STATE OF CONNECTICUT *v.* CHRISTOPHER DEANGELO (AC 47032)

Suarez, Seeley and Bishop, Js.

Syllabus

The defendant acquittee, who previously had been found not guilty of certain crimes by reason of mental disease or defect and who had been committed to the jurisdiction of the Psychiatric Security Review Board, appealed from the trial court's judgment granting the state's petition to extend his commitment to the board pursuant to statute (§ 17a-593 (c)). He claimed that the court improperly determined that the state met its burden of proving by clear and convincing evidence that, after having served his maximum term of commitment, his discharge would constitute a danger to himself or others. *Held*:

The trial court improperly granted the state's petition to continue the defendant's commitment, as the state did not meet its burden of proving that the defendant's discharge would constitute an imminent danger to himself or others, and, thus, this court reversed the trial court's judgment and directed that court to deny the state's petition.

Argued March 12—officially released July 22, 2025

Procedural History

Petition for an order extending the defendant's commitment to the jurisdiction of the Psychiatric Security Review Board, brought to the Superior Court in the judicial district of Ansonia-Milford and tried to the court, *Hall*, *J.*; judgment granting the petition, from which the defendant appealed to this court. *Reversed*; *judgment directed.*

Kevin L. Sememataska, assistant public defender, for the appellant (defendant).

Jonathan M. Sousa, assistant state's attorney, with whom, on the brief, was *Margaret E. Kelley*, state's attorney, for the appellee (state).

Kirk W. Lowry filed a brief for the Connecticut Legal Rights Project as amicus curiae.

Opinion

BISHOP, J. The defendant, Christopher DeAngelo, as an acquittee,[1] appeals from the judgment of the trial court granting the state's petition to continue commitment (petition) to the jurisdiction of the Psychiatric Security Review Board (board)[2] for an additional period of five years. The dispositive issue in this appeal is whether the court properly determined that the state met its burden of proving by clear and convincing evidence that the defendant, after serving his maximum term of commitment, presently constitutes a danger to himself or others.[3] See, e.g., *State* v. *Torell*, 223 Conn.

[1] General Statutes § 17a-580 provides in relevant part: "(1) 'Acquittee' means any person found not guilty by reason of mental disease or defect pursuant to section 53a-13 . . . ." See also *State* v. *Metz*, 230 Conn. 400, 405, 645 A.2d 965 (1994).

[2] "The board is an administrative body consisting of a psychiatrist, a psychologist, a probation expert, a layperson, an attorney who is a member of the state bar, and a layperson with experience in victim advocacy. General Statutes § 17a-581 (b). The purpose of this administrative body is to manage, monitor and review the status of each acquittee to ensure the protection of the general public. . . . That being its purpose, the board has general and specific familiarity with all acquittees beginning with their initial commitment . . . ." (Internal quotation marks omitted.) *State* v. *Torell*, 223 Conn. App. 21, 27 n.11, 307 A.3d 280 (2023), cert. denied, 348 Conn. 960, 312 A.3d 36 (2024); see also *Payne* v. *Fairfield Hills Hospital*, 215 Conn. 675, 677, 578 A.2d 1025 (1990).

[3] The defendant also argues that (1) the court improperly presumed that he was dangerous and placed the burden on him to prove the contrary in violation of his constitutional right to due process, (2) the court's interpretation of General Statutes § 17a-593 rendered it unconstitutionally void for vagueness, and (3) the Connecticut constitution affords him greater protection than the federal constitution. The amicus curiae brief filed by the Connecticut Legal Rights Project also argues that the defendant's continued commitment to the jurisdiction of the board amounts to a violation of his constitutional rights.

As a result of our conclusion that the court improperly determined that the state met its burden of proving that the defendant would constitute a danger to himself or others, we need not address these constitutional claims. It is well settled that "[w]e . . . do not engage in addressing constitutional questions unless their resolution is unavoidable. Ordinarily, [c]onstitutional issues are not considered unless absolutely necessary to the decision of a case." (Internal quotation marks omitted.) *State* v. *McCahill*, 261 Conn. 492,

App. 21, 38, 307 A.3d 280 (2023), cert. denied, 348 Conn. 960, 312 A.3d 36 (2024). On the basis of our thorough review of the record in this matter, we determine that there is no support for the court's conclusion that the state met its heightened[4] burden and, therefore, that the court improperly granted the state's petition. Accordingly, we reverse the judgment of the trial court and remand the case with direction to deny the state's petition for the defendant's continued commitment to the jurisdiction of the board.

The record reveals that the conduct underlying the defendant's index offenses[5] occurred on December 2, 1997, when he committed a robbery and larceny at the First Union Bank in Derby. See *State* v. *DeAngelo*, Superior Court, judicial district of Ansonia-Milford, Docket No. CR-97-0108766-S (February 24, 2000). On that date, the defendant entered the bank armed with a pellet gun while wearing a disguise consisting of a fake mustache and beard. He ordered the assistant manager to fill his briefcase with money while also telling her that he did not intend to hurt her. The assistant

501, 811 A.2d 667 (2002); see also *In re Kaleb H.*, 306 Conn. 22, 26 n.3, 48 A.3d 631 (2012) ("[t]his court has a basic judicial duty to avoid deciding a constitutional issue if a nonconstitutional ground exists that will dispose of the case" (internal quotation marks omitted)); see generally *State* v. *Shane K.*, 228 Conn. App. 105, 118, 322 A.3d 1094 (2024); *Gonzalez* v. *Commissioner of Correction*, 205 Conn. App. 511, 522 n.13, 258 A.3d 97, cert. denied, 339 Conn. 909, 261 A.3d 745 (2021), cert. denied, U.S. , 142 S. Ct. 1238, 212 L. Ed. 2d 240 (2022); *State* v. *Lopez*, 177 Conn. App. 651, 662, 173 A.3d 485, cert denied, 327 Conn. 989, 175 A.3d 563 (2017).

[4] Our Supreme Court has stated that "[the clear and convincing burden of proof] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." (Internal quotation marks omitted.) *State* v. *Perez*, 276 Conn. 285, 308, 885 A.2d 178 (2005).

[5] "The psychiatric profession refers to the offenses that led to an acquittee's arrest as index offenses." (Internal quotation marks omitted.) *State* v. *Foster*, 217 Conn. App. 476, 487 n.5, 289 A.3d 191, cert. granted, 346 Conn. 920, 291 A.3d 1041 (2023).

manager then went to the safe, filled the briefcase with $54,000, and delivered it to the defendant. After showing the pellet gun to the assistant manager, the defendant left the bank. Outside, as he was entering his motor vehicle, police officers ordered him to halt. The defendant ignored the officers' commands. Instead, he began to drive away with the officers giving chase. With the defendant in flight, the officers fired their weapons at the defendant's motor vehicle, striking it several times. During this pursuit, the defendant's vehicle nearly hit a Derby police officer.

Shortly thereafter, the defendant was apprehended in a nearby parking lot. In addition to the pellet gun, the police retrieved from the defendant's vehicle a double barrel shotgun loaded with one live round. The next day, the state charged the defendant with, inter alia, robbery in the first degree in violation of General Statues § 53a-134, larceny in the first degree in violation of General Statutes (Rev. to 1997) § 53a-122, and attempt to commit assault in the first degree in violation of General Statutes § 53a-49 and General Statutes (Rev. to 1997) § 53a-59.

The facts of the defendant's offenses were uncontested at his criminal trial. Additional evidence was presented on behalf of the defendant that, in the months before he committed these offenses, he was abusing alcohol while also undergoing treatment for obsessive compulsive disorder (OCD). The defendant also was taking large doses of antidepressant (Prozac) and anti-anxiety (Xanax) medications that he had been prescribed. The evidence further revealed that the defendant had an adverse reaction to the medications, and in combination with alcohol consumption, they caused the defendant to exhibit manic behavior of psychotic proportions and, ultimately, to commit the index offenses. Consequently, the court, *Arnold*, *J.*, found the defendant not guilty by reason of mental disease or

defect on February 24, 2000.[6] The court specifically noted that the defendant had voluntarily ingested the Prozac and Xanax in accordance with his prescriptions.

Following the court's judgment, the defendant was referred to the Department of Mental Health and Addiction Services for an evaluation pursuant to the terms of General Statutes § 17a-582.[7] See *State* v. *DeAngelo*, Superior Court, judicial district of Ansonia-Milford, Docket No. CR-97-010866-S (June 20, 2000). The 2000 evaluation report was signed by a psychiatrist, the Director of the Diagnostic Unit, and the Director of the Whiting Forensic Division of Connecticut Valley Hospital (Whiting). The report stated that the defendant suffered from a serious psychiatric illness. The report also determined that the treatment of the defendant with Prozac and Xanax, combined with his use of alcohol, resulted in a manic like episode culminating in the

[6] General Statutes § 53a-13 (a) provides that, "[i]n any prosecution for an offense, it shall be an affirmative defense that the defendant, at the time the defendant committed the proscribed act or acts, lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law." See also *State* v. *Long*, 268 Conn. 508, 540, 847 A.2d 862 (verdict of not guilty by reason of mental disease or defect establishes that person committed act that constitutes criminal offense because of mental illness), cert. denied, 543 U.S. 969, 125 S. Ct. 424, 160 L. Ed. 2d 340 (2004).

Additionally, we note that, "[a]lthough § 53a-13 has been amended since the events giving rise to the acquittee's prosecution . . . that amendment has no bearing on this appeal. Accordingly, we refer to the current revision of the statute." (Citation omitted; internal quotation marks omitted.) *State* v. *Torell*, supra, 223 Conn. App. 24 n.2.

[7] "When an individual is found not guilty by reason of mental disease or defect, the individual—the acquittee—is committed to the custody of the Commissioner of Mental Health and Addiction Services for examination of the acquittee's mental condition. General Statutes § 17a-582 (a). Once the examination is complete, a hearing is held, and the court determines whether the examinee should be confined, conditionally released, or discharged. General Statutes § 17a-582 (e) (1) and (2). . . . *State* v. *Vasquez*, 194 Conn. App. 831, 835–36, 222 A.3d 1018 (2019), cert. denied, 334 Conn. 922, 223 A.3d 61 (2020)." (Internal quotation marks omitted.) *State* v. *Torell*, supra, 223 Conn. App. 24 n.5.

commission of the index offenses. The report concluded that the defendant was a danger to himself and to others and recommended his commitment to the jurisdiction of the board for a period of time as deemed appropriate by the court.

On June 19, 2000, the court held a commitment hearing. The court considered the testimony of the numerous mental health professionals and other witnesses, as well as several exhibits that were admitted into evidence, including the evaluation prepared in accordance with § 17a-582, and found that "the [defendant] presently constitutes a danger to himself and others." The court issued a memorandum of decision in which it detailed its findings and conclusions, ultimately committing the defendant to the jurisdiction of the board and ordering that he be confined at Whiting for a maximum confinement period of ten years.[8] The initial commitment was set to expire on or about June 18, 2010. By agreement of the parties, the defendant's commitment date has been extended multiple times.

On December 7, 2022, the state filed the petition for continued commitment pursuant to General Statutes § 17a-593 (c) that is the subject of this appeal. It alleged that the defendant "still remains mentally ill to the extent that his discharge would constitute a danger to himself or others." Additionally, the state claimed that the complete record of the board supports its position

[8] "See General Statutes § 17a-582; *State* v. *Harris*, 277 Conn. 378, 382–83, 890 A.2d 559 (2006) (after acquittee has proven defense of mental disease or defect, he or she may be committed to jurisdiction of board for maximum term of commitment not to exceed maximum sentence that could have been imposed had that individual been convicted); *State* v. *Foster*, 217 Conn. App. 476, 506 n.1, 289 A.3d 191 (*Seeley*, *J.*, concurring) (same), cert. granted, 346 Conn. 920, 291 A.3d 1041 (2023); see generally *State* v. *Long*, 268 Conn. 508, 519–20, 847 A.2d 862 (review of statutory commitment scheme for acquittees as set forth in General Statutes §§ 17a-580 through 17a-603), cert. denied, 543 U.S. 969, 125 S. Ct. 424, 160 L. Ed. 2d 340 (2004)." *State* v. *Torell*, supra, 223 Conn. App. 25 n.6.

that there is reasonable cause to believe that a continued commitment is in the best interests of the protection of society. On February 3, 2023, the board filed its report in support of the state's petition and recommended that the court extend the defendant's commitment for an additional five year period.[9]

On August 16, 2023, the defendant filed a memorandum of law arguing that the court should deny the state's petition. The defendant conceded that he is a person with a mental illness;[10] however, he argued that "there is nothing to suggest that he is presently dangerous to himself or others." The defendant further noted that the board recently had approved his application for temporary leave, which it would not have been authorized to do if he constituted a danger to himself or others. See General Statutes § 17a-587 (a).[11]

The court, *Hall*, *J.*, conducted a hearing on August 30 and September 11, 2023. At the conclusion of this

[9] General Statutes § 17a-593 (d) provides: "The court shall forward any application for discharge received from the acquittee and any petition for continued commitment of the acquittee to the board. The board shall, within ninety days of its receipt of the application or petition, file a report with the court, and send a copy thereof to the state's attorney and counsel for the acquittee, setting forth its findings and conclusions as to whether the acquittee is a person who should be discharged. The board may hold a hearing or take other action appropriate to assist it in preparing its report."

[10] The board's report stated the following: "[The defendant's] psychiatric diagnoses are Bipolar I Disorder in Full Remission, Most Recent Episode Depressed—Moderate with Anxious Distress with Atypical Features; [OCD]; Other Specified Personality Disorder with Mixed Antisocial, Borderline and Narcissistic Features; Alcohol Use Disorder in Sustained Remission in a Controlled Environment and Tobacco Use Disorder in Sustained Remission in a Controlled Environment." He is currently prescribed various psychotropic medications. There does not appear to be any dispute that, due to his current mental illness, the acquittee suffers from a psychiatric disability. See, e.g., *State* v. *March*, 265 Conn. 697, 705–709, 830 A.2d 212 (2003).

[11] General Statutes § 17a-587 (a) provides in relevant part: "The board shall grant the application [for temporary leave], subject to such conditions and supervision as the board may set in the order for temporary leave, if it concludes that the acquittee's temporary leave, under the conditions specified, would not constitute a danger to the acquittee or others. . . ."

proceeding, the court issued an oral decision granting the state's petition. At the outset, it observed that the state had the burden of establishing, by clear and convincing evidence, that the defendant "has a psychiatric disability which leads him to pose an imminent danger to himself and to others and the court must also determine whether or not that's the case and also the effect of a granting or denial of the position on the [defendant's] own health and well-being, to a lesser extent."[12] The court then focused on the information contained in the board's September 5, 2023 report detailing the defendant's three previous temporary leaves, in which he "did well in many respects but was recalled to the care provider for various reasons" including alcohol use and an arrest for a minor theft. It also explained that, although the defendant had been approved for a phase one temporary leave,[13] albeit with extensive conditions, the board had not approved him for a phase two temporary leave or a conditional release. Finally, the court noted its concern about the effect that not having "direct institutional support" might have on the defendant's health and well-being. For these reasons, the court granted the state's petition, finding that it had met its burden of establishing by clear and convincing evidence that the defendant posed an imminent danger to the safety of himself and the community.

The next day, the court issued a written "supplement" for the purpose of emphasizing the rationale set forth

[12] General Statutes § 17a-593 (g) provides: "The court shall make a finding as to the mental condition of the acquittee and, *considering that its primary concern is the protection of society and its secondary concern is the safety and well-being of the acquittee*, make one of the following orders: (1) If the court finds that the acquittee is not a person who should be discharged, the court shall order the recommendation or application for discharge be dismissed; or (2) if the court finds that the acquittee is a person who should be discharged, the court shall order the acquittee discharged from custody. The court shall send a copy of such finding and order to the board." (Emphasis added.)

[13] See footnote 14 of this opinion.

in its oral decision. It noted that the state had presented testimony from Paul Bryant, a psychiatrist. The defendant called two psychologists, Drs. Brian Conover and Claudia Krasnicki, to testify on his behalf. "All three agreed that the defendant has done well, has been a thoughtful and cooperative patient, and has engaged in his treatment. The testimony of all three witnesses was supplemented by a series of reports prepared for the board and/or the court . . . ."

The court further explained: "The witnesses appear to have agreed . . . that, as currently managed under board supervision, the defendant does not pose such a danger to the community that he should not be granted a temporary leave from direct institutional supervision and care as part of a gradual reintroduction to unsupervised treatment. Where the witnesses diverged was on the issue of whether the defendant would pose a danger to himself or others in the absence of his current management and support regimen under the supervision of the board. Doctors Conover and Krasnicki testified that, if discharged, the defendant would have available to him the virtual equivalent of care and support he enjoys now. They also expressed confidence that the defendant would voluntarily avail himself of all that care and support. Doctor Bryant testified that the defendant would pose no danger to himself or others under his current management and support regimen." (Emphasis omitted.)

The court iterated that the defendant had been approved for temporary leave on three prior occasions, in 2002, 2004 and 2011, but such leaves had been canceled by Whiting due to rule violations and arrest. Finally, the court appeared to opine that a "gradual shift" from the board's management and supervision to the defendant having full responsibility of his treatment and living situation, the "generally preferred model,"

supported its decision to grant the petition. This appeal followed. Additional facts will be set forth as needed.

