access to her residence at the time of the trial, there was more than sufficient evidence for the court to conclude that the respondent had not obtained and likely would not remain in a permanent and suitable housing environment.[7]

Second, the respondent's argument also ignores the fact that the court's determination that she failed to

[7] In her principal appellate brief, the respondent appears to argue that the court erred in failing to grant a continuance so that the department could conduct an inspection of the Waterbury residence. Specifically, the respondent argues in her brief that the court was "required [to grant] additional time to determine whether the respondent's residence was appropriate for reunification," and that "[t]he failure to allow for such minimal delay acted against the statutory language [of § 17a-112 (j) (3) (B)] and resulted in an improper termination of the respondent's parental rights." During oral argument before this court, however, the respondent's counsel clarified that the respondent was not claiming that the court erred in failing to grant a continuance but, instead, was arguing that the court was required to consider whether the respondent would have been able to demonstrate sufficient rehabilitation if given additional time for the department to inspect her residence. The record reflects that the court expressly considered—and rejected—the respondent's argument that the circumstances justified giving her additional time to rehabilitate, however, and we conclude that the court's determination that the respondent failed to rehabilitate was reasonably supported by the evidence.

rehabilitate relied on more than just her lack of permanent housing. Rather, the memorandum of decision indicates that the court relied on the totality of the evidence regarding the respondent's overall failure to address the issues that led to Zakari's commitment to the petitioner's custody, finding that "[the respondent] repeatedly eschewed the department's attempts to connect [her] with services and providers that were essential for reunification." The court further found that "[t]he evidence and testimony does not support giving [the respondent] additional time to become compliant with the court-ordered specific steps and/or to afford [the respondent] further time to decide whether to more fully collaborate with the department." In light of the aforementioned evidence of the respondent's repeated, ongoing failure to comply with her specific steps and refusal to cooperate with the department, the court's determination in that regard was well supported by the record. Accordingly, we conclude that the evidence was sufficient to support the conclusion that the respondent failed to achieve a sufficient degree of rehabilitation such that, within a reasonable time and considering the age and needs of Zakari, she could assume a responsible position in his life.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* YERO S. WALKER (AC 46936)

Cradle, C. J., and Wilson and Prescott, Js.

Syllabus

Convicted of the crimes of carrying a pistol without a permit and criminal possession of a pistol, and of being a persistent felony offender, the defendant appealed to this court. The defendant claimed, inter alia, that the trial court had violated his constitutional right to be present at all critical stages

of the prosecution when it allowed him to be tried and sentenced for being a persistent felony offender after he failed to appear in court for both the trial on that charge and his sentencing. *Held*:

The trial court violated the defendant's right to be present at trial and sentencing with respect to part B of the state's substitute information, which charged the defendant with being a persistent felony offender, when the proceedings concerning that charge were conducted in the defendant's absence, as the defendant had never been notified of the contents of part B of the substitute information, and, therefore, any waiver by the defendant of the right to be present during those proceedings could not have been knowing and intelligent.

Because the state failed to demonstrate that this constitutional violation was harmless beyond a reasonable doubt, this court reversed the defendant's conviction of being a persistent felony offender and remanded the case for resentencing.

The defendant could not prevail on his claim that the trial court had violated his right to counsel of his choice when the court denied his request for a continuance, immediately prior to the commencement of jury selection, for the purpose of replacing his court-appointed counsel with private counsel, as the defendant was afforded the opportunity to retain substitute counsel almost three years prior to the commencement of jury selection, when he first raised the issue of replacing his court-appointed counsel with the trial court, but failed to do so, and at no point did the defendant assert a substantial complaint concerning his court-appointed counsel's representation of him.

Argued March 27—officially released June 12, 2025*

Procedural History

Two part substitute information charging the defendant, in the first part, with the crimes of carrying a pistol without a permit and criminal possession of a pistol, and, in the second part, with being a persistent felony offender, brought to the judicial district of Waterbury, where the charge of criminal possession of a pistol was tried to the court, *Schuman*, *J.*; finding of guilty; thereafter, the charge of carrying a pistol without a permit and the second part of the information were tried to the jury before *Schuman*, *J.*; verdict of guilty;

* June 12, 2025, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

subsequently, the court, *Schuman*, *J.*, rendered judgment in accordance with the finding of guilty and the verdict, and the defendant appealed to this court. *Reversed in part*; *further proceedings*.

Alice Osedach Powers, assigned counsel, for the appellant (defendant).

Raynald A. Carre, deputy assistant state's attorney, with whom were *Maureen Platt*, state's attorney, and *Elena Palermo*, senior assistant state's attorney, for the appellee (state).

Opinion

CRADLE, C. J. The defendant, Yero S. Walker, appeals from the judgment of conviction, rendered following a jury trial, of carrying a pistol without a permit in violation of General Statutes (Rev. to 2017) § 29-35 (a)[1] and being a persistent felony offender in violation of General Statutes § 53a-40 (g), and rendered after a trial to the court, of criminal possession of a pistol in violation of General Statutes (Rev. to 2017) § 53a-217c (a) (1).[2] On appeal, the defendant claims that the trial court violated his constitutional rights (1) to be present at all critical stages of his prosecution when it determined that he waived that right and tried and sentenced him in absentia, and (2) to counsel of his choice when it denied his motion for a continuance to retain substitute counsel. We disagree with the defendant's claim that his constitutional right to counsel was violated. We agree, however, that the trial court improperly determined that he had waived his right to be present at trial and sentencing as to the charge of being a persistent felony offender[3] and therefore reverse the judgment as to that

[1] Hereinafter, all references to § 29-35 are to the 2017 revision.

[2] Hereinafter, all references to § 53a-217c are to the 2017 revision.

[3] In light of the relief that we afford the defendant with respect to this claim, we need not address the defendant's separate claim that his constitutional right to due process was violated when the trial court failed to inform him of the contents of the state's part B information, in which he was charged with being a persistent felony offender.

charge only and remand the case for resentencing on the remaining two convictions.

The following facts and procedural history are relevant to the defendant's claims on appeal. On October 7, 2018, the defendant was arrested in connection with an incident in which shots were fired in a parking lot in Waterbury. The state initially charged the defendant with illegal transfer/purchase of a pistol in violation of General Statutes (Rev. to 2017) § 29-33; carrying a pistol without a permit in violation of § 29-35 (a); illegal possession of a large magazine in violation of General Statutes (Rev. to 2017) § 53-202w (c) (1); tampering with physical evidence in violation of General Statutes § 53a-155 (a); interfering with an officer in violation of General Statutes (Rev. to 2017) § 53a-167a (a); stealing a firearm in violation of General Statutes § 53a-212 (a); and criminal possession of a pistol in violation of § 53a-217c (a) (1).

On October 30, 2018, the defendant appeared in court, and the court appointed Assistant Public Defender John Cizik to represent him. At that time, Cizik entered pro forma not guilty pleas to the charges on behalf of the defendant.

The trial commenced on April 27, 2022. Prior to proceeding with jury selection, the court noted that the state had filed a substitute information charging the defendant with carrying a pistol without a permit in violation of § 29-35 (a) and criminal possession of a pistol in violation of § 53a-217c (a) (1). The court, *Schuman, J.*, confirmed with Cizik at that time the defendant's not guilty plea on both charges, and his election to be tried before a jury on the charge of carrying a pistol without a permit and by the court on the charge of criminal possession of a pistol.

Also on April 27, 2022, the state filed a part B information charging the defendant with being a persistent felony offender in violation of § 53a-40 (g) and seeking

enhanced penalties on the charges of carrying a pistol without a permit, criminal possession of a pistol and "criminal possession of ammunition."[4] There was no mention on the record of the part B information. On May 25, 2022, the state filed an amended part B information seeking enhanced penalties only on the charge of criminal possession of a pistol.

The jury found the defendant guilty of carrying a pistol without a permit and the court found the defendant guilty of criminal possession of a pistol. The jury also later found the defendant guilty of being a persistent felony offender.[5] Thereafter, the court sentenced the defendant to a total effective sentence of fifteen years of incarceration, of which three years were mandatory, and five years of special parole. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the court violated his constitutional right to be present at all critical stages of his prosecution when it tried and sentenced him in absentia. Specifically, the defendant claims that the court improperly determined that he had waived his right to be present during trial and sentencing on the state's part B information charging him with being a persistent felony offender because he had never been notified of the contents of the part B information, and, consequently, any waiver could not have been knowing and intelligent. We agree.

The following additional procedural history is relevant to this claim. Following jury selection, at which

[4] The record does not reflect that the defendant was charged with criminal possession of ammunition in this case.

[5] Although the state had given notice on April 25, 2022, of its intent to seek sentence enhancement pursuant to General Statutes § 53-202k for the commission of a class A, B or C felony with a firearm, it ultimately did not pursue enhancement of the defendant's sentence pursuant to that statute.

the defendant was present with counsel, evidence was scheduled to begin on May 24, 2022. On the morning of May 24, the defendant did not appear in court, which prompted the court to issue a capias to have him brought to court. The court recessed until 2:30 p.m. When court reconvened, the state indicated that neither its inspector nor other law enforcement officers had been able to locate the defendant. Defense counsel indicated that he also had been unable to reach the defendant. In response to the state's argument that trial should proceed in the defendant's absence, the court first recounted: "We started jury selection several weeks ago, and we did pick two jurors, and then—and on one of those days, the defendant asked to leave early to pick his daughter up at school, and I granted permission.