The following legal principles guide our review of this appeal. Our appellate courts have recognized that, despite the significant differences in the purposes between an order of commitment issued as a result of an acquittal pursuant to § 53a-13 and a prison sentence imposed as a result of a criminal conviction, the effect of such a commitment is no less a deprivation of liberty. See *State* v. *Imperiale*, 337 Conn. 694, 712–13, 255 A.3d 825 (2021); *State* v. *Torell*, supra, 223 Conn. App. 25 n.6. Our Supreme Court expressly has stated that the statutory procedures for the recommitment of acquittees, as set forth in § 17a-593 (c), implicate the liberty interests of such individuals. *State* v. *Long*, 301 Conn. 216, 238, 19 A.3d 1242, cert. denied, 565 U.S. 1084, 132 S. Ct. 827, 181 L. Ed. 2d 535 (2011); *State* v. *Long*, 268 Conn. 508, 524, 847 A.2d 862, cert. denied, 543 U.S. 969, 125 S. Ct. 424, 160 L. Ed. 2d 340 (2004).

In *Payne* v. *Fairfield Hills Hospital*, 215 Conn. 675, 578 A.2d 1025 (1990), our Supreme Court explained: "[T]he confinement of insanity acquittees, although resulting initially from an adjudication in the criminal justice system, is not punishment for a crime. The purpose of commitment following an insanity acquittal, like that of civil commitment, is to treat the individual's mental illness and protect him and society from his potential dangerousness. *The committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous. . . . As he was not convicted, he may not be punished. His confinement rests on his continuing illness and dangerousness. Jones* v. *United States*, 463 U.S. 354, 368–69, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983)." (Emphasis added; internal quotation marks omitted.) *Payne* v. *Fairfield Hills Hospital*, supra, 683–84; see also *State* v. *Harris*, 277 Conn. 378, 394, 890 A.2d 559 (2006); *State* v. *Ardizzone*, 215 Conn.

App. 854, 866, 283 A.3d 982 (2022), cert. denied, 346 Conn. 905, 287 A.3d 1089 (2023).

In the present case, the state sought to extend the defendant's commitment pursuant to § 17a-593 (c), which authorizes the state to seek the continuing confinement of an acquittee beyond his maximum term of commitment. Our review of the defendant's claim, therefore, is based on the text of this statute, and judicial opinions that have interpreted it. We begin with the language of § 17a-593 (c), which provides: "If reasonable cause exists to believe that the acquittee remains a person with psychiatric disabilities or a person with intellectual disability to the extent that his discharge at the expiration of his maximum term of commitment would constitute a danger to himself or others, the state's attorney, at least one hundred thirty-five days prior to such expiration, may petition the court for an order of continued commitment of the acquittee."

In *State* v. *Metz*, 230 Conn. 400, 645 A.2d 965 (1994), our Supreme Court addressed the question of whether the state or the acquittee should bear the burden of proof regarding the basis for a continuing commitment beyond its original term. Id., 402. Speaking for a unanimous court, former Chief Justice Peters first discussed the significant constitutional issues implicated, generally, by confinement and, specifically, the due process entitlements of an acquittee whom the state seeks to confine beyond the terms of an original commitment. Id., 412–18. Former Chief Justice Peters stated: "These constitutional concerns lead us to construe the maximum period of commitment authorized by § 17a-582 (e) (1) (A) as a reasonably identified point of demarcation beyond which the presumption of dangerousness initially accompanying an acquittee does not continue. Accordingly, we conclude that § 17a-593 (c) impliedly imposes the same burden on the state at a hearing for

the continued commitment of an acquittee beyond his current definite period of commitment as is imposed in a civil commitment hearing under [General Statutes] § 17a-498 (c); namely, to show by clear and convincing evidence that the acquittee is currently mentally ill and dangerous to himself or herself or others or gravely disabled." (Footnote omitted.) Id., 425.

Subsequently, in *State* v. *March*, 265 Conn. 697, 830 A.2d 212 (2003), our Supreme Court noted that the term "dangerousness" as used in General Statutes § 17a-580 (5), includes the notion of immediacy. Id., 708–709. Thus, "dangerousness" incorporates the notion *that one poses an imminent risk of danger to oneself or to others*. Id. The state, therefore, must prove that an acquittee presents an imminent risk of "danger to self or to others" to meet its burden of proving an acquittee's dangerousness. (Internal quotation marks omitted.) Id., 709. In *State* v. *Harris*, supra, 277 Conn. 378, a matter in which the state sought to extend an acquittee's period of confinement, our Supreme Court iterated that the element of "dangerousness" in this context includes an imminent risk that the acquittee would harm himself or herself or others; id., 388; and explained further that the term " '[i]mminent' is defined as 'ready to take place; esp: hanging threateningly over one's head. . . .' Merriam–Webster's Collegiate Dictionary (10th Ed. 1993) [p. 580]." Id., 389. In sum, to satisfy its burden before the trial court in this matter, the state was obligated to prove by clear and convincing evidence that, as a result of his mental illness, the defendant posed a risk of imminent physical injury to himself or others. See *State* v. *Warren*, 100 Conn. App. 407, 416–17, 919 A.2d 465 (2007); Regs., Conn. State Agencies § 17a-581-2 (a) (6).

We recognize that a trial court that must make a determination of dangerousness in this context faces a difficult task. Additionally, we are cognizant that "the goals of a treating psychiatrist frequently conflict with

the goals of the criminal justice system. . . . While the psychiatrist must be concerned primarily with therapeutic goals, the court must give priority to the public safety ramifications of releasing from confinement an individual who has already shown a propensity for violence. As a result, the determination of dangerousness in the context of a mental status hearing reflects a societal rather than a medical judgment, in which the rights and needs of the [acquittee] must be balanced against the security interests of society. . . . The awesome task of weighing these two interests and arriving at a decision concerning release rests finally with the trial court." (Internal quotation marks omitted.) *State* v. *Corr*, 87 Conn. App. 717, 725, 867 A.2d 124, cert. denied, 273 Conn. 929, 873 A.2d 998 (2005); see also *State* v. *Warren*, supra, 100 Conn. App. 433 (although medical testimony may be helpful, issue of evaluating dangerousness and prediction of acquittee's future behavior, for which there is no bright-line test, is reserved for courts). Additionally, we note that, in addressing the legal determination of dangerousness in this context, "the court may and should consider the entire record available to it, including the defendant's history of mental illness, his present and past diagnoses, his past violent behavior, the nature of the offense for which he was prosecuted, the need for continued medication and therapy, and the prospects for supervision if released." (Internal quotation marks omitted.) *State* v. *Damone*, 148 Conn. App. 137, 171, 83 A.3d 1227, cert. denied, 311 Conn. 936, 88 A.3d 550 (2014); see also *State* v. *Jacob*, 69 Conn. App. 666, 677, 798 A.2d 974 (2002).

We turn now to our standard of review. As we have noted, in the case at hand, the state had the burden to prove by clear and convincing evidence that the defendant presents a risk of imminent danger to himself or to others due to his mental illness. The defendant has not challenged the court's finding that he suffers

from a mental illness; therefore, we are concerned solely with the issue of whether the state met its burden of proving that the defendant would constitute an imminent danger to himself or others if discharged from the jurisdiction of the board. As an appellate court, we do not find facts and we do not disturb the factual findings made by the trial judge unless they are clearly erroneous. See *State* v. *Ryder*, 111 Conn. App. 271, 276, 958 A.2d 797 (2008). As we have often stated, "[a] finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Whelan* v. *Brestelli*, 230 Conn. App. 683, 696, 331 A.3d 1220 (2025); see also *State* v. *Orr*, 199 Conn. App. 427, 436–37, 237 A.3d 15 (2020).

Finally, we briefly discuss the clear and convincing evidence standard. As our Supreme Court noted in *Miller* v. *Commissioner of Correction*, 242 Conn. 745, 700 A.2d 1108 (1997), a factual innocence case, this "standard should operate as a weighty caution upon . . . all judges, and it forbids relief whenever the evidence is loose, equivocal or contradictory." (Internal quotation marks omitted.) Id., 795. This court has explained that "[t]he clear and convincing standard of proof is substantially greater than the usual civil standard of a preponderance of the evidence, but less than the highest legal standard of proof beyond a reasonable doubt. *It is sustained if the evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist.* . . . Although we have characterized this standard of proof as a middle tier standard . . . and as an intermediate standard

. . . between the ordinary civil standard of a preponderance of the evidence, or more probably than not, and the criminal standard of proof beyond a reasonable doubt, *this characterization does not mean that the clear and convincing standard is necessarily to be understood as lying equidistant between the two. Its emphasis on the high probability and the substantial greatness of the probability of the truth of the facts asserted indicates that it is a very demanding standard and should be understood as such.*" (Citations omitted; emphasis altered; internal quotation marks omitted.) *In re Giovanni C.*, 120 Conn. App. 277, 279–80, 991 A.2d 638 (2010); see also *State* v. *Rizzo*, 266 Conn. 171, 211 n.22, 833 A.2d 363 (2003) (intermediate standard is used when particularly important individual rights are involved). Guided by these principles, we now turn to the evidence produced at the hearing and the court's findings regarding the state's petition for continued commitment.

As indicated in the board's report to the court dated January 30, 2023, which was admitted into evidence as exhibit 1 at the hearing, following his commitment in 2000, the defendant initially was confined in a maximum security setting at Whiting. Shortly thereafter, the board transferred him to Dutcher Services (Dutcher), which is a less restrictive setting, at Whiting.

During the defendant's periods of confinement, he has been granted temporary leaves[14] for specific periods

[14] Bryant testified that a temporary leave is "the process in which the hospital believes that one of their acquittees is ready for transition to the community . . . . The first phase is called day temporary leaves, where the acquittees leave the hospital and go into the community just to spend the day. That usually starts off with about one day a week, and then progresses to a few days a week, but they always come back to the hospital and spend the night.

"And, then, once someone has successfully done well on that for a period of time, they then go to a phase two, or overnight temporary leave where they will spend the night in the community. So, again, they'll—it'll be progressive where they'll start with one day and then that will increase up to seven

of time. One such leave that had been granted in 2002 was terminated after the defendant was arrested for shoplifting in 2004. Another leave that was granted in 2007 was terminated one year later, when the defendant attempted suicide. He began a third period of leave in 2011, which continued for three years, during which time the defendant exhibited clinical stability. On the basis of that success, the defendant was granted a conditional release[15] which allowed him to live outside of Whiting full time and receive outpatient treatment at the Connecticut Mental Health Center. But this period of quietude ended in 2015, when the board learned that, in spite of receiving therapeutic and community support, the defendant secretly had been consuming alcohol.[16] He then was transferred, without objection, back to Whiting.

In 2020, the defendant experienced profound depressive symptoms and underwent electroconvulsive therapy. Subsequently, the defendant began showing significant improvement in self-care and participation in treatment activities. Additionally, his anxiety and OCD symptoms improved. Consequently, Whiting granted the defendant the highest level of privileges, which allowed him access to the Whiting's grounds without supervision.

During the three year time period between February, 2020, and January, 2023, and specifically in 2020 and 2021, the defendant encountered a series of stressful events, including a severe episode of COVID-19 that

days a week where they're essentially staying in the community except for a weekly trip back to the hospital to check in with their treatment team."

[15] Bryant described a conditional release as follows: "[T]he hospital is saying . . . this person is really being treated in the community, they're doing well so we think that their treatment should move to the community treatment team."

[16] Bryant testified that the defendant would become more anxious and overwhelmed as a commitment hearing approached, and, rather than alert his treatment providers to his increased symptoms, would consume alcohol as a coping mechanism.

necessitated treatment in the intensive care unit, a burst appendix that required surgical intervention, and the death of his mother, who was his primary support. Nevertheless, despite these traumatic events and the attendant pressure on him, the board reported that the defendant utilized his treatment team for support and avoided any further depressive episodes. The defendant's providers monitored his increased anxiety symptoms, which did subside as he continued to participate in individual and group therapy.

The state also introduced a letter from Whiting to the board dated June 15, 2023, that was admitted into evidence at the hearing as exhibit 3, stating that an application for temporary leave had been made on the defendant's behalf. This application had not been acted upon when the state filed its petition to extend the defendant's commitment. In response to the application for temporary leave, the board issued a memorandum of decision dated September 5, 2023, which was admitted at the hearing on the state's petition, designated as exhibit 4. In this decision, the board noted that the defendant "has consistently collaborated with hospital and community staff with the goals of appropriately engaging in available treatments and working towards a place where he's ready to begin a [t]emporary [l]eave once again." The board further observed that the defendant "has maintained a full privilege level that allowed him to have unsupervised pass times on hospital grounds within his own custody for much of the day. [The defendant] also went on several hospital supervised trips into the community and there were no associated concerns with him." Although the board found that the defendant had, in more recent years, gained considerable insight into his behaviors and needs, and had been fully engaged in all available therapies and medicines, only phase one of the hospital's application for temporary leave was approved. In granting only

phase one of the application allowing the defendant day leaves from the hospital, but denying phase two, which would have permitted overnights away from the hospital, the board opined: "Due to the level of risk that [the defendant] has presented both to himself and to the community during previous attempts for community reintegration, the [b]oard wants to ensure that [the defendant] is appropriately supported and that decisions are clinically validated and supported related to his transition period, identified services and timeframes. Therefore, the [b]oard finds that under the conditions contained within this order . . . [the defendant] would not constitute a danger to himself, or others should he start to participate in treatment in the community."

During the hearing on its petition, the state offered the testimony of Bryant, who identified himself as an employee of Yale University and a consulting forensic psychiatrist for the Department of Mental Health and Addiction Services. Bryant testified concerning the defendant's treatment and medication regime. As to the defendant's diagnoses, Bryant testified that he suffers from bipolar disorder, OCD, personality disorder with antisocial, borderline, and narcissistic traits, as well as alcohol and tobacco abuse disorders in sustained remission. Bryant offered his opinion that all of these diagnoses and their symptoms are well managed under the defendant's treatment regime, including the current medicines administered to him. He opined that, if the defendant were to discontinue receiving the doses of medicine prescribed for him, there would be a risk that his symptoms would reemerge, including depressive or manic behaviors. Notably, Bryant concluded that, in his current circumstances in the hospital and under the jurisdiction of the board, the defendant does not present a substantial risk of danger to himself or any others. Prescriptively, Bryant opined that a gradual reintroduction into the community would best suit the defendant's

needs. Significantly, he did not say that the defendant posed an imminent danger to himself or to others. Bryant acknowledged that the defendant had not engaged in any threatening behavior, violence or aggression. His testimony was couched in terms of risks of an increase in the defendant's symptoms should the defendant stop taking the medicines prescribed for him and cease his treatment. However, Bryant offered no testimony regarding the risk of *imminent* danger to the defendant or others if the defendant were to be released from the jurisdiction of the board. Indeed, on cross-examination, Bryant acknowledged that he had supported the application filed on behalf of the defendant for a gradual, two step temporary leave program that would initially result in day passes and eventually, in phase two, grant him the opportunity for overnight stays away from Whiting. He then was asked this question: "If [the defendant] currently posed an immediate risk of harming himself or others, Whiting . . . would not be asking the [board] to grant a [temporary leave] application. Is that correct?" Bryant answered: "Yes, I'd say that's correct." Further, on cross-examination, Bryant repeated his opinion that the defendant is not a danger to himself or to others with "his symptoms managed in the current way." Finally, in response to a question from the defendant's lawyer, Bryant acknowledged his belief that the defendant did not meet the criteria for civil commitment at that time.

Following Bryant's testimony, the state rested. The defendant then called Conover as his first witness. Conover is a clinical psychologist employed by Whiting. He testified that he has served as the defendant's individual psychotherapist for approximately eight years. After discussing the defendant's progress over the past several years following his return to Whiting in 2015, Conover stated his belief that the defendant no longer needed to be under the supervision of the board. As

reasons for this opinion, Conover noted the defendant's investment in his treatment, as well as his willingness to collaborate with his treatment team. Conover concluded by opining that, once free of board supervision, the defendant would continue with his treatment on a voluntary basis.

Much of the state's questions during its cross-examination of Conover concerned the hospital's temporary leave program, which the board just had approved partially for the defendant with the result that, once implemented, he would have the opportunity to leave the hospital during the daytime and to return in the evening. Conover acknowledged that, generally, such a gradual process is useful for individuals who have been confined to the jurisdiction of the board. When asked if the temporary leave process that transitions into community release would be beneficial to the defendant, Conover answered that, in these particular circumstances, a gradual release into the community would not benefit the defendant. Conover expressed, as the basis of this conclusion, that, over time, the defendant has gained insights into his illness. He commented that the defendant "has demonstrated not only his ability to identify those symptoms, but to respond to any kind of increase in symptoms by reaching out to his treaters and asking for help with those things, and, therefore, the compulsory nature is not really necessary, and I would say the same about his substance abuse." Conover stated, as well, that the defendant is motivated to remain sober and remain totally compliant with his treatment plan for continued sobriety. Conover added that the level of oversight the board presents in the defendant's situation is a stressor for him, and this additional stress constituted a risk factor. Conover concluded by stating his belief that the defendant should be discharged from any further confinement without the need for a gradual release as envisioned by the board.

The second witness called on behalf of the defendant was Krasnicki, a psychologist serving at Dutcher, where the defendant is housed. She testified that she had worked with the defendant for approximately twelve years. On the basis of her extensive experience directly with the defendant, she opined that he is not presently a danger to himself or to the community. During cross-examination, when asked about the defendant's sobriety, she pointed out that both liquor and other drugs can be obtained by those confined to Whiting but that the defendant has been committed to his sobriety and the treatment necessary to remain alcohol free. Krasnicki also commented that the defendant has the strong support of a brother and a sister who is like a second mother to him and that, over time, he has developed a personal relationship with his treaters at the hospital, whom she said she believed the defendant would continue to see even if he were no longer under the board's control.

Our review of the trial testimony reveals that none of the mental health professionals testified that he is presently a danger to himself or to others. Bryant did opine that, if the defendant ceased his treatment medication regimes, "there would be risk for exacerbation of his bipolar disorder which could include depressive symptoms or manic symptoms, could cycle between the two. There would . . . we'd anticipate an increase in OCD symptoms, which had been very severe in the past for . . . [the defendant]. And he would also be at an increased risk for relapse into his alcohol use disorder." This testimony, however, did not include an opinion as to whether such increased risks were imminent, or whether there was an imminent, increased risk that the defendant might cease his treatment or medication if he were to be released from the jurisdiction of the board. Further, there was no testimony regarding an imminent risk of danger of physical harm to either

the defendant or others. Finally, both of the defendant's treating psychologists opined that the ongoing stress of being under the jurisdiction of the board actually was having detrimental impact on the defendant's well-being.

On the basis of this record, the question before us is whether the court's determination that the state met its burden of demonstrating, by clear and convincing evidence, that, as a result of his mental illness, the defendant posed a risk of imminent physical injury to himself or others was clearly erroneous. We conclude that the state failed to present the necessary evidence of an *imminent* risk of physical harm to the defendant or others and, therefore, the court's finding was improper.

To be sure, the record reflects that, during the defendant's commitment, he has been granted several temporary leaves from Whiting, and, while on these leaves, he has participated in misconduct that had caused him to return to a stricter form of confinement at Whiting. As previously stated, the defendant's first temporary leave began in 2002, but was terminated in 2004 after his arrest for shoplifting. His second temporary leave began in 2007, but was terminated in 2008, after he had attempted suicide and violated other terms of his temporary leave. His third temporary leave began in 2011 and, as acknowledged by the state, for the following three years of this leave, the defendant exhibited clinical stability and treatment compliance. Thereafter, in 2014, the defendant was granted a conditional release, which allowed him to live full-time outside of Whiting and to receive treatment at the Connecticut Mental Health Center. This conditional release was terminated, however, in 2015, when the board discovered that the defendant had been consuming alcohol. It is notable, however, that, in each of these situations, none of the

defendant's missteps occurred shortly after the commencement of either the temporary leave or the conditional release. In short, nothing in the history of these failures suggests that, if freed from the jurisdiction of the board, there is an *imminent* risk that the defendant may become a danger to himself or others.

To the contrary, his current treatment providers testified that, in the years since his last conditional release, the defendant has continued to mature and more fully embrace his treatment regimens. Additionally, he now receives two medications, disulfiram, commonly known as Antabuse, and naltrexone, which dampen cravings for alcohol consumption, and he is a willing participant in the various therapies provided to him that will remain available to him even after his discharge from confinement. The trial court heard no evidence that the defendant would discontinue either his treatment or medications if released from the jurisdiction of the board and, as a result, present an imminent risk of danger to himself or others.[17]

As noted, at the hearing before the trial court, Conover, who has treated the defendant for several years, testified to his belief that the defendant does not presently need a period of gradual transition back into the community on the basis of his commitment to his treatment regime. And Krasnicki, a clinical psychologist who has treated the defendant for twelve years, testified in favor of his complete release from the jurisdiction of the board. In addition to her belief that the defendant does not need a gradual period of transition before

[17] Bryant did testify that, if the defendant was to stop taking all of his medications, there would be a risk of an increase of his bipolar disorder, including depressive or manic symptoms, an increase in his OCD symptoms, and increase for a relapse of his alcohol use disorder. His testimony, however, did not address the likelihood of the defendant ceasing to take all of his prescribed medications and a corresponding increased risk in his dangerousness.

becoming free of the board's oversight, Krasnicki opined that the ongoing oversight is not in the defendant's best interest and could actually be detrimental to him. She opined: "He, at this point in time, I feel is strongly committed to his treatment, his recovery. I don't feel that having that layer of oversight at this point is doing anything more but adding more stress which is not added to his quality of life."

In its oral decision, the trial court referred to exhibit 4, the board's September 5, 2023 memorandum of decision with respect to the defendant's application for temporary leave. The court used this document as a basis to summarize the defendant's prior temporary leaves that had been terminated for various reasons. The court then specifically noted that, in approving the phase one temporary leave, the board concluded the defendant would not constitute a danger to himself or others if he continued to participate in treatment. The court further explained that the board had observed that the defendant remained a person with a psychiatric disability to the extent that his discharge or conditional release would constitute a danger to himself or others without the conditions imposed as a part of the phase one temporary leave. The board's memorandum of decision, however, contained no evidence that the defendant would pose an *imminent* risk of danger to himself or others if he were granted a phase two temporary leave. Rather, this document set forth the conclusory statement that, "[d]ue to the level of risk that [the defendant] has presented both to himself and to the community during previous attempts for community reintegration, the [b]oard wants to ensure that [the defendant] is appropriately supported and that decisions are clinically validated and supported related to his transition period, identified services and timeframes." This statement, while perhaps sufficient to deny an application for a phase two temporary leave, lacks the necessary

detail to support a finding of dangerousness required to grant a petition to extend a commitment beyond its maximum term. Significantly, the board's memorandum of decision provided no support for its conclusion that the defendant posed an imminent danger to himself or others should he be released from the board's jurisdiction.

Next, the court expressed its concern regarding the effect on the defendant's health and well-being should he no longer have the direct institutional support of the board, noting the substantial amount of time that he had been under its jurisdiction. While this may have been a legitimate concern, particularly for his treatment providers, the court did not cite to or refer specifically to any evidence that a change in the defendant's circumstances would result in his imminent dangerousness. Again, the question is not whether a particular course of treatment would be a "better" medical approach for the defendant, but whether the defendant, if released from the board's jurisdiction, posed a risked of imminent physical injury to himself or others due to his mental illness. See *State* v. *Warren*, supra, 100 Conn. App. 416–17.

In the September 12, 2023 written supplement to the oral decision, the court remarked that the witnesses at the hearing on the state's petition diverged on the issue of whether the defendant would pose a danger to himself or others. It further acknowledged that all three professionals "expressed confidence" that the defendant would continue to avail himself, on a voluntary basis, of the care and support he received while under the jurisdiction of the board. After citing to the board's September 5, 2023 memorandum of decision addressing the application for a temporary leave, the court explained that, given the preference for a gradual shift from the oversight of the board to the defendant's having full responsibility for his treatment, its view was that the

defendant should remain under the jurisdiction of the board while this gradual shift occurred. It again failed to connect this reasoning with the requirement that the state establish an imminent danger to the defendant or others. Simply stated, in both its oral remarks at the September 11, 2023 hearing and in the written supplement to its oral decision, the court relied on no evidence regarding the imminent dangerousness element required under our law.

To illustrate the lack of evidence of imminent dangerousness in this matter, it is useful to compare and contrast this defendant with other acquittees with similar procedural histories. In *State* v. *Foster*, 217 Conn. App. 476, 289 A.3d 191, cert. granted, 346 Conn. 920, 291 A.3d 1041 (2023), this court affirmed the judgment of the trial court granting the state's petition to extend the confinement of an acquittee who had been found not guilty by reason of mental disease or defect. Id., 478. The underlying facts of that case, as recited by this court, are instructive. "On January 16, 2001, [Franklin Foster], then twenty-four years old, entered a Greenwich middle school while in possession of two knives. In a school hallway, [Foster] slapped, punched, and kicked a male sixth grade student, and he lifted a female sixth grade student over his head. [He] was on school grounds without permission and his violent conduct was unprovoked." Id., 478–79. After Foster was found not guilty by reason of mental disease or defect, and the appropriate referral for evaluation was made, the court committed him to the jurisdiction of the board for a period of time not to exceed ten years. Id., 479. His commitment was continued by agreement several times. Id. In 2018, he was granted a conditional release and began living in the community. Id. In 2019, the state filed a petition for continued commitment in which it alleged "that reasonable cause existed that [Foster]

continues to be a danger to himself or others if discharged from confinement and that without continued supervision by the board, [he] would quickly decompensate and become a risk." (Internal quotation marks omitted.) Id.

On appeal, Foster claimed that the state failed to present clear and convincing evidence that he was an imminent threat to become a danger to himself or others. Id., 482. The state, however, had adduced evidence that, during Foster's period of confinement, there had been "several instances in which he intimidated, inappropriately touched, and made socially inappropriate statements, often of a sexual nature, to female staff members." Id., 489. The trial court noted, as well, that reports of instances of inappropriate conduct continued up through the latest report that the board filed with the court. Id., 490.

This court further stated "that there was evidence before the [trial] court that, following [Foster's] commitment to the board, he used physical violence toward other patients, he challenged another patient to engage in a physical alteration, and he engaged in otherwise threatening behavior toward others." Id., 492. Furthermore, this court observed that there was evidence before the court of Foster's "noncompliance with prescribed medication in a hospital setting." (Internal quotation marks omitted.) Id. Finally, the trial court in *Foster* had explained that the board had stated that without mandated safeguards, "which [Foster's] treaters continue to believe are required to address his risk, he is likely to become noncompliant with treatment and medication . . . ." (Internal quotation marks omitted.) Id., 493.

These findings and this history can readily be contrasted with the facts in the present case, beginning with a comparison of the nature of the index offense

in the present case to the continuing violent conduct by Foster. To be sure, robbing the bank in 1997 was a dangerous activity, given the use of a pellet gun, the presence of a loaded shotgun in the defendant's car, and his brief attempt to elude capture. His conduct while under the jurisdiction of the board, however, is distinguishable from that found in other cases involving acquittees such as Foster. His misconduct while on leaves from confinement over the years did not include any violence or threat of violence on his part.[18] Additionally, Foster's history of noncompliance with his medicine regimen is in stark contrast to the unrefuted evidence that the defendant is not only medicine compliant but is eager to continue with all of his therapeutic treatments. In short, there was no evidence presented to the court that the defendant will "quickly decompensate" if released from the jurisdiction of the board. Id., 479.

The state also relies partially on this court's opinion in *State* v. *Dyous*, 198 Conn. App. 253, 233 A.3d 1138, cert. denied, 335 Conn. 948, 238 A.3d 17 (2020), another case in which the state sought to extend the commitment of an acquittee who had been found not guilty by reason of mental disease or defect after his criminal trial. Id., 254. Following the trial and the appropriate referral, the court committed Anthony Dyous to the jurisdiction of the board for a period not to exceed twenty-five years. Id. Dyous had been charged with two counts of kidnapping in the first degree, two counts of threatening in the second degree, and one count of

[18] The state relies heavily on our reasoning in *State* v. *Warren*, supra, 100 Conn. App. 407, that a record that does not reveal any acts of physical aggression does not preclude a finding of dangerousness. Id., 433. Although we agree with that proposition, it nonetheless remains the state's burden of proving *imminent* dangerousness to self or others by clear and convincing evidence in the context of a petition to continue commitment filed pursuant to § 17a-593 (c). In other words, our conclusion that the court improperly granted the state's petition is not based solely on the absence in the record of any action of physical aggression by the defendant.

carrying a dangerous weapon. Id. The underlying facts, as recited by our Supreme Court are as follows: "Between 1977 and the time of the incident [that] resulted in his criminal commitment [Dyous] was hospitalized three times in psychiatric facilities. Thereafter, in December, 1983, [Dyous] hijacked a bus carrying forty-seven people, including a child. He threatened the driver with a bomb and nerve gas and stated he had been asked by God to deliver a message." (Internal quotation marks omitted.) Id., 255.

This court noted that, in 1986, Dyous escaped from the Norwich State Hospital with a female peer with whom he travelled to South Carolina, Texas, and finally Mexico, where he was apprehended. Id. This court further observed that, when found in Mexico, Dyous exhibited symptoms of psychosis and that, once returned to Whiting, he "was found to be grossly psychotic and experiencing auditory and visual hallucinations as well as grandiose and persecutory delusions." Id. At Whiting, he was involved thereafter in a violent incident that resulted in his own injuries as well as injuries to staff members and other patients. Id.

This court, on review, also tracked Dyous' periods of confinement and partial releases in the following years, which included a positive drug screen for cocaine, symptoms of psychosis, and failure to adhere to his medicine regimen, including refusing to take his medications. Id. From time to time, he exhibited psychotic and paranoid symptoms, as well as delusional thinking. Id. Following his return to Whiting, he became violent and was at one time placed in four-point restraints for a period of six hours. Id. This court continued: "During the next several years, [Dyous] remained at Whiting and was involved in a series of assaults. From 1996 [through] 2005, [his] behavior at Whiting was characterized by chronic refusal to take medication, irritability, mood lability, grandiosity, paranoid ideation, rule

breaking, physical altercations with peers and refusal to engage meaningfully in treatment." Id., 256.

This court further noted that, "throughout his commitment, [Dyous] has demonstrated little insight into his illness and, instead, has sought to justify or rationalize his behavior. Additionally, despite a history of psychotic episodes, [Dyous] remains steadfast in his opposition to taking antipsychotic medication [even] [t]hough medication has been shown to ameliorate [his] symptoms . . . ." (Internal quotation marks omitted.) Id., 257–58.

The appeal in *Dyous* arose after the trial court had granted a 2017 petition by the state to further extend [Dyous'] period of confinement. Id., 260. On appeal, this court noted that, in granting the state's petition, the trial court took into consideration the seriousness of the criminal conduct, as well as Dyous' lack of participation in recommended treatment groups, poor insight into his mental illness and refusal to take recommended medication. Id. The trial court also referred to Dyous' altercation with another patient in which Dyous had acted in a confrontational and very aggressive manner. Id.

In our view, the state's reliance in the present case on *Dyous* is misplaced. There, the state presented, and the court found, ample evidence of Dyous' continuing dangerousness. In contrast, in the present case, there is no evidence of the defendant's present dangerousness to himself or others; there is only the concern expressed by the board and echoed by the court that the defendant may at some future point stop following his medicine regimen and may at some future point cease his therapies with the result that he might then act in a manner dangerous to himself or others. Although his index offenses were significant, and they created a risk of harm to others, they involved none of the violence that

characterized the behaviors described in either *State* v. *Foster*, supra, 217 Conn. App. 476, or *State* v. *Dyous*, supra, 198 Conn. App. 253. Similarly, the history of the defendant's confinements and periodic releases evinced no violent or antisocial behavior. Moreover, and importantly, while neither Foster nor Dyous demonstrated insight into their mental illnesses, the psychologists who have treated the defendant testified that he shows great insight into his mental health condition and demonstrates an unwavering commitment to his medicine and treatment regime. In short, the *Foster* and *Dyous* cases, both relied upon by the state, are of value only for the stark contrasts they present to the circumstances of the defendant before us.

Instead, we conclude that the present matter is more analogous to a recent decision from the Superior Court. In *State* v. *Ali*, Docket No. CR-04-108157-S, 2023 WL 4881439 (Conn. Super. July 3, 2023), the state filed a petition to continue the commitment of the acquittee pursuant to § 17a-593 (c). In 1983, the acquittee had set fire to a residence after he had been denied permission to join a card game with his mother and her friends. Id., *1. He was acquitted of arson in the second degree after the court found that "he lacked . . . substantial capacity because of mental disease or defect to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law." Id. He initially was committed to the jurisdiction of the board for twenty years, and that commitment was extended on several occasions. Id.

The court conducted a hearing on June 29, 2023, regarding the state's most recent petition to extend the acquittee's commitment. Id. Alexander Westphal, a psychiatrist, testified as the state's sole witness. Id. Westphal indicated that the acquittee, who had been granted the highest level of privileges available at the hospital, was found to be in his best mental state, and

there were no concerns that the acquittee posed a risk to himself or others. Id. In denying the state's petition, the trial court relied on Westphal's opinion that the acquittee presently did not meet the standard for a civil commitment, as well as concluding that a "risk couched in the terms of a possibility is simply too thin a reed to carry the weight of the state's burden under these circumstances." Id., *2. Ultimately, the court determined that the state had not met its burden and ordered that the acquittee was to be discharged from the custody of the board at the conclusion of his current period of commitment.[19] Id., *3.

Similarly, in the present case, Bryant testified that he did not have an opinion as to whether continued commitment would be beneficial to the defendant. Bryant further stated that, under the defendant's current treatment and management, he did not present an acute risk of danger to himself or others. Bryant agreed on cross-examination that, if the defendant presently posed a risk of danger to himself or others, the hospital would not have granted the application for a temporary leave. Bryant also acknowledged that the defendant, who also was granted the highest level of privileges on hospital grounds, presently did not meet the standard for a civil commitment. Finally, Bryant's testimony did not link or quantify, in any manner, the potential increased risks of symptoms that the defendant may experience to the risk of imminent physical injury to himself or others. Rather, his testimony, and the letter from the board recommending that the defendant's commitment be extended for another five year period, suggest that the state's motion should be granted because there has not yet been a successful gradual transition period from

[19] Although *Ali*, as a trial court opinion, is not binding on this court, we find that the court's reasoning that a mere possibility of a risk of dangerousness is insufficient to justify the continued commitment of an acquittee in these circumstances is applicable to the matter at hand.

the hospital to the community. As previously noted, although this certainly may be a laudable and prudent therapeutic approach, it falls short of the demanding standard that the state must meet under these particular circumstances and to ensure that the defendant's due process rights are protected. We iterate that, in order to extend the defendant's commitment, the state was required to prove, by clear and convincing evidence, that his discharge would constitute an imminent danger to himself or others. See *State* v. *Torell*, supra, 223 Conn. App. 40.