"But then I believe, on the second day of jury selection, the defendant informed us that he was sick and supplied a note indicating he would not be available to return to work until Saturday of that week. That caused us to suspend jury selection and reschedule the trial because we had planned on completing jury selection that week and trying the case the next week given the tight trial schedule that I had and also particularly [the state].

"We then resumed jury selection last week and, on one day of jury selection, the defendant was late. I told him he's required to be here at the beginning of court. And we completed jury selection last week. At the conclusion of jury selection, I did tell the defendant that a trial would start Tuesday and he was required to be here from 10 a.m. to 5 p.m. on the days of trial this week.

"So, I believe the defendant has had full notice of the trial. It's disturbing, obviously, that he is not here or [that he did not call] anyone including his lawyer to inform us of any reason why he can't be here."

The court then explained: "[U]nder this circumstance, we look at Practice Book § 44-8 (2), which provides that the defendant must be present at the trial and at the sentencing hearing, but if the defendant will be represented by counsel at the trial or sentencing hearing, the judicial authority may direct that the trial or part thereof or the sentencing hearing be conducted in the defendant's absence if the judicial authority determines that the defendant waived the right to be present. . . . [A]t this point, I just want to address the waiver issue. . . . I am going to find that the defendant has waived his right to be present. The case law supports this finding . . . [in that it] states [that], if a defendant deliberately leaves the courtroom after his trial has begun, he forfeits his right to be present at trial. [Our case law also] . . . states [that] a waiver of the right to be present at trial may be manifested by . . . an intelligent and intentional action. It does not have to be expressed but may consist of acts or conduct from which it may be implied, and I find that the defendant's failure to be here, after he was informed that he was required to be here and numerous times told to be here on time, his failure to be here without calling and giving us any indication as to a reason why he couldn't be here after at least three hours of [a] police search for him without finding him [at] the addresses where he's likely to be found, not returning or answering or returning phone calls, does constitute a waiver of the right to be present under § 44-8 (2)."

After defense counsel voiced his concern that proceeding without the defendant would violate his constitutional rights, the court explained: "What I'm going to try to do is balance the competing interests here. [The] Practice Book does provide that the court may direct that the trial or a part thereof be conducted in the defendant's absence. I'm going to order that a part of the trial be conducted in the defendant's absence this

afternoon to accommodate the two state's witnesses who are not available for the rest of the trial period, which was really today and tomorrow.

"In doing so, I'm considering a number of factors. One, of course, is their availability. Two is a capias was issued over three hours ago, and the defendant has not been located, so there's been at least a reasonable opportunity to find the defendant. He has not been located, and he has not called.

"And I will instruct the jur[ors] that they should draw no unfavorable inference from the defendant's absence and that his absence should play no role in their verdict, and they should not speculate as to the reasons why the defendant is not here.

"On the other hand, in the hopes that the defendant can be found overnight, I don't want to go ahead with the rest of the trial until tomorrow. Those witnesses are available. I think it's reasonable to wait until tomorrow at 10 a.m. to see whether the defendant does appear or can be found before we go ahead with any more of the trial in absentia.

"I would also add that at this point, rescheduling the trial is not a meaningful option. We have already rescheduled the trial once because of the defendant's absence, and, at this time, the balance weighs in favor of the state and the court's interest in moving ahead with this case. I will note that, next week, both [the state's attorney] and [the court] start a murder case that we project will take five weeks for jury selection and evidence, and there's a speedy trial motion in that case. So that has to be heard. I think it would be inconvenient and unfair to the state to reschedule this case a third time. The state has prepared its witnesses each time, and, in all fairness, the state has a right to be heard here. And I think it would be prejudic[ial] if we rescheduled it again.

"I think hearing the testimony of the witnesses [who will] not be available in the defendant's absence this afternoon and then deferring the rest of the trial until tomorrow morning when, hopefully, the defendant will be here, strikes the appropriate balance giving all the competing considerations. [Defense counsel], of course, will be here for all of this and certainly enjoys full right of cross-examination of these witnesses." The jury was sworn, and trial began in the defendant's absence.

The defendant again failed to appear in court on the next day. The court explained: "Numerous efforts have been made to bring him here for his benefit, but he's chosen not to be here. I construe that as a continuing waiver of his right to be here, and, since the state has witnesses who are ready to testify, we have a jury, we started the trial. We already rescheduled this trial, and, for all the reasons I stated yesterday, I concluded that we should continue the trial in absentia." Trial again proceeded in the defendant's absence.

On that same day, after closing arguments, the court indicated to counsel that it had found the defendant guilty of criminal possession of a pistol, and, "based on that decision, we will ask the jury, after it's rendered its verdict on carrying a pistol without a permit, to come back and hear evidence on . . . part B . . . of the information charging [him] with [being a] persistent felony offender." The jury thereafter found the defendant guilty of carrying a pistol without a permit, and the court instructed the jury to return the following day to consider the state's part B information.

The defendant again did not appear in court the next day. At that time, the court confirmed with defense counsel that "the defendant enters a not guilty plea and jury election on the second part of the information . . . ." After the jury found the defendant guilty of being

a persistent felony offender, the court set a sentencing date of August 24, 2022.

On August 24, 2022, the defendant failed to appear in court for sentencing. The court again found that he waived his right to be present and proceeded to sentence him in absentia.[6]

On appeal, the defendant claims that his constitutional right to be present at his trial and sentencing was violated in that the court improperly determined that he waived that right because he had not been apprised of the part B information. Although defense counsel objected to proceeding with trial in the defendant's absence, counsel did not assert the specific claim that the defendant could not have waived his constitutional right to be present because he did not have notice of the part B information. Accordingly, the defendant seeks review pursuant to *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).

"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

[6] The court reasoned: "[T]he defendant was here for . . . the beginning of jury selection and was well aware, as far as I can tell, that this trial was going forward. And we did go forward in the defendant's absence. The defendant can't reasonably assume that the case is going to go away merely because he doesn't appear in court, or that we will just wait until he gets back. So, I view the defendant's failure to appear today as an intentional waiver of his right to appear and therefore believe that we should conduct the sentencing in absentia."

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.) *State* v. *Daniels*, 228 Conn. App. 321, 342, 324 A.3d 820, cert. denied, 350 Conn. 926, 326 A.3d 248 (2024).

The state does not dispute, and we conclude, that the record is adequate to review the defendant's claim and that the claim is of constitutional magnitude. The first two prongs of *Golding* therefore have been satisfied. The state challenges the defendant's assertion that a constitutional violation exists because he waived his right to be present at trial and sentencing, and, thus, argues that the defendant's claim fails under the third prong of *Golding*. We disagree.

"It has long been settled that an accused enjoys a right both at common law and pursuant to the sixth amendment's confrontation clause to be present at all stages of trial. . . . It is also well settled that under the due process clauses of the fifth and fourteenth amendments a defendant must be allowed to be present at his trial to the extent that a fair and just hearing would be thwarted by his absence. . . . Nevertheless, the defendant's presence is not required when the right is waived. Waiver in this context is addressed both in our rules of practice and in our case law. . . .

"Pursuant to Practice Book § 44-8: The defendant must be present at the trial and at the sentencing hearing, but, if the defendant will be represented by counsel at the trial or sentencing hearing, the judicial authority may: (1) Excuse the defendant from being present at the trial or a part thereof or the sentencing hearing if the defendant waives the right to be present; (2) Direct that the trial or a part thereof or the sentencing hearing be conducted in the defendant's absence if the judicial

authority determines that the defendant waived the right to be present; or (3) Direct that the trial or a part thereof be conducted in the absence of the defendant if the judicial authority has justifiably excluded the defendant from the courtroom because of his or her disruptive conduct . . . . Consequently, the trial court is authorized to direct the trial or a part thereof to be conducted in the absence of the defendant who is represented by counsel if the court determines that he has waived his right to be present. . . .

"Waiver is the intentional relinquishment of a known right. Waiver does not have to be express, but may consist of acts or conduct from which waiver may be implied. . . . Moreover, whether there has been an intelligent and competent waiver of the right to presence must depend, in each case, upon the particular facts and circumstances surrounding that case. . . .