The trial court appears to have been concerned primarily with an abrupt transition from the "direct institutional support provided under the auspices of the [board]" and the defendant's extensive involvement with that entity to his being on his own in the community. There was no evidence in the record, however, that the defendant would move from the hospital to an unsupported community setting. To the contrary, the defendant's psychologists testified that he indicated he would continue his treatment with the hospital with minimal changes, despite no longer being under the jurisdiction of the board. We recognize that the trial court was not required to accept this testimony, and we are not at liberty to substitute our views of this evidence in place of the trial court. Despite our limited review, however, we conclude that absent from the court's analysis is a finding, based on clear and convincing evidence, that such a rapid transition would result in a risk of imminent harm to himself or others. The court's reference to an unsupported and conclusory statement reciting the appropriate legal standard from the board's report does not constitute evidence to meet the rigorous standard applicable under these facts and circumstances.

In *State* v. *Metz*, supra, 230 Conn. 400, the former chief justice stated the following: "Freedom from unjustified

governmental intrusions into personal security and bodily freedom are basic, historically recognized liberty interests that are protected by the federal constitution. *Foucha* v. *Louisiana*, 504 U.S. 71, [79–80], 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992); *Vitek* v. *Jones*, 445 U.S. 480, 492, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980). As a matter of federal law, [i]t is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection; that is, the nature of commitment [must] bear some reasonable relation to the purpose for which the individual is committed. *Foucha* v. *Louisiana*, supra, [79]. The United States Supreme Court has recognized involuntary commitment to a mental institution, in particular, as involving more than a loss of freedom from confinement; *Vitek* v. *Jones*, supra, [92]; due to its stigmatizing consequences, and the potential exposure to invasive, compulsory medical and psychiatric treatment. . . . The law of federal due process accordingly imposes significant constitutional constraints on involuntary commitments. Even for the purpose of psychiatric treatment, a state may not confine an individual, unless the individual is both mentally ill and dangerous. *O'Connor* v. *Donaldson*, 422 U.S. 563, 573–76, 95 S. Ct. 2486, 45 L. Ed. 2d 396 (1975)." (Citation omitted; internal quotation marks omitted.) *State* v. *Metz*, supra, 230 Conn. 412–13. It bears repeating that, although a gradual shift to the community from the hospital may be preferable for purposes of his treatment, the record and our mandated application of the pertinent law do not support the finding necessary to permit the state to extend further the deprivation of the defendant's liberty interest.

In the matter at hand, in which the defendant now has been confined for twenty-five years following the index offenses and fifteen years beyond the ten year period of maximum confinement initially imposed by the court, and in the absence of clear and convincing

evidence that he is presently an imminent danger to himself or to others, he is entitled to his freedom. Accordingly, we conclude that the state failed to meet the very demanding standard of clear and convincing evidence. This standard operates "as a weighty caution upon the minds of all judges, and it forbids relief whenever the evidence is loose, equivocal or contradictory." (Internal quotation marks omitted.) *Antonio A.* v. *Commissioner of Correction*, 205 Conn. App. 46, 88, 256 A.3d 684, cert. denied, 339 Conn. 909, 261 A.3d 744 (2021). On the basis of the principles set forth herein, we conclude that state failed to meet its demanding burden. Therefore, the court improperly granted the petition to continue the defendant's commitment.

The judgment is reversed and the case is remanded with direction to deny the state's petition for continued commitment.

In this opinion the other judges concurred.

GERALD RINGEL ET AL. *v.* MARIA GENEDINA GOTTLIEB
(AC 47321)

Moll, Cradle and Clark, Js.*

Syllabus

The plaintiff property owners appealed from the trial court's judgment defining the scope and location of an easement that granted the abutting defendant property owner right-of-way access across the plaintiffs' property to the beach and waters of Long Island Sound. The plaintiffs claim, inter alia, that the court improperly concluded that the warranty deed at issue clearly and unambiguously reserved a general beach easement for the defendant's use of the plaintiffs' property above the mean high water line. *Held*:

The trial court erred in concluding that the easement language in the warranty deed was clear and unambiguous, as the definition of "beach" in our case law is not consistent and both parties' interpretations of the term

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

"beach" were reasonable, and, therefore, the language in the deed was ambiguous as to the easement's location and scope.

The trial court erred in making findings on the basis of claims that the defendant had withdrawn prior to trial, as the language of the parties' stipulation clearly expressed an intent to abandon their respective claims that the other party engaged in conduct that exceeded the scope of the easement or impeded the defendant's use of the easement, leaving only the scope and location of the easement as the sole issue to be adjudicated, and it was improper for the court to have ruled on issues beyond that.

Argued January 7—officially released July 22, 2025

Procedural History

Action seeking, inter alia, an injunction prohibiting the defendant from using the plaintiffs' property in a manner that exceeds the scope of an easement on the plaintiffs' property, brought to the Superior Court in the judicial district of Fairfield, where the defendant filed a counterclaim; thereafter, the case was tried to the court, *Hon. Barry K. Stevens*, judge trial referee; judgment for the defendant on the complaint and on the counterclaim, from which the plaintiffs appealed to this court. *Reversed*; *new trial*.

Joel Z. Green, with whom, on the brief, was *Linda Pesce Laske*, for the appellants (plaintiffs).

James M. Nugent, for the appellee (defendant).

Opinion

MOLL, J. In this property dispute, the plaintiffs, Gerald Ringel and Wanda Ringel, appeal from the judgment of the trial court, rendered after a bench trial, in favor of the defendant, Maria Genedina Gottlieb. On appeal, the plaintiffs claim that the court erred by (1) holding that the warranty deed at issue clearly and unambiguously reserved a general beach easement for the defendant's use of the plaintiffs' property above the mean high water line and (2) making findings and issuing

orders pertaining to claims that the defendant had withdrawn prior to trial. We agree and, accordingly, reverse the judgment of the trial court.

The following facts and procedural history, as set forth by the trial court or as are undisputed in the record, are relevant to our resolution of this appeal. The plaintiffs own property located at 1205 Fairfield Beach Road in Fairfield. The defendant owns property located at 1206 Fairfield Beach Road in Fairfield.

"Before the parties' ownership [of their respective properties], both the plaintiffs' property and the defendant's property were owned by Joseph and Alice Badolati. On July 2, 1969, the Badolatis executed a warranty deed [(deed)] conveying 1205 Fairfield Beach Road to the plaintiffs, while retaining ownership of 1206 Fairfield Beach Road. . . . After this conveyance, the Badolatis' daughter, Carole Anne Quinn, acquired title to and resided at 1206 Fairfield Beach Road. The defendant acquired title to 1206 Fairfield Beach Road on August 1, 2019, pursuant to an executor's deed executed by Kathleen Quinn, executor of the last will and testament of Carole Anne Quinn." The deed contains an easement, which provides: "The premises are conveyed subject to the Grantors reserving for the benefit of themselves, their heirs, successors, assigns, occupants and tenants of premises across Fairfield Beach Road, Fairfield, Connecticut, known as [1206][1] Fairfield Beach Road, Fairfield, Connecticut, the title to which premises is being retained by the Grantors herein an easement over the westerly portion of the premises being conveyed herein. This easement [is] to be used as a Right-of-Way for access to the Beach and Waters of Long

[1] The deed identified the dominant estate as 134A Fairfield Beach Road in Fairfield. However, since the creation of the deed, the numbering of the lots on Fairfield Beach Road has changed, and 134A Fairfield Beach Road has become 1206 Fairfield Beach Road.

Island Sound. In addition, there is reserved to the Grantors and their heirs, successors, assigns, occupants and tenants full boating and swimming rights and other normal uses." (Footnote added.) Thus, "[t]he defendant's property abuts the plaintiffs' property, and . . . the plaintiffs' property is burdened by an easement for the benefit of the defendant's property."

In September, 2021, the plaintiffs commenced this action against the defendant. On January 10, 2022, the plaintiffs filed a second amended verified complaint (operative complaint), in which they alleged that the defendant used the easement in a manner that exceeded the scope of the easement and constituted both a nuisance and a trespass on the plaintiffs' property. The defendant subsequenty filed (1) an answer in which she denied the plaintiffs' claims and (2) a counterclaim seeking an injunction in which she alleged, inter alia, that the plaintiffs "significantly impeded [her] use of the easement and ha[d] severely interfered with [her] ability to peacefully use and enjoy the beach." On November 15, 2022, the plaintiffs filed an answer denying the material allegations of the defendant's counterclaim. As the trial court, *Hon. Barry K. Stevens*, judge trial referee, stated in its decision, "[b]oth parties [sought] injunctive relief enjoining the conduct that they respectively claim[ed] impair[ed] the proper or appropriate use of the easement."

Prior to trial, the parties narrowed the disputed issues by way of a stipulation, which states in relevant part: "The evidence at the trial in this action shall be limited to documents and testimony that are relevant to the court's determination of the scope and interpretation of the easement . . . ."[2] In pursuit of that goal, the

[2] The stipulation was agreed upon by the parties prior to trial and was noted on the record at the start of trial. The court requested that the parties file a written stipulation with the court. The written stipulation was filed on August 1, 2023.

parties agreed that they would not present evidence "as to any conduct by any party, including their families, guests, tenants and invitees, concerning any alleged violations of the easement . . . ." The parties further agreed that they "each acknowledge that they shall respect and shall not interfere with the rights of the parties to use and enjoy the plaintiffs' property or any right conferred by the easement, all as determined by the court." Thus, as the court stated, "the sole issue presented for the court's adjudication concern[ed] the scope and location of the . . . easement."

On July 28, 2023, the matter was tried to the court. The court admitted into evidence several exhibits and heard testimony from several witnesses. Thereafter, both parties filed posttrial briefs.

On January 11, 2024, the court issued a memorandum of decision finding in favor of the defendant on the plaintiffs' operative complaint and her counterclaim. The court agreed with the defendant that the language in the deed pertaining to the easement, in clear and unambiguous terms, "provide[d] a general right-of-way over the westerly portion of the plaintiffs' property for: access to the beach; access to the waters of Long Island Sound; full boating and swimming rights; and other normal uses," and further "provide[d] these rights in general, unrestricted terms." The court also rejected the plaintiffs' interpretation of the deed as "restrict[ing] the defendant's use of the beach and the waters of Long Island Sound to the area that is 'below the Mean High Water line . . . .' " As the court summarized, "there can be no real, bona fide dispute that the defendant has what may be generally described as a beach easement, which has the associated right to use the beach for 'normal' uses." The court proceeded to determine that "the plaintiffs [had] failed to meet their burden of proving by a fair preponderance of the evidence that the

defendant ha[d] used the plaintiffs' property 'in a manner that [exceeded] the scope of the easement' as alleged in paragraph five of the operative . . . complaint. For these same reasons, the court [found] that the plaintiffs [had] failed to prove that the defendant ha[d] engaged in any conduct constituting a nuisance or trespass as alleged in this complaint." The court then stated: "The court emphasizes that the limited issue presented to the court for adjudication is the scope of the easement. The court does not address any issues as to whether the defendant has engaged in any activities that constitute an excessive or undue use of the easement." Finally, with respect to the defendant's counterclaim, the court stated that she had proved "by a fair preponderance of the evidence that the plaintiffs' conduct, premised on their position that the easement provides the defendant access only to 'the Beach and Waters of the Long Island Sound below the Mean High Water line,' has operated as an impediment to her use and enjoyment of the easement as alleged in the counterclaim." As relief with respect to the defendant's counterclaim, the court "issue[d] an order enjoining the plaintiffs from interfering with the defendant's use of the easement based on the scope of the easement as found by the court . . . ." This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The plaintiffs' first claim on appeal is that the trial court improperly construed the deed as clearly and unambiguously creating a so-called beach easement in favor of the defendant, as the owner of the dominant estate, allowing use of the plaintiffs' property above the mean high water line. We conclude that the easement language is ambiguous and, therefore, remand the case for a new trial.

We begin by setting forth the applicable standard of review and relevant legal principles. "It is well settled that [a]n easement creates a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the rules authorized by the easement. . . . [T]he benefit of an easement . . . is considered a nonpossessory interest in land because it generally authorizes limited uses of the burdened property for a particular purpose. . . . [E]asements are not ownership interests but rather privileges to use [the] land of another in [a] certain manner for [a] certain purpose . . . . Except as limited by the terms of the servitude . . . the holder of an easement . . . is entitled to use the servient estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude. . . . Likewise, [e]xcept as limited by the terms of the servitude . . . the holder of the servient estate is entitled to make any use of the servient estate that does not unreasonably interfere with enjoyment of the servitude. . . .

"The use of an easement must be reasonable and as little burdensome to the servient estate as the nature of the easement and the purpose will permit. . . . Ordinarily when [judicial] opinions speak of the use of an easement, it arises in right-of-way cases. Thus use frequently involves the amount of traffic over the easement or alterations to the land to make it passable. . . . This is not to overlook, however, that [t]he owner of an easement has all rights incident or necessary to its proper enjoyment, [although] nothing more. . . .

"Significantly, the full scope of the use to be made of [an easement] requires evaluation of the purpose it was to serve. . . . [A]ppellate case law . . . [has] used the terms location, scope, and use somewhat interchangeably. . . . [Our Supreme Court has] read scope and use as having similar meanings insofar as they involve what [the] holder [of the easement] may do

with it, [and] the purposes for which it may be used." (Citations omitted; internal quotation marks omitted.) *Williams* v. *Green Power Ventures, LLC*, 221 Conn. App. 657, 669–71, 303 A.3d 13 (2023), cert. denied, 348 Conn. 938, 307 A.3d 273 (2024).

"Our scope of review as to the intent behind language in a deed is plenary. . . . Although the intent to create an easement by deed is therefore a question of law over which our review is plenary . . . if the language of the deed is incomplete or ambiguous regarding the location, scope, or use of the easement, the trial court's resolution of those issues represents a question of fact subject to the clearly erroneous standard of review. . . . In the absence of unambiguous or complete language in the deed, therefore, determining the location, scope, and use of an express easement is a fact-intensive inquiry properly subject to the clearly erroneous standard of review. . . .

"Nevertheless, when faced with a question regarding the construction of language in deeds, the reviewing court does not give the customary deference to the trial court's factual inferences. . . . The meaning and effect of the [language in the deed] are to be determined, not by the actual intent of the parties, but by the intent expressed in the deed, considering all its relevant provisions and reading it in the light of the surrounding circumstances. . . .

"Our basic rule of construction is that recognition will be given to the expressed intention of the parties to a deed . . . and that it shall, if possible, be so construed as to effectuate the intent of the parties. . . . In arriving at the intent expressed . . . in the language used, however, it is always admissible to consider the situation of the parties and the circumstances connected with the transaction, and every part of the writing should be considered with the help of that evidence. . . .

"In the construction of a deed or grant, the language is to be construed in connection with, and in reference to, the nature and condition of the subject matter of the grant at the time the instrument is executed, and the obvious purpose the parties had in view. . . . [I]f the meaning of the language contained in a deed or conveyance is not clear, the trial court is bound to consider any relevant extrinsic evidence presented by the parties for the purpose of clarifying the ambiguity. . . .

"Finally, we note that [t]he fact that servitudes are intended to bind successors to interests in the land, as well as the contracting parties, and are generally intended to last for an indefinite period of time, lends increased importance to the writing because it is often the primary source of information available to a prospective purchaser of the land. The language should be interpreted to accord with the meaning an ordinary purchaser would ascribe to it in the context of the parcels of land involved. Searching for a particular meaning adopted by the creating parties is generally inappropriate because the creating parties intended to bind and benefit successors for whom the written record will provide the primary evidence of the servitude's meaning. . . . For this reason, [i]n determining the scope of an express easement, the language of the grant is paramount in discerning the parties' intent. . . . In addition, [a]ny ambiguity in the instrument creating an easement, in a case of reasonable doubt, will be construed in favor of the grantee." (Citations omitted; internal quotation marks omitted.) Id., 673–75.

"When considering whether an ambiguity exists in a deed, a court does not decide which party has the better interpretation, only whether there is more than one reasonable interpretation of the . . . language at issue." (Internal quotation marks omitted.) *Freidheim* v. *McLaughlin*, 217 Conn. App. 767, 782, 290 A.3d 801

(2023). A deed is ambiguous "[i]f we conclude that the language allows for more than one reasonable interpretation . . . ." (Internal quotation marks omitted.) Id.

As was noted earlier in this opinion, the deed provides in relevant part for the easement "to be used as a Right-of-Way for access to the Beach and Waters of Long Island Sound. In addition, there is reserved to the Grantors and their heirs, successors, assigns, occupants and tenants full boating and swimming rights and other normal uses." The court concluded that the scope of the easement was clear and unambiguous because "there is nothing unclear or novel about the use of the word 'beach' as [it is] used in th[e] easement. Interpreting this language 'with the meaning an ordinary purchaser would ascribe to it in the context of the parcels of land involved'; *Williams* v. *Green Power Ventures, LLC*, supra, 221 Conn. App. 674–75; the word beach may [be] defined as the sandy area of land along the waterline or the 'land on the margin of the sea.' Ballentine's Law Dictionary (3d Ed. [1969]) [p. 127]. In this particular context, a more technical definition is that the word 'beach' refers to the sandy shore above mean high water, because, under Connecticut law, the area between the high and low water marks is owned by the state. See *Newkirk* v. *Sherwood*, 89 Conn. 598, [605], 94 A. 982 (1915) ('[t]he word "beach" may be used to mean land between high and low-water mark[s], or it may be used to include a sandy shore above mean high water which is washed by storms and by exceptionally high tides'); accord *Mihalczo* v. *Woodmont*, 175 Conn. 535, 538, 400 A.2d 270 (1978) ('the land between high and low-water marks remains in the state'); *State* v. *Knowles-Lombard Co.*, 122 Conn. 263, [265], 188 A. 275 (1936) ('[i]t is settled law in this [s]tate that the public, whose representative is the [s]tate, is the owner of the soil between high and low-water mark upon navigable water where the tide ebbs and flows')." The court also

determined that "there is nothing unclear or ambiguous about the language of the easement providing access and use of the beach and waters of Long Island Sound for boating, swimming, and 'other normal uses.' To explain conversely, the uses reserved through the easement exclude 'abnormal' uses that are uncharacteristic with boating, swimming, or beach activities."

Although both sides argue that the easement language is clear and unambiguous, they assert different interpretations. The plaintiffs argue that the court erred in its interpretation, as some of the "terms used in the deed, including the word 'Beach', are recognized to have varying meanings, particularly when referring to a boundary or other locus referenced in a deed. Further, the court's interpretation of the meaning of the words used in the deed depends upon an arbitrary parsing of those words, and a failure to attribute any meaning to the capitalization of words and their use in the phrase, 'the Beach and Waters of Long Island Sound,' that distorts their meaning and is not consistent with the rules of construction applicable to deeds and easements, or with normal usage." Thus, the plaintiffs contend that this phrase, as it was used in the deed, indicated an intent of the original parties to the deed for the easement to be used solely as a right-of-way for access to the area below the mean high water line. The defendant argues to the contrary that the easement's "[i]nclusion of the specific term 'Beach' in addition to the phrase 'and the waters of Long Island Sound' evinces the grantors' specific intent that the easement is creating access to both the water as well as the beach above the high-water mark."

In light of these conflicting arguments regarding the location and scope of the easement, resolving the plaintiffs' claim requires us to determine whether the term "Beach," as it is used in the deed, is clear and unambiguous. See *Williams* v. *Green Power Ventures, LLC*, supra, 221 Conn. App. 673–75. For the reasons that follow, we

conclude that the easement language allows for more than one reasonable interpretation and is, therefore, ambiguous. See *Freidheim* v. *McLaughlin*, supra, 217 Conn. App. 782.

The term "Beach" is not defined in the deed and, therefore, we must look to the ordinary meaning of the term. See id., 784. At the time when the deed was created, Black's Law Dictionary defined "beach" in relevant part as: "the space between ordinary high and low water mark . . . or the space over which the tide usually ebbs and flows. It is a term not more significant of a sea margin than 'shore.' . . . In common parlance designates that portion of shore consisting generally of sand and pebbles, resulting usually from the action of water, as distinct from upland, to which it often extends above normal high-water mark. . . . Beach is synonymous with 'shore,' 'strand,' or 'flats.' The term may also include the sandy shore above mean high water which is washed by storms and exceptionally high tides." (Citations omitted.) Black's Law Dictionary (4th Ed. 1968) p. 194. Additionally, Ballentine's Law Dictionary contemporaneously defined "beach" as the "[l]and on the margin of the sea, lake, or river . . . the land lying between the lines of high water and low water, land over which, if a tidal stream or body of water is involved, the tide ebbs and flows." (Citation omitted.) Ballentine's Law Dictionary (3d Ed. 1969) p. 127. On the basis of the foregoing definitions, the term "beach," as it was used in the deed, could reasonably be interpreted as a reference to the area above the mean high water line or as a reference to the area below the mean high water line.

Our conclusion that there is more than one reasonable interpretation of the term "beach," as it was used in the deed, is further bolstered by our case law, which does not specify a precise and uniform definition of the term. Our Supreme Court has held that "[t]he word

'beach' may be used to mean land between high and low-water mark, or it may be used to include a sandy shore above mean high water which is washed by storms and by exceptionally high tides." *Newkirk* v. *Sherwood*, supra, 89 Conn. 605; see also *Dawson* v. *Orange*, 78 Conn. 96, 119, 61 A. 101 (1905) ("[t]he term 'beach' is used sometimes for the shore between high and low water mark, and sometimes for a strip of land lying next to and above such shore"); *Merwin* v. *Wheeler*, 41 Conn. 14, 26 (1874) ("[t]he word 'beach' has no such inflexible meaning that it must denote land between high and low water mark"). The defendant correctly notes that some cases suggest that "beach" specifically refers to the area above the mean high water mark, whereas the area between the high and low water mark is called the "shore." See, e.g., *Church* v. *Meeker*, 34 Conn. 421, 424–25, 431 (1867). The lack of consistency in our case law, however, as to whether the term "beach," as a matter of law, refers to the area above the mean high water line lends support to our conclusion that the easement language is ambiguous.

The plaintiffs argue that the easement provides a right-of-way solely for access to the land below the mean high water mark. The plaintiffs contend that the capitalization of the term "Beach" in the deed is significant when reading the deed as a whole, as it demonstrates an intent to refer specifically back to Fairfield Beach, which was identified earlier in the deed[3] and,

[3] The deed states in relevant part that the Badolatis "do give, grant, bargain, sell and confirm unto the said GERALD RINGEL and WANDA RINGEL and unto the survivor of them and unto such survivor's heirs and assigns, ALL THAT certain piece, parcel or tract of land together with the buildings thereon, situated in the Town of Fairfield, County of Fairfield and State of Connecticut, at Fairfield Beach, so called, designated as part of lot #10 on a certain map on file in the Office of the Fairfield Town Clerk as Map No. 52 and more fully described as follows:

"Beginning at the southeast corner of the premises herein described at a point marking the intersection with the mean high water mark of the waters of Long Island Sound of the divisional line between the premises herein described and land now or formerly of Lorraine H. Testo and proceed-

in their view, denotes a proper noun referring to the area below the mean high water mark. The plaintiffs' interpretation of the term "Beach" is also supported by the easement's inclusion of the second sentence, reserving for the defendant "full boating and swimming rights and other normal uses." As the plaintiffs note, it is significant that "the only two specific examples provided of 'normal uses' involve water-dependent activities, and not uses that involve use of upland areas above the mean high water line." These examples suggest that "Beach" may have been intended to refer to the area below the mean high water mark, where the easement holder could engage in water-dependent activities. We determine, therefore, that it is reasonable to conclude, in "considering all [of the deed's] relevant provisions and reading it in the light of the surrounding circumstances"; (internal quotation marks omitted) *Williams* v. *Green Power Ventures, LLC*, supra, 221 Conn. App. 673; that "Beach" was intended to refer specifically to Fairfield Beach, meaning the area below the mean high water mark.

In contrast, the defendant argues that the easement allows her access to the area above the mean high water mark because the "easement grants access to the Beach *and* Waters of Long Island Sound *in addition to* 'boating, swimming and other normal uses.' It is obviously phrased in the conjunctive." (Emphasis in original.) The defendant argues that, "[i]f indeed the easement was meant to merely allow the [defendant] and [her] guests to pass over the [plaintiffs'] property to the waters of

ing thence west 25 feet more or less along the mean high water mark of Long Island Sound to a point marking the intersection with said mean high water mark of the divisional line between the premises herein described and land now or formerly of Pauline R. Mullins: running thence northerly along said land now or formerly of Pauline R. Mullins to the road line of Fairfield Beach Road; running thence easterly 25± feet along said road line of Fairfield Beach Road to a point; thence running southerly along land now or formerly of Lorraine H. Testo to the point or place of Beginning. . . ."

Long Island Sound, that could easily have been accomplished without mention of the specific term 'Beach.' " As was noted previously in this opinion, in support of her interpretation of the term "Beach," the defendant relies on cases in which this court and our Supreme Court have suggested that the term "beach" refers to the area above the mean high water mark. See *Short Beach Cottage Owners Improvement Assn.* v. *Stratford*, 154 Conn. 194, 200, 224 A.2d 532 (1966); *Church* v. *Meeker*, supra, 34 Conn. 424–25; *Mandes* v. *Godiksen*, 57 Conn. App. 79, 87–89, 747 A.2d 47, cert. denied, 253 Conn. 915, 754 A.2d 164 (2000). For the aforementioned reasons, however, including the fact that our case law's definition of "beach" is not consistent, we conclude that both of the parties' interpretations of the term "Beach" are reasonable and, therefore, the easement is ambiguous as to its location and scope.

In light of the foregoing, we conclude that the trial court erred in concluding that the easement language is clear and unambiguous. As a result, the court's judgment must be reversed and the case must be remanded for a new trial to resolve the ambiguity as to the scope and location of the easement. See *Parisi* v. *Parisi*, 315 Conn. 370, 386, 107 A.3d 920 (2015) (remanding to trial court to resolve ambiguity in separation agreement "through a determination of [the original parties'] intent after consideration of all available extrinsic evidence and the circumstances surrounding the entering of the agreement"); see also, e.g., *Williams* v. *Green Power Ventures, LLC*, supra, 221 Conn. App. 674 ("[i]n arriving at the intent expressed . . . in the language used . . . it is always admissible to consider the situation of the parties and the circumstances connected with the transaction, and every part of the writing should be considered with the help of that evidence" (internal quotation marks omitted)); id., 675 ("[a]ny ambiguity in the instrument creating an easement, in a case of reasonable doubt,

will be construed in favor of the grantee" (internal quotation marks omitted)); *Freidhem* v. *McLaughlin*, supra, 217 Conn. App. 790 ("[F]actual findings are a necessary prerequisite to determine the scope and extent of [a plaintiff's] rights with respect to [an] easement. It is well established that appellate courts are not triers of fact and rely on the trial court's findings and conclusions related thereto." (Internal quotation marks omitted.)).

II

The plaintiffs next claim on appeal that "[t]he trial court erred in making findings and issuing orders based on allegations and claims that the defendant had withdrawn prior to trial, including in finding that the plaintiffs had impeded the defendant's use of the easement and in issuing injunctive relief with respect thereto." We agree in part.[4]

Preliminarily, we note that, although our resolution of the plaintiffs' first claim is dispositive of this appeal, we will also address the plaintiffs' second claim because it is sufficiently likely to arise on remand. See *Budlong & Budlong, LLC* v. *Zakko*, 213 Conn. App. 697, 714 n.14, 278 A.3d 1122 (2022) ("[a]lthough our resolution of the defendant's first claim is dispositive of this appeal, we also address the defendant's second claim because it is likely to arise on remand").

The following legal principles and standard of review govern our resolution of this claim. "Any determination

[4] The plaintiffs also claim that the court improperly allowed, over their objections, evidence to be introduced by the defendant that was not relevant to the sole issue to be adjudicated and exceeded the limitation on evidence as stipulated by the parties. We need not delve into the merits of this claim following our conclusion in part I of this opinion that the present action must be remanded for a new trial. In light of our conclusion in part II of this opinion, however, that the court improperly adjudicated claims that were withdrawn prior to trial, we note that evidence that solely supported such claims should not have been admitted over the plaintiffs' objections.

regarding the scope of a court's subject matter jurisdiction or its authority to act presents a question of law over which our review is plenary. . . . Generally, it is clear that [t]he court is not permitted to decide issues outside of those raised in the pleadings." (Citation omitted; internal quotation marks omitted.) *Lynn* v. *Bosco*, 182 Conn. App. 200, 213, 189 A.3d 601 (2018). When interpreting a stipulation, "[u]nless the language is so clear as to render its interpretation a matter of law, the question of the parties' intent in entering into a stipulation is a question of fact that is subject to the 'clearly erroneous' scope of review." *Rosenfield* v. *Metals Selling Corp.*, 229 Conn. 771, 780, 643 A.2d 1253 (1994). "Ordinarily . . . stipulations of the parties should be adopted by the court. . . . If, for some reason, the court cannot adopt the stipulation of the parties, it should state its disapproval of the stipulation and the reasons for its disapproval on the record." (Citation omitted.) *Central Connecticut Teachers Federal Credit Union* v. *Grant*, 27 Conn. App. 435, 438, 606 A.2d 729 (1992).

As was previously stated, the parties narrowed the issues in dispute at trial by way of the stipulation. The stipulation provides in relevant part: "The parties agree and acknowledge that the defendant, as the owner of 1206 Fairfield Beach Road, has the right to pass and repass along the western boundary of the plaintiffs' property at 1205 Fairfield Beach Road . . . . The parties are in dispute as to whether the easement confers upon the defendant, as the owner of 1206 Fairfield Beach Road, any rights to use and occupy any other portion of the plaintiffs' property at 1205 Fairfield Beach Road along the western boundary of the plaintiffs' property and, if any, the nature and extent of any such rights . . . . The parties acknowledge that the plaintiffs claim that the defendant has used the plaintiffs' property at 1205 Fairfield Beach Road in a manner that exceeds

the rights conferred upon the defendant as the owner of 1206 Fairfield Beach Road. Conversely, the defendant claims that the plaintiffs have interfered with and prevented the defendant from using the plaintiffs' property in violation of the easement claimed by the defendant as the owner of 1206 Fairfield Beach Road . . . . There shall be no evidence presented by the parties at trial as to any conduct by any party, including their families, guests, tenants, and invitees, concerning any alleged violations of the easement . . . . The parties each acknowledge that they shall respect and shall not interfere with the rights of the parties to use and enjoy the plaintiffs' property or any right conferred by the easement, all as determined by the court."

Additionally, the parties stated on the record at the start of trial that they were withdrawing their respective nuisance claims. The following colloquy occurred between the court and the parties' respective counsel:

"The Court: Question. There [were] allegations of nuisance in the complaint. Based on the . . . stipulation, the nuisance claim is being withdrawn, is that correct or not?

"[The Defendant's Counsel]: Yes, Your Honor.

"The Court: Okay, noted for the record.

"[The Defendant's Counsel]: Just on the—just on the scope of the easement—

"The Court: Very good. . . . You didn't say that explicitly, but let's get that explicitly on the record. Thank you.

"[The Plaintiffs' Counsel]: And for the plaintiffs there are allegations of nuisance as well and, once again, the injunction we would seek would be to enforce the easement as it is interpreted by the court.

"The Court: All right. Very good.

"[The Defendant's Counsel]: Same for the defendant, Your Honor.

"The Court: Very Good."

We conclude that the language of the stipulation is so clear as to render its interpretation a matter of law. See *Rosenfield* v. *Metals Selling Corp.*, supra, 229 Conn. 780. The parties clearly expressed an intent to abandon their respective claims that the other party engaged in conduct that (1) exceeded the scope of the easement or impeded the defendant's use of the easement, and (2) constituted a nuisance. This left the scope and location of the easement as the sole issue to be adjudicated, and to the extent that the court ruled on issues beyond that, such rulings were improper.

Despite the stipulation, pursuant to which the parties withdrew their claims pertaining to alleged misconduct and nuisance, the court stated: "[T]he court finds that the plaintiffs have failed to prove that the defendant has engaged in any conduct constituting a nuisance or trespass as alleged in this complaint. . . . As to the defendant's counterclaim, the court finds that the defendant has proven by a fair preponderance of the evidence that the plaintiffs' conduct, premised on their position that the easement provides the defendant access only to 'the Beach and Waters of Long Island Sound below the Mean High Water line,' has operated as an impediment to her use and enjoyment of the easement as alleged in the counterclaim." This was a clear deviation from the stipulation, as the court ruled on issues that were no longer before it, namely, whether the plaintiffs or the defendant engaged in conduct constituting a violation of the easement or a nuisance. Moreover, in deviating from the stipulation of the parties, the court did not "state its disapproval of the stipulation and the reasons for its disapproval on the record," as is required.

See *Central Connecticut Teachers Federal Credit Union* v. *Grant*, supra, 27 Conn. App. 438.

With respect to the plaintiffs' discrete argument that the court issued injunctive relief based on allegations and claims that the defendant had withdrawn prior to trial, we disagree. The court stated in relevant part: "Based on the court's judgment in favor of the defendant on her counterclaim, the court issues an order enjoining the plaintiffs from interfering with the defendant's use of the easement based on the scope of the easement as found by the court herein." This order pertained to the sole issue to be adjudicated by the court and, therefore, was not improper. As was noted, the parties sought an injunction "to enforce the easement as it is interpreted by the court," which was what the court ultimately granted.

In sum, we conclude that the court erred in making findings based on claims that the defendant had withdrawn prior to trial. The court's order issuing injunctive relief, however, pertained to the issue presented for adjudication.

The judgment is reversed and the case is remanded for a new trial consistent with this opinion.

In this opinion the other judges concurred.

DAVID A. ABRAHAMS *v.* ROBERT PHOTOS ET AL.
(AC 47139)

Alvord, Seeley and Norcott, Js.