"The United States Supreme Court has stated that, where the accused is not in custody, the prevailing rule has been, that if, after the trial has begun in his presence, he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates as a waiver of his right to be present and leaves the court free to proceed with the trial in like manner and with like effect as if he were present. . . . *Taylor* v. *United States*, 414 U.S. 17, 19, 94 S. Ct. 194, 38 L. Ed. 2d 174 (1973)." (Citations omitted; internal quotation marks omitted.) *State* v. *Hernandez*, 197 Conn. App. 257, 262–63, 231 A.3d 266, cert. denied, 335 Conn. 960, 239 A.3d 1215 (2020).[7]

[7] Of course, cases in which a defendant is in custody or present at trial and then affirmatively expresses his decision to absent himself from trial are different from those, such as the present case, in which the defendant, without explanation, simply does not appear for trial. "The trial court is not required to preemptively notify a defendant that his case will proceed in his absence without any indication that he would be absent at some later time. This requirement would give the defendant the power to control the court by unilaterally prevent[ing] his case from going forward, allowing him to defy the law with impunity, and in the process, to paralyze the [criminal]

For most purposes, commencement of a jury trial is generally defined as the commencement of the voir dire examination of potential jurors. See, e.g., *State* v. *Hargett*, 343 Conn. 604, 637, 275 A.3d 601 (2022). Here, the defendant was out on bond and was present in court with counsel throughout jury selection. When jury selection was complete, the court specifically addressed the defendant to ensure that he understood that he needed to be present for the remainder of trial the following week. The defendant nevertheless inexplicably failed to appear. On that basis, the defendant does not challenge the court's determination that he waived his right to be present for trial and sentencing on the charges of carrying a pistol without a permit and criminal possession of a pistol; nor could he reasonably have done so. The defendant was aware of those charges and the potential sentences associated with the charged offenses. Defense counsel indicated in court that he had discussed those charges with the defendant and that the defendant was aware of them and the attendant liability if convicted of them. The record does not reflect, however, that the defendant was ever made aware of the existence of the part B information or its contents, or the potential sentencing ramifications if convicted of the charge set forth therein.[8]

proceedings." (Internal quotation marks omitted.) *State* v. *Hernandez*, supra, 197 Conn. App. 268.

[8] General Statutes § 53a-40 provides in relevant part: "(g) A persistent felony offender is a person who (1) stands convicted of a felony other than a class D or E felony, and (2) has been, at separate times prior to the commission of the present felony, twice convicted of a felony other than a class D or E felony, if such felonies were committed during the ten years prior to the commission of the present felony.

* * *

"(o) When any person has been found to be a persistent felony offender, the court, in lieu of imposing the sentence authorized by section 53a-35a for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by said section for the next more serious degree of felony; provided the sentence imposed may not be less than three years, and provided further three years of the sentence so imposed may not be suspended or reduced by the court. . . ."

"The sixth amendment to the United States constitution and article first, § 8, of the Connecticut constitution guarantee a criminal defendant the right to be informed of the nature and cause of the charges against him with sufficient precision to enable him to meet them at trial. . . . [That] the offense should be described with sufficient definiteness and particularity to apprise the accused of the nature of the charge so he can prepare to meet it at his trial . . . [is a principle] of constitutional law [that is] inveterate and sacrosanct." (Citations omitted; internal quotation marks omitted.) *State* v. *Laracuente*, 205 Conn. 515, 518, 534 A.2d 882 (1987), cert. denied, 485 U.S. 1036, 108 S. Ct. 1598, 99 L. Ed. 2d 913 (1988).

Consistent with this fundamental constitutional mandate, Practice Book § 37-11 provides: "Prior to the time the defendant enters a guilty plea, or, if the defendant pleads not guilty, prior to the commencement of trial, the court shall notify the defendant of the contents of the second part of the information. The clerk shall enter on the docket the time and place of the giving of such notification and, where necessary, shall include entry thereof in the judgment file."

Here, the record reflects that the state first filed a part B information on April 27, 2022. The state filed its substitute information on that same day. Although the court addressed the substitute information with defense counsel, there was no mention of the part B information.[9] The record does not reflect that the court had ever notified the defendant of the contents of the part

[9] Although the court advised the defendant of the state's intention to seek sentence enhancement under § 53-202k, that advisement cannot supplant the requirement, set forth in Practice Book § 37-11, that the defendant be advised of the contents of the part B information, which required different proof and provided for a different sentence enhancement than a sentence enhancement under § 53-202k.

B information.[10] There is likewise no indication in the court file that the defendant was so advised. In fact, we cannot glean from the record that the defendant ever had any knowledge of the contents of the part B information and what the state was required to prove in order to determine that he is a persistent felony offender and the penalty that he faced. Rather, after the court announced its finding of guilt on the criminal possession charge, it asked defense counsel if the defendant was pleading not guilty with respect to the part B information and whether he was electing a jury trial on the charge contained therein. In the absence of the defendant, defense counsel responded affirmatively.[11] The contents of the part B information were not read in court until they were read to the jury at the commencement of its consideration of it.

Because the defendant was never apprised of the part B information, he could not have intelligently and knowingly waived any rights associated with it. We therefore conclude that the court improperly determined that he did so. In the absence of a valid waiver,

[10] After the court advised the defendant of the state's intention to seek sentence enhancement under § 53-202k, the court noted that "there's still an outstanding issue as to persistent felony offender enhancement. And I'm not going to raise that now, unless you want me to, but, rather, wait to see what the verdict is and then see whether we should have a separate proceeding before the jury, the court, or whether there would be a plea or what on persistent serious felony offender, but I don't think we need to address that right now." This was the court's only reference to the part B information on the record. Based on the court's comment, it intended to advise the defendant of the part B information after it made its finding of guilt as to the criminal possession of a pistol charge. Unfortunately, that intent was thwarted by the defendant's absence at trial, which could not reasonably have been anticipated by the court.

[11] We note that Practice Book § 37-7 provides: "Upon being read the charges against him or her contained in the information or complaint, the defendant shall enter a plea of not guilty, guilty, or nolo contendere." Here, the defendant was not present when Cizik entered a plea of not guilty on behalf of the defendant with respect to the part B information and elected a jury trial thereon.

the defendant's constitutional right to be present at trial and sentencing, as to the part B information only, was violated when the proceedings related to that charge went forward in his absence.

Having determined that a constitutional violation exists, we turn to the fourth prong of *Golding* and consider whether the state has demonstrated that that violation was harmless beyond a reasonable doubt. "[A]n otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional [violation] was harmless beyond a reasonable doubt. . . . In evaluating whether a denial of presence [from a critical stage of the proceedings] is harmless, [w]e first determine whether the defendant's presence . . . would have contributed to his ability to defend against the charges. . . . We then consider the evidence presented at trial." (Internal quotation marks omitted.) *State* v. *Davis*, 186 Conn. App. 385, 395, 199 A.3d 1149 (2018), cert. denied, 330 Conn. 965, 199 A.3d 1081 (2019). "The state bears the burden of demonstrating that the constitutional [violation] was harmless beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Alexis*, 194 Conn. App. 162, 176, 220 A.3d 38, cert. denied, 334 Conn. 904, 219 A.3d 800 (2019). The defendant argues that, because he was tried and sentenced in absentia, he was not able to assist his counsel in his own defense at trial or to assist counsel in arguing mitigation of his punishment at sentencing. This prong merits little discussion in that the state has failed to address, let alone demonstrate, harmlessness.

On the basis of the foregoing, we conclude that the defendant's constitutional right to be present at trial and sentencing on the part B information was violated and that the judgment must be reversed as to the charge of being a persistent felony offender.

II

The defendant also argues that his right to counsel of his choice was violated when the court denied his request for a continuance for the purpose of retaining private counsel. We are not persuaded.

The following additional procedural history is relevant to this claim. The defendant filed a letter dated June 18, 2019, wherein he asked that Cizik be removed as his attorney and replaced by a special public defender on the ground that Cizik's representation of him had demonstrated a lack of interest for his "well-being . . . ." In his letter, the defendant complained that "Cizik ha[d] told me that he knows what happened in result to my charges and that I am guilty which is untrue, and I also find [it] to be unfair, as if I have no say in this matter." The defendant indicated in his letter that "[t]ime is of the essence for me as my case is on the trial list with a possibility of being called at any time . . . ."

On July 17, 2019, the court, *Fasano*, *J.*, held a hearing to address the defendant's request for new counsel. The defendant told the court that he had an issue with Cizik's advice to plead guilty to the charges against him. The court explained that the decision to plead guilty would "never be up to [Cizik]," and, in fact, Cizik had rejected the court's earlier plea offer, and the case was on the trial list. The court told the defendant, "[i]f you need another attorney, you would hire one yourself. I can't just keep giving you attorneys out of that office unless I thought [that Cizik] was doing something wrong or that he was not appropriate under the circumstances. And he's doing all he can." The defendant complained that Cizik was denying his requests for copies of his file, specifically, discovery materials in his file. When the court informed the defendant that he had only the right to review those materials, but not the right to have copies of them, he complained that he had not even

been allowed to review them. Cizik refuted that claim. The court again told the defendant, "[i]f you want to bring in another attorney, you have to do that on your own." The defendant indicated that he would have to try to talk to his family about doing so, and the court responded, "[y]es, you can do that. . . . The matter's on the trial list. It's not going to come up right away, so you have time."

On April 27, 2022, when the parties initially were scheduled to commence jury selection, the defendant again raised the issue of "firing [Cizik] and hiring new counsel." The defendant expressed disagreement with Cizik's representation that he was prepared for trial. The court indicated that it was not inclined to continue cases on the eve of trial, that this case began in 2018, and that the defendant's effort to replace Cizik should have been raised a long time ago. The defendant explained that he tried to have Cizik removed from his case previously but that he had only been out on bond for six months and was now working and trying to secure the money to retain private counsel. After the court indicated that potential jurors had been summoned, both attorneys were present and prepared to begin trial, and the "case is old" and had been "carefully fit into [the court's] trial schedule," the court referred the defendant's request for time to hire new counsel to Judge Iannotti.[12]

Judge Iannotti began by recounting: "Judge Schuman brought to my attention that [the defendant] indicated that he wanted to hire a new lawyer. The case has been called into trial. The case is at least two years old. . . . It might be more than that . . . [possibly] four years old. He's been out on bond for a considerable period of time. He's had plenty of time to consult with other

[12] The proceeding before Judge Iannotti occurred on the same day in a different courtroom.

attorneys. It is improper to ask for a new counsel when your case is ready to face jury selection. You have the right to hire anybody you want, and, certainly, I'm not preventing him from doing that, of course. He can hire anybody he wants, but it has to be today, and they have to come in and say they're ready to start trying the case. The case is not going to be delayed after four years because, after four years, he indicates that he now wants new counsel, of which I can't understand possibly why, when you have [Attorney] Cizik representing you. So there's not going to be a continuance of this case . . . for new counsel at this time."