Syllabus

The plaintiff appealed from the trial court's judgment granting the defendant attorney's second motion for summary judgment on the plaintiff's complaint alleging, inter alia, legal malpractice. The plaintiff claimed, inter alia, that the court improperly rendered summary judgment for the defendant despite the existence of genuine issues of material fact. *Held*:

The trial court properly granted the defendant's second motion for summary judgment, as the defendant made a showing, by way of the plaintiff's deposition testimony in which he stated multiple times that the defendant was not his attorney, that there was a lack of a genuine issue of material fact as to the nonexistence of an attorney-client relationship between the plaintiff and the defendant, which vitiated every claim in the operative complaint, and the plaintiff subsequently failed to satisfy his burden of presenting evidence demonstrating the existence of a genuine issue of material fact, thereby entitling the defendant to judgment as a matter of law.

The trial court properly considered the defendant's second motion for summary judgment because it was not barred by the doctrines of res judicata or collateral estoppel, as the court's denial of the defendant's first motion for summary judgment was not a final judgment, the defendant was not otherwise precluded from filing his second motion, and it was within the trial court's discretion to consider the renewed motion for summary judgment that had previously been denied where additional or new evidence had been submitted that was not before the court in ruling upon the earlier motion for summary judgment.

The trial court did not improperly fail to enter a default judgment against the defendant for filing his second motion for summary judgment in an untimely manner in violation of the order of pleadings set forth in the rule of practice (§ 10-6), as the defendant's filing of his second motion for summary judgment, which was not a pleading, was not procedurally untimely pursuant to the rule of practice (§ 17-44) because no scheduling order existed at that time and the case was not assigned for trial at the time that that motion was filed.

Argued April 22—officially released July 22, 2025

Procedural History

Action to recover damages for, inter alia, the named defendant's alleged legal malpractice, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Cordani*, *J.*, denied the named defendant's motion for summary judgment; thereafter, the defendant Cheryl Anderson was defaulted for failure to appear; subsequently, the court, *Saadi*, *J.*, granted the named defendant's second motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

David A. Abrahams, self-represented, the appellant (plaintiff).

Michael S. Tripicco, with whom, on the brief, was *Cristin E. Sheehan*, for the appellee (named defendant).

Opinion

NORCOTT, J. The self-represented plaintiff, David A. Abrahams, appeals from the summary judgment rendered by the trial court in favor of the defendant Attorney Robert Photos in this action arising from an alleged attorney-client relationship between the plaintiff and the defendant.[1] On appeal, the plaintiff claims that the court improperly (1) rendered summary judgment in favor of the defendant despite the existence of genuine issues of material fact, (2) failed to determine that a second motion for summary judgment filed by the defendant, which is the operative motion at issue in this appeal, was barred by the doctrines of res judicata or collateral estoppel, and (3) failed to enter a default judgment against the defendant for filing his second motion for summary judgment prior to filing his answer to the revised complaint.[2] We disagree and, accordingly, affirm the judgment of the trial court.

The following facts are not in dispute. In 2001, the plaintiff was convicted, following a jury trial, of various crimes, as set forth in *State* v. *Abrahams*, 79 Conn. App. 767, 768–69, 831 A.2d 299 (2003). See id., 783 (affirming judgment of conviction). He was sentenced to a total effective term of fifty-one years of incarceration followed by nine years of special parole.[3]

[1] The complaint also named as a defendant Cheryl Anderson, who did not participate in this appeal. The plaintiff's motion to default Cheryl Anderson for failure to appear was granted by the court, *Hon. Dale W. Radcliffe*, judge trial referee. We refer in this opinion to Robert Photos as the defendant.

[2] See Practice Book § 61-3 ("[a] judgment disposing of only a part of a complaint . . . is a final judgment if that judgment disposes of all causes of action in that complaint . . . brought . . . against a particular party").

[3] Specifically, the plaintiff was convicted of attempt to commit murder in violation of General Statutes §§ 53a-49 and 53a-54a (a), assault in the first degree in violation of General Statutes § 53a-59 (a) (1), and criminal possession of a firearm in violation of General Statutes (Supp. 2000) § 53a-217. See *State* v. *Abrahams*, supra, 79 Conn. App. 768. On those charges, he was

On April 18, 2016, David Anderson, the son of the plaintiff and Cheryl Anderson, was driving a car in Bridgeport when he was struck and killed when another vehicle that was being pursued by the police collided with his vehicle.[4] In her capacity as the administrator of David's estate, Cheryl brought a wrongful death action against the city of Bridgeport and the Bridgeport Police Department. In a final accounting, David's estate was valued at $100,000, which included $50,000 from a settlement in the wrongful death action and $50,000 from a settlement of an automobile insurance claim related to the accident. After the deduction of fees, costs, and liens from the final accounting of David's estate, the plaintiff and Cheryl each received approximately $13,152 in settlement payments.

In 2019, the plaintiff commenced the present action. In his revised complaint, he alleged fraud, "collusion," breach of trust, negligence, "deliberate interference of rights," legal malpractice, breach of contract, and fraudulent misrepresentation. The crux of the allegations in the revised complaint is that the defendant promised to represent the plaintiff regarding a sentence modification and promised to secure a large settlement in the wrongful death action for the plaintiff if he agreed to not be a party to that action, but the defendant did not pursue a sentence modification on the plaintiff's behalf nor did he keep the plaintiff apprised of the status of

sentenced to forty-one years of incarceration, and his sentence was enhanced by five years pursuant to General Statutes § 53-202k. During a concurrent proceeding, the court found the plaintiff guilty of violation of probation in violation of General Statutes (Supp. 2000) § 53a-32 and sentenced him to an additional five years of incarceration, which was to be served consecutive to all other sentences. See *Abrahams* v. *Commissioner of Correction*, Docket No. 3:10cv519 (MRK), 2010 WL 5093113, *1 (D. Conn. December 8, 2010).

[4] In the interest of clarity and simplicity, in this opinion we refer to Cheryl Anderson and David Anderson by their first names.

the wrongful death action, failing even to seek his input prior to the settlement of that action.[5]

The defendant filed a motion for summary judgment in 2020, which the court, *Cordani*, *J.*, denied. After completing a deposition of the plaintiff, the defendant filed a second motion for summary judgment in February, 2023. In that motion, the defendant argued that he was entitled to judgment as a matter of law because he never represented the plaintiff, noting that the plaintiff acknowledged numerous times in his deposition testimony that the defendant had never been his attorney. The plaintiff filed a memorandum in opposition, arguing

[5] Specifically, the plaintiff alleged that the defendant (1) promised and failed to represent him regarding a sentence modification, thereby inducing him to give up his "right" to be named as a party in the wrongful death action, then settled that action for nowhere near the "nice amount . . . to start his life over" that was promised to him (fraud), (2) colluded with Cheryl to deprive him of his "right" to be a party to the wrongful death action, then settled that action without his knowledge or input ("collusion"), (3) failed to keep him updated concerning the wrongful death action and failed to represent him in a sentence modification despite having promised to do so (breach of trust), (4) owed him a duty of reasonable care to keep him updated on the status of the wrongful death action and to represent him concerning a sentence modification, but failed to do so, and used deception to induce him to give up his "right" to be named as a party in the wrongful death action (negligence), (5) induced him with promises of big settlements in the wrongful death action and with a sentence modification to give up his "right" to be included as a party in the wrongful death action ("deliberate interference of rights"), (6) promised him that if he agreed to not be a party to the wrongful death action then the Department of Correction (department) would not take one half of his share of the settlement and promised to represent him in a sentence modification proceeding but broke his promises (legal malpractice), (7) promised and failed to represent him concerning a sentence modification wherein his sentence would be reduced to at least twenty-five years (breach of contract), and (8) informed the plaintiff that he would not be a party to the wrongful death action in order to ensure that the department would not take one half of his share of the settlement of that action, promised to represent him concerning a sentence modification, and promised to reduce his sentence to at least twenty-five years as a result of "connections and favors owed to him," but failed to keep his promises (fraudulent misrepresentation). (Internal quotation marks omitted.)

that the defendant's second motion for summary judgment should be denied as untimely because it was not filed in accordance with the order of pleadings set forth in Practice Book § 10-6[6] and that the defendant was precluded by the doctrines of res judicata and/or collateral estoppel from filing a second motion for summary judgment.

Following a hearing, the court, *Saadi*, *J.*, rendered summary judgment in favor of the defendant on the entirety of the revised complaint as alleged against him. The court determined that the plaintiff's procedural objections were without merit and further concluded that there were no genuine issues of material fact as to the absence of an attorney-client relationship between the plaintiff and the defendant concerning the wrongful death action and the sentence modification and, therefore, the defendant was entitled to judgment as a matter of law. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The plaintiff first claims that the court improperly rendered summary judgment despite the existence of genuine issues of material fact concerning whether there was an attorney-client relationship between the plaintiff and the defendant as to (a) the wrongful death action and (b) a sentence modification.[7] We are not persuaded.

[6] See footnote 13 of this opinion.

[7] The defendant contends in his appellate brief that certain counts of the revised complaint were impliedly stricken. The defendant had filed a motion to strike on February 2, 2022, prior to the filing of his second motion for summary judgment. At the hearing on that motion, the court, *Hon. Dale W. Radcliffe*, judge trial referee, stated: "I'm going to deny the—the motion to strike. I'm going to specifically indicate, however, that . . . the only causes of action that I see as pled in this complaint [are] [n]egligent misrepresentation, fraudulent misrepresentation, legal malpractice, and negligence, and breach of fiduciary duty . . . ." In ruling on the defendant's second motion for summary judgment, the court, *Saadi*, *J.*, addressed the eight counts alleged in the revised complaint in the context of a motion for summary

We begin with the following relevant principles of law, including our standard of review. Practice Book § 17-49 provides that "[t]he judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

"A party moving for summary judgment is held to a strict standard. . . . To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. . . . Our review of the trial court's decision to grant [a] motion for summary judgment is plenary." (Citation omitted; internal quotation marks omitted.) *Ferri* v. *Powell-Ferri*, 317 Conn. 223, 228, 116 A.3d 297 (2015).

"An attorney-client relationship is established when the advice and assistance of the attorney is sought and received in matters pertinent to his profession. . . . Evidence of either a retainer agreement or a contract between the parties is relevant to the determination of its existence." (Citations omitted; internal quotation marks omitted.) *DiStefano* v. *Milardo*, 276 Conn. 416, 422, 886 A.2d 415 (2005).

A

As to the wrongful death action, the plaintiff argues that the court took his deposition testimony out of

judgment. Accordingly, we will address the court's granting of the defendant's second motion for summary judgment as to all eight counts as enumerated in the plaintiff's revised complaint.

context, overlooked evidence, and improperly determined that he failed to present concrete evidence creating a genuine issue of material fact as to whether an attorney-client relationship existed. We disagree.

The defendant demonstrated that there were no genuine issues of material fact that no attorney-client relationship existed between him and the plaintiff concerning the wrongful death action. The court did not, as the plaintiff argues, take his deposition testimony out of context. Rather, it is quite clear considering the plaintiff's deposition as a whole that the plaintiff testified multiple times that the defendant was not his attorney. Specifically, when asked whether he knew "for a fact that [the defendant] was not representing [him] on the wrongful death suit," the plaintiff answered that the defendant "was representing Cheryl on the wrongful death suit because [the plaintiff] wasn't a party to it." When asked, "[a]nd you know if someone is your attorney, you usually sign a document saying they're your attorney," the plaintiff responded in the affirmative. Additionally, the plaintiff stated that he did not give the defendant any money nor did he sign any documents and further stated that the defendant "wasn't my attorney, per se. I didn't sign any retainer agreement with him." When asked "[d]o you recall exactly when that was that you realized that [the defendant] did not represent you or was not your attorney," the plaintiff responded, "I mean he was never my attorney . . . ."

After the defendant made a showing, by way of the plaintiff's statements in his deposition testimony, that there was no real doubt that an attorney-client relationship did not exist between the plaintiff and the defendant, the plaintiff then failed to satisfy his burden of presenting evidence demonstrating the existence of a genuine issue of material fact. Additionally, as noted by the trial court, the plaintiff filed multiple motions to intervene in the wrongful death action, which the

court denied, thereby further demonstrating his knowledge through filings made as a self-represented litigant that he was not a party to that action.[8] For the foregoing reasons, we conclude that the court properly determined that no genuine issues of material fact existed that there was no attorney-client relationship between the plaintiff and the defendant for the purposes of the wrongful death action.

B

Concerning the sentence modification, the plaintiff argues that the court improperly determined that no genuine issues of material fact existed concerning the absence of an attorney-client relationship and, in so concluding, overlooked portions of his deposition testimony and improperly determined that he failed to present concrete evidence creating a genuine issue of material fact. We disagree.

During his deposition, the plaintiff stated that he never signed a retainer agreement with the defendant but that the defendant discussed his criminal case with him and the defendant stated that he would get back to the plaintiff in thirty days but failed to do so. The plaintiff explained that the defendant was David's attorney on a criminal matter that ended in February, 2016, when the charges against David were "dropped." When the plaintiff was asked during his deposition, "[s]o you're alleging that [the defendant] told you specifically that he'll handle your sentence modification," he answered, "[r]ight. Well, that's what he told David. He told David, 'do not worry about your father. I'll take care of it. Get your life back together. We'll deal with that later. Get your life back together.' "

[8] See, e.g., *Village Mortgage Co.* v. *Garbus*, 201 Conn. App. 845, 862 n.15, 244 A.3d 952 (2020) (it is well established that court may take judicial notice of file in another case regardless of whether it is between same parties).

The court reasoned in its decision that "[t]he defendant argues that the informal statements to comfort the plaintiff's son David, the gathering of information from the plaintiff to analyze the merits of applying for a sentence modification and then failing to inform the plaintiff that the defendant would not represent him does not establish an attorney-client relationship. While the defendant could certainly have avoided any confusion by informing the plaintiff that he was not going to represent him for the purpose of seeking a sentence modification, the failure to do so does not transform a noncommittal conversation about possible representation into an attorney-client relationship."

Whether a noncommittal conversation about possible legal representation would be sufficient to create an attorney-client relationship is not an issue we need to address in the present case because the plaintiff made clear in his deposition that no such relationship existed. It bears repeating that, when he was asked, "[d]o you recall exactly when that was that you realized that [the defendant] did not represent you or was not your attorney," the plaintiff responded, "I mean he was never my attorney . . . ." Additionally, the plaintiff's statements concerning what David allegedly told the plaintiff do not create a genuine issue of material fact. The court could not properly consider them because they were hearsay.[9] See *Walker* v. *Housing Authority*, 148 Conn. App. 591, 600, 85 A.3d 1230 (2014) ("when deciding a motion for summary judgment a court may not consider material that would be hearsay at trial" (internal quotation marks omitted)). Accordingly, we conclude that no genuine issue of material fact existed that the parties

[9] Section 8-1 (3) of the Connecticut Code of Evidence defines "hearsay" as "a statement, other than one made by the declarant while testifying at the proceeding, offered in evidence to establish the truth of the matter asserted." None of the hearsay exceptions applies. See Conn. Code Evid. §§ 8-2 through 8-10.

had no attorney-client relationship for the purpose of a sentence modification.[10]

In conclusion, and in the exercise of our plenary review over the interpretation of pleadings,[11] we note that the existence of an attorney-client relationship is an integral component of each claim alleged in the revised complaint. Accordingly, the lack of a genuine issue of material fact as to the nonexistence of an attorney-client relationship between the plaintiff and the defendant as to both the wrongful death action and the sentence modification vitiates the basis for every claim alleged in the revised complaint against the defendant,

[10] The court reasoned, in the alternative, that, even if it were assumed, for the sake of argument, that there were genuine issues of material fact regarding the existence of an attorney-client relationship as to the sentence modification, the defendant, nonetheless, was entitled to judgment as a matter of law because "the plaintiff has not plead[ed] any facts demonstrating he suffered any prejudice, or compensable loss or harm due to the defendant not filing for sentence modification. In his deposition the plaintiff acknowledged he was not prevented from engaging other counsel and filing for a sentence modification at any time in the several years since he met with the defendant and that he has chosen not to do so. . . . Finally, during the July 27, 2023 hearing the plaintiff acknowledged that at the time he met with the defendant in April, 2016, he had not yet served the required minimum of his fifty-one year sentence pursuant to [General Statutes] § 53a-35a." (Citations omitted.)

We agree with the court's alternative reasoning and note that there exist no genuine issues of material fact that the plaintiff has not suffered any harm as a result of the defendant not pursuing a sentence modification on his behalf because the plaintiff will not have served the twenty-five year mandatory minimum of his 2001 sentence until 2026. Pursuant to § 53a-35a, the plaintiff's mandatory minimum sentence for each of his consecutive sentences for attempted murder and assault is ten years, which amounts to twenty years, plus the five year sentence enhancement, which, pursuant to General Statutes § 53-202k, "shall not be suspended or reduced . . . ." Pursuant to General Statutes § 53a-39 (d), the statutory provisions permitting a modification of a sentence upon a finding of good cause "shall not apply to any portion of a sentence imposed that is a mandatory minimum sentence for an offense which may not be suspended or reduced by the court."

[11] See, e.g., *Carpenter* v. *Daar*, 346 Conn. 80, 128, 287 A.3d 1027 (2023) ("The interpretation of pleadings is always a question of law for the court . . . . Our review of the trial court's interpretation of the pleadings therefore is plenary." (Internal quotation marks omitted.)).

thereby entitling the defendant to judgment as a matter of law. On the basis of the foregoing, we conclude that the court properly granted the defendant's second motion for summary judgment as to the entirety of the revised complaint alleged against the defendant.

II

The plaintiff next claims that the court "erred by granting the defendant's second motion for summary judgment in which the defendant litigated the same set of facts as his first motion for summary judgment, violating the well established doctrines of res judicata/collateral estoppel." We disagree.

We begin by setting forth the following relevant legal principles and standard of review. "The doctrines of collateral estoppel and res judicata, also known as issue preclusion and claim preclusion, respectively, have been described as related ideas on a continuum. . . . Both doctrines share common purposes, namely, to protect the finality of judicial determinations, [to] conserve the time of the court, and [to] prevent wasteful litigation . . . . Despite their conceptual closeness . . . the two doctrines are regarded as distinct. . . . The doctrine of collateral estoppel prevents a party from relitigating issues and facts [that have been] actually and necessarily determined in an earlier proceeding between the same parties or those in privity with them [on] a different claim . . . whereas the doctrine of res judicata prevents a party from relitigating the same claim following a final judgment on the merits, regardless of what additional or different evidence or legal theories might be advanced in support of it." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Solon* v. *Slater*, 345 Conn. 794, 810, 287 A.3d 574 (2023). "[T]he applicability of res judicata or collateral estoppel presents a question of law over which we employ plenary review." (Internal quotation marks

omitted.) *Rockwell* v. *Rockwell*, 196 Conn. App. 763, 769, 230 A.3d 889 (2020).

The plaintiff's claim is without merit because "res judicata and collateral estoppel depend on the existence of a valid final judgment . . . ." *Corey* v. *Avco-Lycoming Division*, 163 Conn. 309, 317, 307 A.2d 155 (1972), cert. denied, 409 U.S. 1116, 93 S. Ct. 903, 34 L. Ed. 2d 699 (1973). In the present case, the court's denial of the defendant's first motion for summary judgment was not a final judgment.[12] See *Brown & Brown, Inc.* v. *Blumenthal*, 288 Conn. 646, 653, 954 A.2d 816 (2008) ("denial of a motion for summary judgment does not result in a judgment"); see also *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 398, 685 A.2d 1108 (1996) (critical factor in determining whether judicial determination constitutes final judgment for purposes of res judicata is whether it constitutes final judgment for purposes of appeal), overruled on other grounds by *State* v. *Salmon*, 250 Conn. 147, 735 A.2d 333 (1999). Accordingly, neither the doctrine of collateral estoppel nor the doctrine of res judicata is applicable.

The defendant was not otherwise precluded from filing his second motion for summary judgment because "[t]here is nothing in the rules of practice or in our case law . . . that specifically restricts a party to one summary judgment motion." *Fiaschetti* v. *Nash Engineering Co.*, 47 Conn. App. 443, 445–46, 706 A.2d 476,

[12] None of the exceptions to the general rule that a denial of a motion for summary judgment is not a final judgment applies in the present case. See, e.g., *Hopkins* v. *O'Connor*, 282 Conn. 821, 828, 925 A.2d 1030 (2007) (denial of motion for summary judgment is immediately appealable when motion is predicated upon colorable claim of absolute immunity based on sovereign immunity); *Singhaviroj* v. *Board of Education*, 124 Conn. App. 228, 236, 4 A.3d 851 (2010) (denial of motion for summary judgment is immediately appealable when denial is due to doctrine of collateral estoppel or res judicata); see also *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983) (establishing two circumstances in which otherwise interlocutory order is appealable pursuant to General Statutes § 52-263).

cert. denied, 244 Conn. 906, 714 A.2d 1 (1998). Rather, "it is within the trial court's discretion to consider a renewed motion for summary judgment that has previously been denied where . . . additional or new evidence has been submitted which was not before the court in ruling upon the earlier motion for summary judgment." *Mac's Car City, Inc.* v. *American National Bank*, 205 Conn. 255, 262, 532 A.2d 1302 (1987). We discern no reason why the defendant's second motion for summary judgment, to which the new evidence of the plaintiff's deposition was appended, should not have been heard by the trial court and, accordingly, conclude that the court properly considered it.

III

The plaintiff last claims that the court improperly failed to enter a default judgment against the defendant for filing his second motion for summary judgment in an untimely manner in violation of the order of pleadings set forth in Practice Book § 10-6 by filing it before answering the revised complaint. He also contends that he was prejudiced by the defendant's filing of his answer to the revised complaint after the hearing on the second motion for summary judgment because his answer created genuine issues of material fact. We disagree.

The plaintiff's argument regarding the order of pleadings is rooted in a misinterpretation of our procedural practices. It is true that pleadings, generally, are not to be filed outside of the order specified in Practice Book § 10-6.[13] See *Reale* v. *Rhode Island*, 192 Conn. App. 759,

[13] Practice Book § 10-6 provides that "[t]he order of pleading shall be as follows:

"(1) The plaintiff's complaint.

"(2) The defendant's motion to dismiss the complaint.

"(3) The defendant's request to revise the complaint.

"(4) The defendant's motion to strike the complaint.

"(5) The defendant's answer (including any special defenses) to the complaint.

"(6) The plaintiff's request to revise the defendant's answer.

764, 218 A.3d 723, cert. denied, 334 Conn. 901, 219 A.3d 798 (2019). Although that section sets forth the order of pleadings, it does not dictate the proper time frame for the filing of a motion for summary judgment because such a motion, axiomatically, is not a pleading. Rather, Practice Book § 17-44 establishes the proper timing for the filing of a motion for summary judgment by providing in relevant part that "[i]n any action . . . any party may move for a summary judgment as to any cause of action or defense as a matter of right *at any time* if no scheduling order exists and the case has not been assigned for trial. . . ." (Emphasis added.) The defendant's filing of his second motion for summary judgment was not procedurally untimely because no scheduling order existed at that time and the case was not assigned for trial at the time that that motion was filed.

Although Practice Book § 17-44 allows for the filing of a motion for summary judgment "at any time," this was not always the rule. Historically, prior to October 1, 1992, Practice Book § 379, which was the precursor to Practice Book § 17-44, required that the pleadings be closed before seeking a summary judgment, but the well established rule in Practice Book § 17-44 is sound because, "[o]n a motion for summary judgment, the questions are whether there is any material fact in issue, and, if not, whether the movant is entitled to judgment as a matter of law. . . . [W]hen considering a motion for summary judgment, facts in addition to those asserted in the complaint can form the basis for an argument that there is no material fact in dispute that would prevent judgment as a matter of law. When there is no such material fact in dispute or where there is agreement of the parties as to every relevant fact . . . the pleadings need not be closed in order to move for summary judgment." (Footnote omitted; internal

"(7) The plaintiff's motion to strike the defendant's answer.

"(8) The plaintiff's reply to any special defenses."

quotation marks omitted.) *Gordon* v. *Gordon*, 170 Conn. App. 713, 722–23, 155 A.3d 809, cert. denied, 327 Conn. 904, 170 A.3d 1 (2017). Because no genuine issues of material fact exist, the pleadings need not have been closed in the present case before the defendant filed the second motion for summary judgment.

It was not until August 21, 2023, that the plaintiff filed motions for default, arguing that the defendant should be defaulted for filing his answer to the revised complaint in an untimely fashion.[14] By the time the plaintiff filed these motions, however, it was too late for the trial court to consider them because the motions for default were moot, as the defendant already had filed an answer to the revised complaint on July 27, 2023.[15]

In sum, the court, in rendering summary judgment, had before it the pleadings, including the defendant's answer to the revised complaint, along with affidavits and other proof submitted by the parties and properly concluded that no genuine issues of material fact existed and, therefore, the defendant was entitled to judgment as a matter of law. For the foregoing reasons, the plaintiff's claim fails.

The judgment is affirmed.

In this opinion the other judges concurred.

[14] The plaintiff also filed motions for default after the defendant filed his second motion for summary judgment, which motions were denied without prejudice by the clerk, pursuant to Practice Book § 17-32 (a), due to a lack of clarity in the relief sought and, in the alternative, because of the pendency of the defendant's second motion for summary judgment.

[15] Practice Book § 17-32 (b) provides in relevant part: "If a party who has been defaulted under this section files an answer before a judgment after default has been rendered by the judicial authority, the default shall automatically be set aside by operation of law . . . ." Accordingly, by an even stronger force of logic, if a party who has not been defaulted for failure to plead files an answer before the court renders judgment, that party cannot then be held in default.

SHERI SPEER *v.* BROWN JACOBSON P.C. ET AL. (AC 47983)

Cradle, C. J., and Seeley and Lavine, Js.

Syllabus

The plaintiff appealed from the judgment of the trial court dismissing her quo warranto action challenging the qualifications of the defendant law firm and the defendant attorney to serve as corporation counsel for the defendant city. She claimed, inter alia, that the dismissal was a disproportionate sanction for her failure to appear at the trial management conference. *Held*:

This court declined to review the plaintiff's claim that the sanction of dismissal was a disproportionately harsh sanction for her failure to attend the trial management conference, as the claim was inadequately briefed.

The plaintiff's claim that the trial court abused its discretion in finding facts to conclude that a default existed or should have entered was unavailing, as the court did not make any factual findings as to the merits of the plaintiff's cause of action but, rather, entered a disciplinary dismissal on the ground that the plaintiff had failed to appear at the trial management conference.

The plaintiff's claim that the trial court denied her procedural and substantive due process in dismissing her action without a hearing and notice pursuant to the rule of practice (§ 14-3) was misplaced, as the court entered a disciplinary dismissal for her failure to appear at the trial management conference, not for a failure to prosecute her action pursuant to Practice Book § 14-3.

The trial court did not abuse its discretion in denying the plaintiff's motion for reconsideration, in which she claimed that COVID-19 symptoms excused her failure to appear at the trial management conference, as the court correctly determined that a motion for reconsideration was not the appropriate vehicle because the plaintiff did not assert a misapprehension of the law or a misapprehension of the facts underlying the court's dismissal, and her argument setting forth new facts to excuse her failure to appear should have been raised in a motion to open pursuant to the rule of practice (§ 17-43).

Argued May 29—officially released July 22, 2025

Procedural History

Action for, inter alia, a writ of quo warranto challenging the qualifications of the named defendant to serve as corporation counsel for the defendant city of Norwich, brought to the Superior Court in the judicial district of New London, where the court, *Graff*, *J.*, rendered

judgment dismissing the action; thereafter, the court denied the plaintiff's motion for reconsideration, and the plaintiff appealed to this court. *Affirmed.*

Sheri Speer, self-represented, the appellant (plaintiff).

Lloyd L. Langhammer, for the appellees (defendants).

Opinion

CRADLE, C. J. The self-represented plaintiff, Sheri Speer, appeals from the judgment of the trial court dismissing her quo warranto action challenging the qualifications of the defendants Brown Jacobson P.C. (Brown Jacobson) and one of its attorneys, Aimee Wickless, to serve as corporation counsel for the defendant city of Norwich (city) due to her failure to appear at the trial management conference. The plaintiff claims that (1) dismissal was a disproportionate sanction for her failure to appear at the trial management conference "due to medical inability"; (2) the court "abused its discretion in finding facts to conclude that a default existed or should have entered"; (3) the court "denied [her] procedural and substantive due process in dismissing the action without a hearing and notice"; and (4) the court abused its discretion in denying her motion for reconsideration. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to our consideration of the plaintiff's claims on appeal. Brown Jacobson and Wickless have acted as corporation counsel and assistant corporation counsel for the city in various legal proceedings, including some involving the plaintiff. In 2021, the self-represented plaintiff commenced the present quo warranto action challenging the qualifications of the defendants to serve as corporation counsel on the ground that

neither is an elector of the city. The court, *O'Hanlan*, *J.*, dismissed the action after finding that it was barred by the doctrines of res judicata and collateral estoppel. That judgment was reversed by this court in *Speer* v. *Brown Jacobson P.C.*, 222 Conn. App. 638, 656, 306 A.3d 1105 (2023).

On remand, in January, 2024, a JDNO notice[1] was issued, containing trial management orders and scheduling a trial management conference for July 18, 2024. On July 16, 2024, the plaintiff filed a trial management report, but she failed to attend the trial management conference two days later. After confirming that the plaintiff was not present in court and that she had not filed a motion for continuance, the court heard from counsel for the defendants, who argued, inter alia, that the case should be dismissed. The court, *Graff*, *J.*, agreed, explaining: "I am looking at the court notice that was sent out on—notice was issued on January 26, 2024, in this matter. In that notice it stated that an in-person trial management conference is scheduled at the above date and time, which was July 18, 2024, at 10:30 a.m., and it gave the address for the courthouse. In that notice, it also states [that] motions for continuances shall be e-filed and are only granted for exceptional circumstances. [The notice further provides that] [f]ailure to comply with this order shall subject the parties and counsel to sanctions, including dismissal of the case, judgment of nonsuit, or default, or other sanctions. In addition to that, it does discuss in the order that unless otherwise ordered by the court, insurance adjusters shall be available by telephone throughout

[1] "The designation JDNO is a standard notation used to indicate that a judicial notice of a decision or order has been sent by the clerk's office to all parties of record. Such a notation raises a presumption that notice was sent and received in the absence of a finding to the contrary." (Internal quotation marks omitted.) *LendingHome Funding Corp.* v. *REI Holdings, LLC*, 227 Conn. App. 786, 789 n.4, 324 A.3d 152 (2024), cert. denied, 351 Conn. 905, 330 A.3d 133 (2025).

the duration of the trial management conference. Prior to the [trial management conference], counsel and self-represented parties shall e-file with the court a joint trial management report, as required in the joint trial management order. This order was put in place by the presiding court judge. It was mailed by the court to [the plaintiff's] address on file, and it was sent electronically to [counsel for the defendants]. I believe it was also electronically sent to [the plaintiff]. . . .

"Based on the plaintiff's failure to appear at today's trial management conference, and her failure to submit a trial management report or to confer with [counsel for the defendants] and submit a joint trial management report, the court is going to dismiss this action."

That same day, the court, *Graff*, *J.*, issued a written order reiterating that a trial management conference had been held, that notice had been sent to both parties and stating, inter alia: "Upon further review, the plaintiff filed [her] trial management report . . . on July 16, 2024, in preparation for today's trial management conference. Therefore, based upon the plaintiff's failure to appear, the court hereby dismisses this action."

The next day, the plaintiff filed a motion for reconsideration, which indicated that it was being filed pursuant to Practice Book § 11-11,[2] on the ground that she "contracted COVID-19 two days ago and has debilitating

[2] Practice Book § 11-11 provides: "Any motions which would, pursuant to Section 63-1, delay the commencement of the appeal period, and any motions which, pursuant to Section 63-1, would toll the appeal period and cause it to begin again, shall be filed simultaneously insofar as such filing is possible, and shall be considered by the judge who rendered the underlying judgment or decision. The party filing any such motion shall set forth the judgment or decision which is the subject of the motion, the name of the judge who rendered it, the specific grounds upon which the party relies, and shall indicate on the bottom of the first page of the motion that such motion is a Section 11-11 motion. The foregoing applies to motions to reargue decisions that are final judgments for purposes of appeal, but shall not apply to motions under Sections 16-35, 17-2A and 11-12."

symptoms at present. [Her] present workload in this court and in her regular vocation has not exactly facilitated recovery, let alone time to adequately respond or react to numerous matters occurring simultaneously."

On August 1, 2024, the plaintiff filed an affidavit in support of her motion for reconsideration in which she averred that she had been prevented from attending the trial management conference or seeking a continuance because she had been hospitalized on the date of the trial management conference. In the affidavit, the plaintiff offered to file her medical records under seal if the court so ordered.[3]

On August 23, 2024, the court denied the plaintiff's motion for reconsideration. In its order, the court explained: "Pursuant to Practice Book § 11-12, a motion for reconsideration is appropriate when the court renders a decision on the merits. Here, when dismissing the case, the court did not render a decision on the merits. Instead, the court rendered a judgment of dismissal after the court entered a default for the plaintiff's failure to appear at the trial management conference." This appeal followed.

I

The plaintiff first claims that the court's dismissal of her case was a disproportionately harsh sanction for her failure to attend the trial management conference. We conclude that this claim is inadequately briefed, and, therefore, we decline to address it.

"We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief

[3] The plaintiff did not, however, affirmatively ask the court for permission to file her medical records, nor did she request an evidentiary hearing.

the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . In addition, briefing is inadequate when it is not only short, but confusing, repetitive, and disorganized. . . .

"We are mindful that [i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party. . . . Nonetheless, [a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." (Internal quotation marks omitted.) *Gleason* v. *Durden*, 211 Conn. App. 416, 439–40, 272 A.3d 1129, cert. denied, 343 Conn. 921, 275 A.3d 211 (2022).

Here, the portion of the plaintiff's appellate brief that is devoted to this claim consists of a recitation of the applicable standard of review and legal principles. Although the plaintiff aptly sets forth in her brief the principles of law that guide our consideration of the proportionality of the dismissal, she has failed to provide any analysis applying those principles to the facts of this case. For instance, the plaintiff cites *Ridgaway* v. *Mount Vernon Fire Ins. Co.*, 328 Conn. 60, 73, 176 A.3d 1167 (2018), which held that the proportionality test set forth in *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, 257 Conn. 1, 776 A.2d 1115 (2001), applies to all sanctions. Under that test, this court considers, when reviewing sanctions imposed by the trial court,

the nature and frequency of the misconduct that precipitated the sanction, the notice of the possibility of a sanction, lesser available sanctions, and the plaintiff's participation in or knowledge of the misconduct. *Ridgaway* v. *Mount Vernon Fire Ins. Co.*, supra, 73. Because the plaintiff has failed to provide any analysis as to her claim of disproportionality or the application of the foregoing factors to the court's dismissal, she has failed to adequately brief this claim. Accordingly, we decline to review it.