The defendant asserted that he was unaware that his case had been scheduled for trial, to which the court responded: "Well, I would think, sir, that that's not correct. The case was placed on the firm jury [list] with you present. The offer was rejected with you present. When the case is placed on [the] firm jury [list], that means it's ready to go. That means you have rejected the offer, that you don't want a plea, and that you're telling the court, sir, that you want a trial. The only thing I did was give you everything that you wanted." When the defendant persisted in claiming that Cizik did not notify him that the case had been scheduled for trial, the court told the defendant that it was "more than reasonably confident that [Cizik] explained everything to [him]" and sent the case back to Judge Schuman to proceed with jury selection.[13]

[13] Cizik informed the court: "Your Honor, I believe we had a discussion in chambers last Wednesday about cases that were being called in for trial. [The defendant's] was one of them. My office contacted him on Wednesday and told him that his case was down to schedule his trial on Thursday. [The defendant] came here on Thursday. I spoke to him, and I told him that we—there were three trials that were brought in. The only question was which was going to go in which order. After that decision was made, I met with [the defendant] in my office for a considerable period of time [and] told him the case is starting jury selection today. [I] explained to him what the jury selection process was. [I] made an appointment with [the defendant] to meet with him and discuss his trial further on Monday afternoon, which, later Thursday, he cancelled."

"It is well established that [a] defendant is not entitled to the appointment of a different public defender to represent him without a valid and sufficient reason. . . . Nor can a defendant compel the state to engage counsel of his own choice by arbitrarily refusing the services of a qualified public defender. . . . When reviewing the adequacy of a trial court's inquiries into a defendant's request for new counsel, an appellate court may reverse the trial court only for an abuse of discretion. . . . [Of course, a] trial court has a responsibility to inquire into and to evaluate carefully all substantial complaints concerning court-appointed counsel . . . . The extent of that inquiry, however, lies within the discretion of the trial court. . . . When a defendant's assertions fall short of a seemingly substantial complaint, we have held that the trial court need not inquire into the reasons underlying the defendant's dissatisfaction with his attorney. . . .

"[An appellate court] must distinguish between a substantial and timely request for new counsel pursued in good faith, and one made for insufficient cause on the eve or in the middle of trial. . . . In evaluating whether the trial court abused its discretion in denying [the] defendant's motion for substitution of counsel, [an appellate court] should consider the following factors: [t]he timeliness of the motion; adequacy of the court's inquiry into the defendant's complaint; and whether the attorney/client conflict was so great that it had resulted in total lack of communication preventing an adequate defense." (Citation omitted; internal quotation marks omitted.) *State* v. *Goode*, 211 Conn. App. 465, 472–73, 272 A.3d 748, cert. denied, 343 Conn. 925, 275 A.3d 1212 (2022).

Here, when the defendant asked for substitute counsel in 2019, the court advised him that he could hire private counsel, and he indicated that he would talk to his family about doing so. In his 2019 letter to the court

asking that new counsel be appointed to represent him, the defendant represented that "[t]ime is of the essence . . . as my case is on the trial list with a possibility of being called at any time . . . ." The defendant nevertheless did not attempt to retain new counsel until almost three years later, after he posted bond to effect his release from prison while awaiting trial. The court afforded the defendant ample opportunity to argue for new counsel and fully express his complaints regarding Cizik's representation of him, but at no time, either in 2019 or upon his renewal of his request for new counsel in 2022, did the defendant assert a substantial complaint regarding that representation. Indeed, the defendant did not provide any complaint of Cizik's representation of him when he renewed his request on the day that jury selection was scheduled to begin. We therefore conclude that the trial court did not err in denying the defendant's request for additional time to retain private counsel. Accordingly, the defendant's claim that his constitutional right to counsel of his choice was violated fails.

The judgment is reversed only with respect to the defendant's conviction of being a persistent felony offender and the case is remanded for resentencing on the remaining convictions; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

RYAN THOMPSON *v.* COMMISSIONER OF CORRECTION (AC 46971)

Seeley, Wilson and Prescott, Js.

Syllabus

The petitioner, who previously had been convicted of reckless manslaughter in the first degree with a firearm, appealed following the habeas court's

granting in part of his petition for certification to appeal from the court's partial dismissal of his second petition for a writ of habeas corpus. *Held*:

This court dismissed the appeal for lack of subject matter jurisdiction, as the habeas court's partial dismissal of the habeas petition was not an appealable final judgment pursuant to *State* v. *Curcio* (191 Conn. 27).

Under *Curcio*, the dismissal of only a portion of the habeas petition was merely a step along the road to a final judgment on the entire habeas petition and would not result in the irreparable loss of the petitioner's appellate right to challenge the partial dismissal if he were not permitted an immediate appeal.

Furthermore, contrary to the petitioner's contention, he did not have a statutory (§ 52-470 (g)) right to appeal, as § 52-470 (g) creates only procedural appellate prerequisites and provides no express right to an interlocutory appeal from the partial dismissal of a habeas petition and the subsequent granting in part of a petition for certification to appeal.

Argued April 28—officially released June 12, 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, *Newson*, *J.*, dismissed the petition in part; thereafter, the court granted in part and denied in part the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

James E. Mortimer, assigned counsel, for the appellant (petitioner).

Timothy J. Sugrue, assistant state's attorney, with whom, on the brief, were *Anne F. Mahoney*, state's attorney, and *Angela R. Macchiarulo*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

PRESCOTT, J. The petitioner, Ryan Thompson, appeals from the judgment of the habeas court dismissing in part his petition for a writ of habeas corpus pursuant

* June 12, 2025, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

to General Statutes § 52-470 (d) and (e)[1] for failure to show good cause for the untimely filing of the petition.[2] On appeal, the petitioner raises several claims related to the habeas court's partial dismissal of his petition.[3] We do not reach the merits of these claims because the decision from which the petitioner appeals is not an appealable final judgment. Accordingly, we dismiss the appeal.

The procedural background underlying this appeal is as follows. In 2000, the petitioner was convicted,

[1] General Statutes § 52-470 provides in relevant part: "(d) In the case of a petition filed subsequent to a judgment on a prior petition challenging the same conviction, there shall be a rebuttable presumption that the filing of the subsequent petition has been delayed without good cause if such petition is filed after the later of the following: (1) Two years after the date on which the judgment in the prior petition is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review; (2) October 1, 2014; or (3) two years after the date on which the constitutional or statutory right asserted in the petition was initially recognized and made retroactive pursuant to a decision of the Supreme Court or Appellate Court of this state or the Supreme Court of the United States or by the enactment of any public or special act. . . .

"(e) In a case in which the rebuttable presumption of delay under subsection (c) or (d) of this section applies, the court, upon the request of the respondent, shall issue an order to show cause why the petition should be permitted to proceed. The petitioner or, if applicable, the petitioner's counsel, shall have a meaningful opportunity to investigate the basis for the delay and respond to the order. If, after such opportunity, the court finds that the petitioner has not demonstrated good cause for the delay, the court shall dismiss the petition. . . ."

[2] The habeas court granted in part and denied in part the petitioner's petition for certification to appeal. "It remains unsettled whether a habeas petitioner is limited in the claims he or she may pursue on appeal when a habeas court grants certification to appeal as to certain specific claims and denies certification to appeal as to others." (Internal quotation marks omitted.) *Hilton v. Commissioner of Correction*, 225 Conn. App. 309, 312 n.1, 315 A.3d 1135 (2024), cert. granted, 351 Conn. 916, 332 A.3d 293 (2025). We do not reach the issue of the propriety of the court's mixed certification order for the primary reason that we dismiss the appeal.

[3] In addition to claiming that the habeas court abused its discretion in denying in part his petition for certification to appeal; see footnote 2 of this opinion; the petitioner claims that the court (1) improperly dismissed in part his amended petition for a writ of habeas corpus despite the fact that it contained a claim of actual innocence, (2) misapplied the law when it dismissed his amended habeas petition in part, and (3) abused its discretion

following a jury trial, "of reckless manslaughter in the first degree with a firearm in violation of General Statutes §§ 53a-55 (a) (3) and 53a-55a."[4] *State* v. *Thompson*, 69 Conn. App. 299, 302, 797 A.2d 539 (2002), rev'd, 266 Conn. 440, 832 A.2d 626 (2003). The petitioner was sentenced to a total effective term of twenty-five years of incarceration. Id., 303. On direct appeal, this court reversed the judgment of conviction and remanded the case for a new trial, concluding that there was prejudicial prosecutorial impropriety and that the trial court had improperly permitted a state police sergeant to testify as to the credibility of a key state's witness. Id., 303–18. Our Supreme Court reversed the judgment of this court and remanded the case to this court with direction to affirm the judgment of the trial court, concluding that the prosecutor's remarks were improper but did not deprive the petitioner of a fair trial and that the evidentiary ruling at issue constituted harmless error. See *State* v. *Thompson*, 266 Conn. 440, 443, 486, 832 A.2d 626 (2003).

In 2001, during the pendency of his direct appeal, the self-represented petitioner filed a petition for a writ of habeas corpus alleging ineffective assistance of trial counsel and deprivation of his right to a trial by an impartial jury. See *Thompson* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-01-0811262-S (January 20, 2010). Following a trial on the merits, the habeas court, *Nazzaro*, *J.*, denied the habeas petition and the petitioner's petition for certification to appeal. See id. The petitioner then filed an appeal asserting that the habeas court had abused its discretion in denying his petition for certification to appeal. This

when it dismissed his amended habeas petition in part on the ground that he had failed to establish good cause for the filing delay.

[4] The jury found the petitioner not guilty of murder in violation of General Statutes § 53a-54a and intentional manslaughter in the first degree in violation of General Statutes § 53a-55a. See *State* v. *Thompson*, 69 Conn. App. 299, 302–303, 797 A.2d 539 (2002), rev'd, 266 Conn. 440, 832 A.2d 626 (2003).

court was not persuaded and, therefore, dismissed the petitioner's appeal, reasoning in part that the habeas court did not abuse its discretion in denying the petition for certification to appeal. See *Thompson* v. *Commissioner of Correction*, 131 Conn. App. 671, 701, 27 A.3d 86, cert. denied, 303 Conn. 902, 31 A.3d 1177 (2011).

On June 15, 2018, the self-represented petitioner filed a second petition for a writ of habeas corpus. On September 20, 2021, the respondent, the Commissioner of Correction, filed a request with the habeas court pursuant to § 52-470 (d) and (e) for an order directing the petitioner to appear and show good cause why his petition should be permitted to proceed when it was filed more than two years after the final appellate disposition of his prior petition.[5]

On October 12, 2021, the petitioner, represented by counsel, filed an amended petition for a writ of habeas corpus, alleging (1) actual innocence, (2) that his right to due process was violated by the state's failure to disclose exculpatory evidence in accordance with *Brady*,[6] (3) that his right to due process was violated by the state's failure to preserve material exculpatory evidence, (4) ineffective assistance of trial counsel, and (5) ineffective assistance of prior habeas counsel. On February 28, 2022, the petitioner filed an objection to the respondent's motion for an order to show cause.

A hearing was conducted on the respondent's motion for an order to show cause on December 16, 2022, and the court, *Newson*, *J.*, ordered a further evidentiary hearing concerning the petitioner's involvement with the Connecticut Innocence Project. That hearing was conducted on April 21, 2023. Following these hearings, the habeas court determined, pursuant to § 52-470 (f),

[5] See footnote 1 of this opinion.

[6] See *Brady* v. *Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

that the untimeliness provisions of that statute did not apply to the petitioner's claim of actual innocence.[7] Accordingly, the court denied the motion as to this claim. The court further concluded that the remainder of the amended habeas petition was untimely pursuant to § 52-470 (d) and that the petitioner had failed to demonstrate good cause to rebut successfully the statutory presumption of unreasonable delay. The court, therefore, granted the motion as to claims two through five of the amended habeas petition and dismissed those claims pursuant to § 52-470 (e). The claim in the amended habeas petition alleging actual innocence remains pending, and the docket reflects that a trial is scheduled to begin on that claim on December 8, 2025. Subsequently, the habeas court denied in part and granted in part the petitioner's petition for certification to appeal.[8] This interlocutory appeal followed.

Prior to oral argument before this court, the respondent, pursuant to Practice Book § 66-8, filed a motion

[7] General Statutes § 52-470 (f) provides in relevant part that "[s]ubsections (b) to (e), inclusive, of this section shall not apply to (1) a claim asserting actual innocence. . . ."

In denying the respondent's motion for an order to show cause as to the petitioner's claim of actual innocence and dismissing the remaining claims, the court reasoned that "[i]t is unlikely the legislature intended a result where a court presented with an order to show cause would be prohibited from dismissing stale and untimely claims simply because they were in the same pleading as an actual innocence claim. Such a reading would result in the unreasonable outcome of [petitioners] being able to use [well pleaded] *claims* of actual innocence as a tactical prophylactic in every *petition* believed to be subject to challenge under § 52-470, effectively eliminating any legitimate challenge to untimely petitions by respondents. This would clearly be contrary to the intent of [No. 12-115, § 1, of the 2012 Public Acts, titled 'An Act Concerning Habeas Corpus Reform']." (Emphasis in original.) As noted previously, we do not reach the merits of the petitioner's claims, which include a challenge to the habeas court's statutory interpretation of § 52-470 as permitting a dismissal of the amended habeas petition except for the claim asserting actual innocence, because the court's decision was not an appealable final judgment.

[8] The habeas court granted the petition for certification to appeal as to the "issues related to the interpretation of § 52-470 (d) [through] (f) only" and denied that petition as to all other claims.

to dismiss the appeal for the lack of an appealable final judgment under *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). The respondent argued that there is not a final judgment because the habeas court has yet to resolve the final pending claim in the amended habeas petition. The petitioner filed an opposition, arguing that this court has jurisdiction over the present appeal pursuant to § 52-470 (g)[9] because the habeas court granted in part his petition for certification to appeal and, in the alternative, that an appealable final judgment exists under either or both prongs of *Curcio*.

On January 8, 2025, this court denied the respondent's motion to dismiss the appeal "without prejudice to the panel considering the merits of this appeal determining whether the appeal has been taken from a final judgment." Following our review of the parties' appellate briefs and the oral argument that transpired before this court, we deem it prudent to reconsider this jurisdictional question. See, e.g., *Village Mortgage Co.* v. *Veneziano*, 203 Conn. App. 154, 165, 247 A.3d 588 (2021).

We begin our analysis of whether we have jurisdiction over this appeal by setting forth the standard of review and applicable legal principles. "The jurisdiction of the appellate courts is restricted to appeals from judgments that are final." (Internal quotation marks omitted.) *Liberty Mutual Ins. Co.* v. *Lone Star Industries, Inc.*, 290 Conn. 767, 793, 967 A.2d 1 (2009); see also General Statutes § 52-263 ("[i]f either party is aggrieved by the decision of the court . . . he may appeal to the court having jurisdiction from the final judgment of the court"); Practice Book § 61-1 ("[a]n aggrieved party may

[9] General Statutes § 52-470 (g) provides in relevant part that "[n]o appeal from the judgment rendered in a habeas corpus proceeding . . . may be taken unless the appellant, within ten days after the case is decided, petitions the judge before whom the case was tried . . . to certify that a question is involved in the decision which ought to be reviewed . . . ."

appeal from a final judgment, except as otherwise provided by law").

"The lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law [over which we exercise plenary review]. . . . [T]here is no constitutional right to an appeal. . . . Unless a specific right to appeal otherwise has been provided by statute, [a reviewing court] must always determine the threshold question of whether the appeal is taken from a final judgment before considering the merits of the claim. . . . Further, we have recognized that limiting appeals to final judgments serves the important public policy of minimizing interference with and delay in the resolution of trial court proceedings. . . .

"Thus, [a]s a general rule, an interlocutory ruling may not be appealed pending the final disposition of a case. . . . In determining whether a judgment or a ruling is an immediately appealable final judgment, courts have routinely looked to a statute's text to see if the legislature has provided an express right to appeal. . . . In those instances that the legislature has not provided such an express right, our courts then continue to consider whether the right at issue implicates one of the two prongs set forth in *State* v. *Curcio*, supra, [191 Conn. 31]." (Citations omitted; internal quotation marks omitted.) *Smith* v. *Supple*, 346 Conn. 928, 936–38, 293 A.3d 851 (2023).

We first note that the decision from which the petitioner appeals was a partial judgment, which did not dispose of the entire amended habeas petition. In general, "[a] judgment that disposes of only a portion of a complaint is not a final judgment." *Bowden* v. *Commissioner of Correction*, 93 Conn. App. 333, 337 n.6, 888 A.2d 1131, cert. denied, 277 Conn. 924, 895 A.2d 796

(2006); see also Practice Book § 61-3 ("[a] judgment disposing of only a part of a complaint, counterclaim or cross complaint is a final judgment if that judgment disposes of all causes of action in that complaint, counterclaim or cross complaint brought by or against a particular party or parties").

The petitioner argued in his opposition to the respondent's motion to dismiss the present appeal that, because the habeas court granted in part his petition for certification to appeal, which petition expressly sought appellate review of an interlocutory decision, § 52-470 (g) authorized appellate review of that interlocutory decision. The petitioner's argument reflects a misinterpretation of both the statute and applicable case law.

We observe that the text of § 52-470 (g) provides the petitioner with no express right to an interlocutory appeal from the habeas court's dismissal in part of his amended habeas petition and subsequent granting in part of his petition for certification to appeal. Rather, that statutory subsection, which provides in relevant part that "[n]o appeal from the judgment rendered in a habeas corpus proceeding . . . may be taken unless the appellant, within ten days after the case is decided, petitions the judge before whom the case was tried . . . to certify that a question is involved in the decision which ought to be reviewed"; General Statutes § 52-470 (g); creates only procedural prerequisites for appeal, which do not establish an independent grant of appellate jurisdiction.

The petitioner's conflation of a habeas court's grant of certification to appeal with the question of whether an appealable final judgment exists improperly places the determination concerning the existence of appellate jurisdiction within the habeas court's discretion. Quite clearly, the determination regarding the existence of an appealable final judgment, in the absence of statutory

authorization to appeal, lies within the province of the appellate courts. See, e.g., *Smith* v. *Supple*, supra, 346 Conn. 936–37 (lack of final judgment implicates subject matter jurisdiction of appellate courts to hear appeal and, unless specific right to appeal is provided by statute, reviewing court must determine threshold question of whether appeal is taken from final judgment before considering merits of claim).

In the absence of any clear statutory language providing the petitioner with a right to an interlocutory appeal, our consideration of whether there exists an appealable final judgment rests on whether either prong of the test articulated in *Curcio* is satisfied. "In both criminal and civil cases . . . [our Supreme Court has] determined certain interlocutory orders and rulings of the Superior Court to be final judgments for purposes of appeal. An otherwise interlocutory order is appealable in two circumstances: (1) [when] the order or action terminates a separate and distinct proceeding, or (2) [when] the order or action so concludes the rights of the parties that further proceedings cannot affect them." *State* v. *Curcio*, supra, 191 Conn. 31.

We now turn to the first prong of *Curcio*, which "requires that the order being appealed from be severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding. . . . If the interlocutory ruling is merely a step along the road to final judgment then it does not satisfy the first prong of *Curcio*. . . . Obviously a ruling affecting the merits of the controversy would not pass the first part of the *Curcio* test. The fact, however, that the interlocutory ruling does not implicate the merits of the principal issue at the trial . . . does not necessarily render that ruling appealable. It must appear that the interlocutory ruling will not impact directly on any aspect of the [action]." (Citations omitted; internal quotation marks omitted.) *Hartford Accident & Indemnity*

Co. v. *Ace American Reinsurance Co.*, 279 Conn. 220, 225–26, 901 A.2d 1164 (2006).

The petitioner argued in his opposition that the first prong of *Curcio* is satisfied because the present appeal does not address the merits of his amended habeas petition but, rather, relates only to his ability to proceed on claims two through five of that petition. Contrary to the petitioner's assertions, the habeas court's dismissal of several of the claims in his amended habeas petition did not terminate a "separate and distinct proceeding . . . ." *State* v. *Curcio*, supra, 191 Conn. 31. Rather, the court's decision simply narrowed the number of pending claims that would proceed to trial.

Although the present appeal relates to the petitioner's ability to proceed on claims two through five, all the claims in his amended habeas petition—including his actual innocence claim, which remains pending—collaterally attack his conviction of reckless manslaughter. Accordingly, even if the petitioner were to prevail on the merits in the present appeal, a trial would proceed on claims two through five in the same proceeding as the actual innocence claim.

Further, if the petitioner were successful in the habeas court on his claim of actual innocence, his amended habeas petition would be granted and his conviction vacated. If, however, the habeas court denies the claim of actual innocence, then, at that juncture, all of the claims in his amended habeas petition would have reached resolution thereby resulting in a final judgment from which he then could file a petition for certification to appeal. This result is consistent with the policy of the appellate courts against piecemeal appeals. See, e.g., *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, 305 Conn. 750, 760, 48 A.3d 16 (2012) (appellate final judgment rule is based partly on policy against piecemeal appeals and conservation of judicial resources).

In sum, the court's dismissal of only a portion of the amended habeas petition is merely a step along the road to a final judgment on the entire amended habeas petition.

The second prong of *Curcio* "permits an appeal if the decision so concludes the rights of the parties that further proceedings cannot affect them. . . . That prong focuses on the nature of the right involved. It requires the parties seeking to appeal to establish that the trial court's order threatens the preservation of a right already secured to them and that that right will be irretrievably lost and the [parties] irreparably harmed unless they may immediately appeal. . . . One must make at least a colorable claim that some recognized statutory or constitutional right is at risk. . . . In other words, the [appellant] must do more than show that the trial court's decision threatens him with irreparable harm. The [appellant] must show that that decision threatens to abrogate a right that he or she *then* holds. . . . The right itself must exist independently of the order from which the appeal is taken."[10] (Emphasis in original; internal quotation marks omitted.) *Halladay* v. *Commissioner of Correction*, 340 Conn. 52, 62, 262 A.3d 823 (2021).

The petitioner argued in his opposition to the respondent's motion to dismiss the present appeal that his right to appeal from the dismissal of claims two through five would be lost if he is not allowed to immediately appeal from that dismissal. This assertion is incorrect.

[10] "[T]he second prong of *Curcio* boils down to whether, as a practical and policy matter, not allowing an immediate appeal will create irreparable harm insofar as allowing the litigation to proceed before the trial court will—in and of itself—function to deprive a party of that right. . . . Paradigmatic examples of such rights that require immediate vindication via an interlocutory appeal are double jeopardy violations resulting in successive prosecutions . . . and various immunities from suit." (Citations omitted; internal quotation marks omitted.) *Halladay* v. *Commissioner of Correction*, 340 Conn. 52, 62–63, 262 A.3d 823 (2021).

First, the petitioner fails to identify a statutory or constitutional right he presently holds that would be irreparably lost if he is not permitted to challenge now the dismissal of some of his habeas claims. His bald assertion that he will suffer irreparable harm as a result of the delay caused by the jurisdictional and procedural restrictions of our appellate process if he is not permitted to appeal immediately from the court's interlocutory decision is insufficient to satisfy the second prong of *Curcio*. See *Heyward* v. *Judicial Dept.*, 159 Conn. App. 794, 801, 124 A.3d 920 (2015) ("[A] bald assertion that [the appellant] will be irreparably harmed if appellate review is delayed until final adjudication . . . is insufficient to make an otherwise interlocutory order a final judgment. One must make at least a colorable claim that some recognized statutory or constitutional right is at risk." (Internal quotation marks omitted.)).

Second, and more significantly, the petitioner's right to challenge on appeal the habeas court's dismissal of claims two through five of his amended habeas petition will not be irreparably lost if he is not permitted an immediate appeal. It is true that, if the petitioner prevails in the habeas court on his claim of actual innocence and the judgment of conviction is vacated, any appellate claims regarding the court's dismissal of claims two through five of his amended habeas petition would be moot. See *State* v. *Ellis*, 224 Conn. 711, 722, 621 A.2d 250 (1993). If, however, the petitioner does not prevail on his claim of actual innocence, he may seek to appeal from the final judgment of the habeas court on the entirety of the amended habeas petition, thereby obtaining appellate review of the habeas court's dismissal of claims two through five.

For the foregoing reasons, the decision of the habeas court on the respondent's motion for an order to show cause does not satisfy either *Curcio* prong. Because the decision from which the petitioner appeals does

not constitute an appealable final judgment, we dismiss his appeal for the lack of subject matter jurisdiction. See, e.g., *State* v. *Guild*, 214 Conn. App. 121, 127, 279 A.3d 222 (2022) ("[u]nless the [interlocutory] appeal is authorized under the *Curcio* criteria, absence of a final judgment is a jurisdictional defect that [necessarily] results in a dismissal of the appeal" (internal quotation marks omitted)).

The appeal is dismissed.

In this opinion the other judges concurred.

J. E. *v.* J. N.*
(AC 47248)

Suarez, Westbrook and Bishop, Js.

Syllabus

The defendant father appealed from the trial court's judgment awarding him joint legal custody of the parties' minor children and issuing certain other orders on the plaintiff mother's application for custody. He claimed, inter alia, that the court improperly required him to proceed with the trial in the absence of his counsel of record, who had requested and been denied a continuance. *Held*:

This court, having determined that the defendant's unpreserved due process claim was reviewable pursuant to *State* v. *Golding* (213 Conn. 233), concluded that the trial court deprived the defendant of his procedural due process rights under the test established in *Mathews* v. *Eldridge* (424 U.S.

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

Moreover, 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.

319) by requiring him to proceed with trial in the absence of his counsel of record, and, thus, this court reversed the judgment of the trial court.

Argued March 12—officially released June 17, 2025

Procedural History

Application for custody of the parties' minor children, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Truglia*, *J.*, denied the defendant's motion for a continuance; thereafter, the case was tried to the court, *Truglia*, *J.*; judgment awarding the parties joint legal custody and issuing certain orders of visitation, from which the defendant appealed to this court. *Reversed*; *further proceedings*.

J. N., self-represented, the appellant (defendant).

Opinion

SUAREZ, J. In this custody action, the self-represented defendant, J. N., appeals following the trial court's judgment of custody and orders of visitation with respect to the parties' minor children.[1] On appeal, the defendant claims, inter alia, that the court improperly required the defendant to proceed with the underlying custody trial in the absence of his attorney.[2] We agree

[1] The plaintiff, J. E., did not file a brief or otherwise participate in this appeal. Consequently, on December 10, 2024, this court issued an order stating that "the appeal shall be considered on the basis of [the defendant's] brief and, if applicable, the appendix, the record, as defined by Practice Book [§] 60-4, and oral argument . . . ."

[2] In his brief to this court, the self-represented defendant sets forth the following claims in his statement of issues: "1. Did the trial court abuse its discretion when it proceeded with trial in the absence of the defendant's attorney? 2. Did the trial court abuse its discretion by allowing the plaintiff to present evidence not compliant with the management orders for trials? 3. Did the plaintiff perjure affidavits and deceive the courts to secure child support? 4. Did the plaintiff perjure financial affidavits and testimony and commit . . . forgery in the second degree [in violation of General Statutes § 53a-139] to get more child support than she was supposed to receive? 5. Did the trial court abuse its discretion when it gave the plaintiff primary physical custody? 6. Do the courts lack jurisdiction because the defendant's constitutional rights were violated, and Title 42 is not a law?" With respect to his final claim on appeal, the defendant argues that the court lacked

with the defendant and, accordingly, reverse the judgment of the court.

The following procedural history is relevant to this appeal. The plaintiff, J. E., and the defendant are the parents of two minor children. On April 22, 2022, the plaintiff filed an application for an emergency ex parte order of custody, together with a custody application.[3] The court, *Heller*, *J.*, granted temporary legal and physical custody of the children to the plaintiff and scheduled a hearing to be held on May 6, 2022. On May 6, 2022, the parties agreed that the April 22, 2022 orders would continue until further order of the court. On the same day, the court, *Hon. Edward R. Karazin*, *Jr.*, judge trial referee, approved the agreement and entered it as an order of the court.

On May 20, 2022, the defendant filed an appearance in this matter as a self-represented party. On June 22, 2022, the defendant filed a pendente lite motion for modification seeking to modify the May 6, 2022 orders. In his motion, the defendant asserted that the circumstances of the case had changed substantially in that a criminal protective order had been modified to remove the minor children from protection. On July 13, 2022, the court, *McLaughlin*, *J.*, issued a scheduling order in which the court set forth a time frame for pretrial

jurisdiction "because of an impartial trial." We understand the defendant's jurisdictional claim to be a due process claim related to his first claim on appeal and, thus, we will address them simultaneously. Because we agree with the defendant that the court improperly required the defendant to proceed without his counsel of record, we need not consider the defendant's remaining claims, as the issues raised therein are not likely to arise during the proceedings on remand. See, e.g., *Zheng* v. *Xia*, 204 Conn. App. 302, 308 n.10, 253 A.3d 69 (2021).

[3] In her April 22, 2022 affidavit in support of her application, the plaintiff averred that, on April 15, 2022, the parties engaged in a physical altercation during which the defendant struck, punched, and choked the plaintiff, in addition to throwing her onto the floor and against the minor children's cribs. The plaintiff further averred that she feared for her life and that the minor children were present throughout the altercation.

discovery. On September 9, 2022, the defendant filed a motion for a continuance seeking additional time to obtain counsel. The court, *Kowalski*, *J.*, granted the defendant's motion.

On December 12, 2022, Attorney Darnell D. Crosland filed an appearance in place of the defendant's appearance pursuant to Practice Book § 3-8 (a).[4] On April 10, 2023, the court, *Kowalski*, *J.*, issued a new order in which it scheduled a trial to commence on December 19, 2023. On December 15, 2023, Crosland filed a motion for a continuance of the scheduled trial, indicating that he was not available. On the same day, the court, *Truglia*, *J.*, denied the motion for a continuance and ordered that "the trial [would] proceed as scheduled."

On December 19, 2023, the court commenced the trial as scheduled. After the plaintiff's counsel called his first witness to testify and prior to the start of that testimony, the following colloquy occurred between the defendant, the court, and the plaintiff's counsel:

"The Defendant: Your Honor, if I may?

"The Court: Yes, sir.

"The Defendant: My attorney was supposed to be here. I'm not sure where he is. I got a text message from him saying that he wouldn't make it today.

"The Court: Okay.

"The Defendant: So, I am supposed to have legal counsel today.

"The Court: You are?

[4] Practice Book § 3-8 (a) provides in relevant part: "Whenever an attorney files an appearance for a party, or the party files an appearance for himself or herself, and there is already an appearance of an attorney or party on file for that party, the attorney or party filing the new appearance shall state thereon whether such appearance is in place of or in addition to the appearance or appearances already on file. . . ."

"The Defendant: Yes. Attorney Crosland is supposed to be the attorney on the case.

"The Court: Right. I understand that he filed a motion for continuance.

"The Defendant: That I didn't know, either. I'm sorry to interrupt. I wasn't aware that he filed a continuance.

"The Court: He filed a motion for a continuance on December [15, 2023] saying that he is out of the country, and I denied it.

"The Defendant: Okay.

"The Court: So, you can file an appearance on your own. . . .

"[The Plaintiff's Counsel]: I think he has one in the file for himself already, Your Honor.

"The Court: Oh, is that true?

"The Defendant: There was one before I retained counsel.

"The Court: Well, it looks like that was an in lieu of appearance. That's strange. . . .

"The Court: Yeah, Attorney Crosland filed an appearance in lieu of your appearance. So, you really should file another appearance for yourself, sir, today. We'll give you that form, all right?[5]

"The Defendant: Yes, Your Honor. . . .

"The Court: All right. So, counsel, please proceed." (Footnote added.)

Thereafter, the trial proceeded as scheduled. The record reflects, however, that the defendant did not

[5] The record reflects that the defendant did not file an appearance in place of Attorney Crosland until March 6, 2024, approximately three and one-half months after the custody trial, and after the present appeal was filed. The defendant has since been self-represented.

have pertinent information that had been provided to his counsel. For example, the following exchange occurred between the court and the defendant with respect to the plaintiff's proposed orders for custody and child support:

"The Court: Sir, do you have a copy of these proposed orders?

"The Defendant: I do not, Your Honor. I don't have anything."

Similarly, when the plaintiff's counsel sought to introduce exhibits into evidence, the following colloquy occurred between the defendant, the court, and the plaintiff's counsel:

"The Defendant: Your Honor, I just have a . . . question of evidence.

"The Court: What's that?

"The Defendant: To my understanding, was this supposed to be presented prior to court proceedings and given to Your Honor?

"The Court: Yes.

"The Defendant: So, I object to this evidence, Your Honor.

"[The Plaintiff's Counsel]: And it was given to his counsel, in accordance with the trial management.

"The Court: If it was given to your counsel, then that is good enough. Counsel represents to the court that she gave copies of all of the proposed exhibits to your lawyer. And I assume you did that in accordance with the trial management standing orders?

"[The Plaintiff's Counsel]: I did, Your Honor. . . . I know, certainly, counsel got a copy of [the proposed exhibits]. And also, the proposed [exhibits] . . . were

sent, once the continuance was denied, to [the defendant] . . . yesterday, as well.

"The Court: Oh.

"[The Plaintiff's Counsel]: So, he had at least notice of them personally, yesterday.

"The Court: Okay. Objection overruled. Let's keep going. . . .

"The Defendant: I just, I don't see it. How was this delivered? Was it via email? Was it via fax? . . .

"The Court: How did you send it to [the defendant], that's the question. . . .

"[The Plaintiff's Counsel]: Via email.

"The Court: Via email?

"[The Plaintiff's Counsel]: Yes. It was sent to you via email from my office . . . .

"The Court: Right. Sir, this . . . document is simply a copy of the court's order . . . so, this is already in the record in this case. I'm going to allow it as a full exhibit."

Moreover, when the plaintiff's counsel sought to introduce financial evidence in relation to child support, the following colloquy ensued in connection with the defendant's lack of understanding of the scope of trial:

"The Defendant: Objection, Your Honor—

"The Court: I'm sorry?

"The Defendant: [O]bjection, but in the form of a question, because I don't understand the rule of evidence too much. We are here for custody. Is this a . . . child support trial or a custody trial?

* * *

"The Defendant: "I don't mean to prolong this, because I don't have an attorney . . . . I'm sorry, child support has already been ruled upon by a judge.[6] It's been sent over to [the Office of] Child Support Services. They are deducting the pay. I don't understand . . . . I don't understand . . . .

"The Court: Sir.

"The Defendant: I don't understand . . . ." (Footnote added.)

On December 26, 2023, after the conclusion of evidence, the court issued the following orders: "1. The parties are awarded joint legal custody of their minor children. Both parties will have equal decision-making authority for all major decisions affecting the children. 2. The plaintiff will have primary physical custody of the minor children and will provide them with their primary residence. 3. The defendant will have parenting time with the children three weekends each month from

[6] On June 20, 2022, the plaintiff filed a pendente lite motion for support and maintenance seeking support from the defendant for the parties' minor children. On December 20, 2022, the court, *Vizcarrondo, J.*, held a hearing on the plaintiff's pendente lite motion. The court issued orders requiring the defendant "to pay child support in the amount of $288 per week" and 42 percent of any work-related childcare expenses. On January 27, 2023, the plaintiff filed a pendente lite motion for contempt that sought enforcement of the December 20, 2022 child support orders. On April 10, 2023, the parties agreed that the defendant would pay the plaintiff $4008 in child support arrearages by May 10, 2023, and a further $2284.80 in childcare expenses arrearages by June 10, 2023. The court, *Kowalski, J.*, approved the agreement and entered it as an order of the court. On May 23, 2023, the plaintiff filed a pendente lite motion for contempt that sought enforcement of the April 10, 2023 child support orders. On August 21, 2023, the court held a hearing on the plaintiff's May 23, 2023 motion for contempt. On the same day, the court issued new orders requiring the defendant to pay the plaintiff "$5000, in full satisfaction of all weekly child support and childcare arrearages." The court further ordered the defendant to pay the plaintiff child support and work-related childcare expenses in the amount of $430.80 per week.

6 p.m. Friday to 6 p.m. Sunday. . . . 18. . . . Commencing December 25, 2023, and weekly thereafter, the court orders the defendant to pay weekly child support to the plaintiff of $288, plus $142.80 for the [children's] work-related childcare, plus $58 to be applied to the arrearage, for a total weekly payment of $488.80. Additionally, the court orders the defendant to pay the $5000 arrearage ordered by this court, *Kowalski*, *J.*, on August 21, 2023, to the plaintiff on or before February 1, 2024, plus the accumulated additional arrearage of $1950.40 on or before February 1, 2024, for a total payment of $6950.40 due on or before February 1, 2024." This appeal followed.

As a threshold matter, we address the reviewability of the defendant's claim. During the trial, the defendant did not request a continuance on the grounds that his attorney should be present, nor did he assert that his due process rights were being violated. On appeal, however, the defendant argues that the court abused its discretion when it proceeded with the trial in the absence of his counsel of record and that the court lacked jurisdiction because his constitutional rights were violated. See footnote 2 of this opinion. We understand the defendant's claim to be an unpreserved due process claim. Because the defendant has presented a record that is adequate for review and has affirmatively demonstrated that his claim is indeed a violation of a fundamental constitutional right,[7] we review his unpreserved constitutional claim under *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).[8]

[7] It is well established that "[a] parent's right to make decisions regarding the care, custody, and control of his or her child is a fundamental liberty interest protected by the [f]ourteenth [a]mendment. . . . Before a parent can be deprived of her right to the custody, care, and control of her child, he or she is entitled to due process of law." (Internal quotation marks omitted.) *Barros* v. *Barros*, 309 Conn. 499, 508, 72 A.3d 367 (2013).

[8] "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

See also *State* v. *Elson*, 311 Conn. 726, 754–55, 91 A.3d 862 (2014) (overruling requirement that appellant must affirmatively request *Golding* review in its appellate brief in order to review unpreserved constitutional claims).

As we have already indicated, the first two prongs of *Golding* are met because the record is adequate for review, and we construe the claim as implicating the defendant's due process rights. Thus, we turn to the third prong of *Golding* and consider whether the court deprived the defendant of his right to due process. "A fundamental premise of due process is that a court cannot adjudicate any matter unless the parties have been given a reasonable opportunity to be heard on the issues involved . . . . Generally, when the exercise of the court's discretion depends on issues of fact which are disputed, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses. . . . It is a fundamental tenet of due process of law as guaranteed by the fourteenth amendment to the United States constitution . . . that persons whose . . . rights will be affected by a court's decision are entitled to be heard at a meaningful time and in a meaningful manner. . . . Whe[n] a party is not afforded an

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 [opposing party] 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). We need not address the fourth prong of *Golding* because, even if subject to harmless error analysis, the plaintiff has the burden to show the harmlessness of the alleged constitutional violation, and the plaintiff did not file a brief or otherwise participate in this appeal. See footnote 1 of this opinion.

opportunity to subject the factual determinations underlying the trial court's decision to the crucible of meaningful adversarial testing, an order cannot be sustained. . . . Whether a party was deprived of [his] due process rights is a question of law to which appellate courts grant plenary review." (Citations omitted; internal quotation marks omitted.) *Kosar* v. *Giangrande*, 228 Conn. App. 749, 758, 326 A.3d 266, cert. denied, 350 Conn. 930, 326 A.3d 556 (2024).

"The United States Supreme Court in *Mathews* v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), established a three part test to determine whether the actions of the court violated a party's right to procedural due process. The three factors to be considered are (1) the private interest that will be affected by the state action, (2) the risk of an erroneous deprivation of such interest, given the existing procedures, and the value of any additional or alternate procedural safeguards, and (3) the government's interest, including the fiscal and administrative burdens attendant to increased or substitute procedural requirements. . . . Due process analysis requires balancing the government's interest in existing procedures against the risk of erroneous deprivation of a private interest inherent in those procedures." (Citation omitted; internal quotation marks omitted.) *Foster* v. *Foster*, 84 Conn. App. 311, 319, 853 A.2d 588 (2004).

"With respect to the first prong of *Mathews*, [a] defendant has an interest in the custody of his child and, therefore, in a custody adjudication process that grants him custody if it is in the child's best interest. From a procedural due process standpoint, the defendant's custody interest is legitimate only to the extent that those procedures facilitate an accurate custody determination, that is, a custody determination consistent with the child's best interest. . . . In cases in which

both parents seek custody, [n]either parent has a superior claim to the exercise of [the] right to provide care, custody, and control of the children. . . . Effectively, then, each fit parent's constitutional right neutralizes the other parent's constitutional right, leaving, generally, the best interests of the child as the sole standard to apply to these types of custody decisions. Thus, in evaluating each parent's request for custody, the parents commence as presumptive equals and a trial court undertakes a balancing of each parent's relative merits to serve as the primary custodial parent; the child's best interests [tip] the scale in favor of an award of custody to one parent or the other. . . .

"Under the second prong of *Mathews*, we must evaluate the risk of an erroneous deprivation of [a] defendant's custody rights under the existing procedures and the probable value, if any, of additional procedural safeguards." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Barros* v. *Barros*, 309 Conn. 499, 509–10, 72 A.3d 367 (2013). Therefore, we must determine whether the court's order requiring the defendant to proceed with the custody trial without counsel of record created a greater risk that the defendant would not have been granted custody when that custody is in the best interests of the children and whether counsel's presence would have enhanced the accuracy of the custody determination. See id.

Finally, the third prong of *Mathews* requires us to consider "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that . . . additional or substitute procedural requirement[s] would entail." (Internal quotation marks omitted.) *Foster* v. *Foster*, supra, 84 Conn. App. 320. "[T]he government has a paramount interest in custody adjudication procedures that facilitate an accurate determination of the child's best interest." *Barros* v. *Barros*, supra, 309 Conn. 517.

In the present case, the private interest implicated is the defendant's fundamental constitutional right to make decisions regarding his children's care, control, education, health, religion, and association. "It is well established that the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court. . . . The rights to conceive and to raise one's children have been deemed essential . . . basic civil rights of man . . . [r]ights far more precious . . . than property rights . . . ." (Citation omitted; internal quotation marks omitted.) *In re Zakai F.*, 336 Conn. 272, 291, 255 A.3d 767 (2020).

Under the existing procedures taken in the present case, the risk of an erroneous deprivation of such interest was significant. As stated previously in this opinion, the defendant had counsel of record, and the defendant expected his counsel to be present to represent him in the custody action. The defendant was not aware that his counsel filed for a continuance of the trial and that the continuance was denied. The record is clear that the defendant was not prepared to represent himself meaningfully. The defendant did not have trial exhibits or proposed orders and did not seem to understand the scope of the trial. Under these circumstances, we are persuaded that counsel's assistance would have enhanced the accuracy of the child custody determination.

Finally, we are persuaded that the third prong of *Mathews* also weighs in favor of the defendant. The cost and administrative burden of merely granting a short continuance to allow the defendant to either hire substitute counsel or properly prepare to represent himself would have been de minimis, while facilitating an accurate determination of the children's best interests by ensuring the defendant had a meaningful opportunity to be heard.

Applying all the *Mathews* factors, we conclude that the court deprived the defendant of his due process rights by requiring him to proceed with the custody trial in the absence of his counsel of record.[9]

The judgment is reversed and the case is remanded for further proceedings according to law.

In this opinion the other judges concurred.

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[9] We note that several postjudgment motions have been filed subsequent to the December 26, 2023 judgment. In 2024, the defendant filed several motions to dismiss. These motions seek to dismiss the court's child support orders on the basis of allegations that, inter alia, the plaintiff perjured certain affidavits and testimony in connection with the underlying case, the plaintiff committed forgery in the second degree in violation of General Statutes § 53a-139, the defendant's constitutional rights were violated, and "Title IV-D [of the Social Security Act] is unconstitutional." In his March 7, 2024 motion to dismiss, the defendant further alleged that "[t]he plaintiff refuses to agree to 50/50 physical custody." On October 18, 2024, the defendant filed a motion to modify child support. In December, 2024, the plaintiff filed an application for an emergency ex parte order of custody and a postjudgment motion for modification of custody. The court, *Kowalski*, *J.*, granted the ex parte order of custody. On December 18, 2024, following a hearing, the court, *Cirello*, *J.*, vacated the ex parte order of custody and denied the plaintiff's postjudgment motion for modification of custody. On January 24, 2025, the defendant filed a motion to modify custody, seeking to modify the parenting schedule ordered by the court on December 26, 2023. These motions remain pending.