II

The plaintiff next claims that the court "abused its discretion in finding facts to conclude that a default existed or should have entered." She cites the principle that "a default admits the material facts that constitute a cause of action" and argues that "the trial court's judgment both finding a default and then entering judgment upon default can neither be legally nor factually correct." It is clear from the court's order of dismissal that it did not make any factual findings as to the merits of the plaintiff's cause of action, but, rather, simply entered a disciplinary dismissal on the ground that the plaintiff failed to appear at the trial management conference.[4] The plaintiff's claim is therefore unavailing.

III

The plaintiff next claims that the court "denied [her] procedural and substantive due process in dismissing [her] action without a hearing and notice." She cursorily[5] argues that she was entitled to notice and a hearing

[4] Although the court did not state the legal authority for its dismissal, we presume that the court entered the dismissal pursuant to Practice Book § 17-19, which permits the court to enter a nonsuit or default for failure to comply with a court order.

[5] The plaintiff has provided no legal authority or analysis in support of this claim.

before the court dismissed her action pursuant to Practice Book § 14-3. The plaintiff's claim is misplaced in that the court entered a disciplinary dismissal for her failure to appear at the trial management conference, not a failure to prosecute her action pursuant to § 14-3. Moreover, the notice sent to the parties in January, 2024, containing the court's trial management orders and scheduling the trial management conference specifically stated that the failure to comply with those orders could result in sanctions, including dismissal. The plaintiff's claim in this regard therefore fails.

IV

The plaintiff finally claims that the court abused its discretion when it denied her motion for reconsideration. We disagree.

Practice Book § 11-12 provides in relevant part: "(a) A party who wishes to reargue a decision or order rendered by the court shall, within twenty days from the issuance of notice of the rendition of the decision or order, file a motion to reargue setting forth the decision or order which is the subject of the motion, the name of the judge who rendered it, and the specific grounds for reargument upon which the party relies. . . ."

As the plaintiff aptly points out: "[T]he purpose of [a motion for reargument and reconsideration] is *not to assert newly raised claims*. Motions for reargument and motions for reconsideration are nearly identical in purpose. [T]he purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts. . . . A reconsideration implies reexamination and possibly a different decision by the [court] which initially decided it. . . . [A] reconsideration hearing involves consideration of

the trial evidence in light of outside factors such as new law, a miscalculation or a misapplication of the law. . . . [Reargument] also may be used to address alleged inconsistencies in the trial court's memorandum of decision as well as claims of law that the [movant] claimed were not addressed by the court. . . . [A] motion to reargue [however] is not to be used as an opportunity to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument." (Emphasis added; internal quotation marks omitted.) *Doe* v. *Bemer*, 215 Conn. App. 504, 516 n.6, 283 A.3d 1074 (2022).

"We review a trial court's decision to deny a litigant's motion for reargument and reconsideration for an abuse of discretion. . . . [A]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did. . . . In addition, where a motion is addressed to the discretion of the court, the burden of proving an abuse of that discretion rests with the appellant." (Citations omitted; internal quotation marks omitted.) *Carriage House I-Enfield Assn., Inc.* v. *Johnston*, 160 Conn. App. 226, 236, 124 A.3d 952 (2015).

Here, the plaintiff argues that the court incorrectly "found that a motion for reconsideration, in general, let alone Practice Book § 11-12, was not the correct vehicle to address the misapprehension of facts and of the law." This argument misstates the court's ruling. We construe the court's ruling as stating that Practice Book §11-12 did not apply *because* the plaintiff did not assert a misapprehension of the law or a misapprehension of the facts underlying the court's dismissal—that she had notice of the date and time of the scheduled trial management conference and failed to appear—

but, rather, sought to introduce new facts to excuse her failure to appear at the trial management conference. See *In re Elianah T.-T.*, 327 Conn. 912, 914, 171 A.3d 447 (2017) (motion for reconsideration was not properly used as means to try new argument). Her motion sought to assert a new claim that was not properly raised in a motion for reconsideration. The plaintiff's argument that she failed to appear at the trial management conference should have been asserted in a motion to open pursuant to Practice Book § 17-43, which she did not file.[6] Accordingly, we conclude that the court did not abuse its discretion in denying the plaintiff's motion for reconsideration.[7]

The judgment is affirmed.

In this opinion the other judges concurred.

[6] Practice Book § 17-43 provides in relevant part: "(a) Any judgment rendered or decree passed upon a default or nonsuit may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion. . . ."

[7] We likewise reject the plaintiff's argument that the court improperly denied her motion for reconsideration on the ground that Practice Book § 11-12 did not apply because she specifically stated in her motion that she was filing it pursuant to Practice Book § 11-11. Our Supreme Court has explained that Practice Book § 11-12 governs motions to reargue an interlocutory order, whereas Practice Book § 11-11 governs motions to reargue a decision that constitutes a final judgment for purposes of appeal and "the standards governing the two rules of practice are not distinguishable . . . ." *Hudson Valley Bank* v. *Kissel*, 303 Conn. 614, 623 n.7, 35 A.3d 260 (2012).

THE CONNECTICUT NOVELTY COMPANY *v.* CHRISTINE GRAICHEN (AC 47670)

Moll, Seeley and Wilson, Js.

Syllabus

The defendant appealed from the judgment of the trial court granting the plaintiff's application for a prejudgment remedy. The defendant claimed that the court improperly granted the application and ordered that the plaintiff could attach, garnish or encumber any of her real or personal property to a certain value because it failed to consider and apply the statutory homestead exemption (§ 52-352b (21)). *Held*:

This court declined to reach the merits of the defendant's claim regarding the homestead exemption, as the claim was raised for the first time in the defendant's posthearing brief and was not properly preserved for appellate review, and, because no evidence was offered regarding the fair market value of the defendant's home and the court did not make any such finding, the record was inadequate for review.

Argued April 23—officially released July 22, 2025

Procedural History

Action to recover damages for, inter alia, statutory theft, and for other relief, brought to the Superior Court in the judicial district of Middlesex, where the court, *Shah, J.*, granted the plaintiff's application for a prejudgment remedy, and the defendant appealed to this court. *Affirmed.*

Alexander T. Taubes, for the appellant (defendant).

Jonathan M. Shapiro, for the appellee (plaintiff).

Opinion

SEELEY, J. The defendant, Christine Graichen, appeals from the judgment of the trial court granting the application for a prejudgment remedy filed by the plaintiff, The Connecticut Novelty Company, doing businessas Malloves Jewelers, a family operated jewelry store. The court granted the application after finding

probable cause to sustain the validity of the plaintiff's claims against the defendant for breach of fiduciary duty, statutory theft, conversion, unjust enrichment, and violations of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., which stemmed from the defendant's alleged theft and misappropriation of the plaintiff's funds for her own personal use. On appeal, the defendant claims that the court improperly granted the plaintiff's application for a prejudgment remedy and ordered that the plaintiff could attach, garnish or encumber any real or personal property of the defendant to the amount of $554,260.35 because it failed to consider and to apply the homestead exemption set forth in General Statutes § 52-352b (21), which exempts from the claims of creditors the value of the debtor's homestead up to the amount of $250,000. Because we conclude that the defendant did not properly preserve her claim for appellate review and, further, that the record is inadequate for our review of this claim, we decline to review it and affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. On August 22, 2023, the plaintiff filed an application for a prejudgment remedy,[1] alleging that it had sustained damages at least

[1] "A prejudgment remedy application is brought as a prelude to the filing of a civil action, and is meant to determine whether security should be provided for any judgment ultimately recovered by the plaintiff if he or she is successful on the merits of the civil action." (Internal quotation marks omitted.) *Adler* v. *Rosenthal*, 163 Conn. App. 663, 676, 134 A.3d 717 (2016); see also *Caciopoli* v. *Howell*, 124 Conn. App. 273, 277, 5 A.3d 509 (2010) ("[a] prejudgment attachment is a provisional remedy afforded to a claimant to secure satisfaction of a judgment in the future" (internal quotation marks omitted)). "A prejudgment remedy means any remedy or combination of remedies that enables a person by way of attachment, foreign attachment, garnishment or replevin to deprive the defendant in a civil action of, or affect the use, possession or enjoyment by such defendant of, his property prior to final judgment . . . . General Statutes § 52-278a (d). A prejudgment remedy is available upon a finding by the court that there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought, taking

in the amount of $422,012.55 as a result of the defendant's theft of the plaintiff's funds and that there was probable cause to believe that a judgment in the amount of the prejudgment remedy sought, taking into account any known defenses, counterclaims, or setoffs, will be rendered in its favor. Along with the application for a prejudgment remedy, the plaintiff filed a proposed complaint, which set forth claims for breach of fiduciary duty, statutory theft in violation of General Statutes § 52-564,[2] conversion, unjust enrichment, and violations of CUTPA.[3] Specifically, the proposed complaint alleged that the plaintiff is a family operated jewelry store located in Middletown and owned by Marc Levin, and that the defendant began working for the plaintiff in 2002 and continued to do so for more than twenty years in multiple roles, most recently as an office manager. It further alleged that, in April, 2023, the plaintiff terminated the defendant's employment after the plaintiff discovered the defendant "attempt[ing] to delete valuable company information from [the plaintiff's] main computer . . . in an effort to hide her theft and misappropriation of [the plaintiff's] funds for her own personal use," and that the defendant used "at least $140,670.85" of the plaintiff's funds to pay for a relative's wedding and to make "routine purchases for her own personal gain . . . ."

The court, *Shah, J.*, held a hearing[4] on the plaintiff's application for a prejudgment remedy on May 9, 2024,

into account any defenses, counterclaims or set-offs, will be rendered in the matter in favor of the plaintiff . . . . General Statutes § 52-278d (a) (1)." (Internal quotation marks omitted.) *Prescott* v. *Gilshteyn*, 227 Conn. App. 553, 563, 322 A.3d 1060, cert. denied, 350 Conn. 926, 326 A.3d 248 (2024).

[2] General Statutes § 52-564 provides: "Any person who steals any property of another, or knowingly receives and conceals stolen property, shall pay the owner treble his damages."

[3] The proposed complaint also sought a declaratory judgment concerning the rights of the parties with respect to certain social media accounts.

[4] We note that the defendant has not provided this court with a copy of the transcript of the hearing, and, as a result, we do not know whether the hearing consisted of oral argument and reliance on affidavits, or whether

and ordered the parties to submit posthearing briefs by May 16, 2024. Both parties complied with the court's order and submitted their respective briefs on May 16, 2024. In her posthearing brief, the defendant claimed, for the first time, that the plaintiff's application for a prejudgment remedy, in which the plaintiff sought an attachment of certain property in Middlefield where the defendant resides, should be denied because the defendant's home in Middlefield is exempt from attachment under the homestead exemption.[5] In a written decision dated May 21, 2024, the court granted the plaintiff's application for a prejudgment remedy in the amount of $554,260.35, ordering that the plaintiff "may attach, garnish and/or encumber to the value of $554,260.35 . . . the property and/or assets of the defendant . . . in any real or personal property . . . ." In its order, the court did not specifically refer to the homestead exemption, although it did state that it considered "any known defenses, counterclaims, and/or setoffs . . . ." This appeal followed.

On appeal, the defendant claims that the court improperly granted the plaintiff's application for a prejudgment remedy in the amount of $554,260.35 allowing for the attachment of the defendant's home because it failed to consider and to apply the homestead exemption.[6] See General Statutes § 52-352b (21). The plaintiff

there was testimony and exhibits presented. In its written decision, the court merely stated that it had made its findings "[a]fter due hearing at which the plaintiff and the defendant appeared and were fully heard on the claims and any defenses . . . ."

[5] In support of this claim, the defendant attached to her posthearing brief a municipal tax assessment of her home in Middlefield.

[6] "The homestead exemption is codified in chapter 906 of the General Statutes, titled 'Postjudgment Procedures,' and 'relates to the enforcement of money judgments. Under this chapter, a judgment creditor may enforce a money judgment by execution or foreclosure 'against any property of the judgment debtor unless the property is exempt from application to the satisfaction of the judgment under section . . . 52-352b . . . or any other provision of the general statutes or federal law.' . . . [General Statutes §] 52-352b sets forth property exempt from postjudgment procedures and

counters that the homestead exemption does not apply to a prejudgment remedy. We leave for another day the resolution of that issue because, for the following reasons, we decline to address the merits of the defendant's claim.

First, the record demonstrates that the defendant raised her claim regarding the application of the homestead exemption for the first time in her posthearing brief. At oral argument before this court, the defendant's counsel acknowledged that the claim was not raised before the trial court during the hearing on the prejudgment remedy application, and the court did not specifically address it in its memorandum of decision.

In *Connex Credit Union* v. *Thibodeau*, 208 Conn. App. 861, 872–74, 266 A.3d 930 (2021), appeal dismissed, 346 Conn. 708, 295 A.3d 416 (2023), this court addressed similar circumstances in which a party raised a claim for the first time in a posttrial brief and concluded: "The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. . . . Practice Book § 60-5. [T]he reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party. . . . [T]o permit the appellant first to raise posttrial an issue that [did not arise] during the course of the trial would circumvent the policy underlying the requirement of timely preservation of issues. . . . *Carroll* v. *Yankwitt*, 203 Conn. App. 449, 479 n.23,

provides in relevant part: 'The following property of any natural person shall be exempt . . . (21) The homestead of the exemptioner to the value of two hundred fifty thousand dollars, provided value shall be determined as the fair market value of the real property less the amount of any statutory or consensual lien which encumbers it . . . .' " (Citations omitted; footnote omitted.) *Ferreira* v. *Ward*, 224 Conn. App. 571, 584–85, 312 A.3d 1075 (2024).

250 A.3d 696 (2021). This court previously has declined to review a claim raised for the first time in a posttrial brief because doing so would contravene the purpose of the preservation requirement, noting that it was not surprising that the trial court did not address the [claim raised for the first time in a posttrial brief] in any manner in its memorandum of decision. *AS Peleus, LLC* v. *Success, Inc.*, 162 Conn. App. 750, 759–60, 133 A.3d 503 (2016). Thus, because the issue was only raised in the defendant's posttrial brief and because the record is inadequate for review, we do not reach the merits of this claim." (Emphasis omitted; internal quotation marks omitted.) *Connex Credit Union* v. *Thibodeau*, supra, 873–74. Likewise, in the present case, because the defendant raised her claim regarding the homestead exemption for the first time in her posthearing brief, she did not properly preserve the claim for appellate review.

Additionally, and for similar reasons, the record is inadequate for this court to review the claim. "It is the responsibility of the appellant to provide an adequate record for review. The appellant shall determine whether the entire record is complete, correct and otherwise perfected for presentation on appeal. Practice Book § 61-10 (a). This court does not presume error on the part of the trial court; error must be demonstrated by an appellant on the basis of an adequate record. . . . The general purpose of [the relevant] rules of practice . . . [requiring the appellant to provide a sufficient record] is to ensure that there is a trial court record that is adequate for an informed appellate review of the various claims presented by the parties. . . . Our role is not to guess at possibilities, but to review claims based on a complete factual record . . . . Without the necessary factual and legal conclusions . . . any decision made by us respecting [the claims raised on appeal] would be entirely speculative. . . . If an appellant fails to provide an adequate record, this court may decline

to review the appellant's claim." (Internal quotation marks omitted.) *S. C.* v. *J. C.*, 227 Conn. App. 326, 334–35, 321 A.3d 427 (2024).

In *Connex Credit Union* v. *Thibodeau*, supra, 208 Conn. App. 873, this court concluded: "Because the trial court did not consider this issue, the factual record is wholly inadequate for our review. The court did not make findings of fact relevant to this specific issue. Therefore, in asking us to review this claim, the defendant is essentially asking us to make factual findings—a request with which we cannot comply. See *Byrne* v. *Spurling*, 105 Conn. App. 99, 103, 937 A.2d 70 (2007). [A]n examination of the plaintiff's belated arguments demonstrates the need for factual findings that the record does not contain. Id. For these reasons, we cannot address the merits of this claim." (Internal quotation marks omitted.) *Connex Credit Union* v. *Thibodeau*, supra, 873.

In the present case, even if we assume that the homestead exemption applies to a prejudgment remedy, to demonstrate entitlement to the homestead exemption, a litigant must submit evidence regarding the fair market value of the real property at issue, and the court must make a finding in that regard. See General Statutes § 52-352b (21) (exempting "[t]he homestead of the exemptioner to the value of two hundred fifty thousand dollars . . . *provided value shall be determined as the fair market value of the real property*" (emphasis added)); General Statutes § 52-352a ("[a]s used in . . . [section] 52-352b . . . (1) '*Value*' *means fair market value* of the exemptioner's equity or unencumbered interest in the property" (emphasis added)); see also *Ferreira* v. *Ward*, 224 Conn. App. 571, 586, 312 A.3d 1075 (2024). Again, because the defendant's claim was not raised during the hearing on the application for the prejudgment remedy, no evidence was offered regarding the fair market value of the defendant's home, nor

did the court make any such finding.[7] The defendant's counsel acknowledged this during oral argument before this court. "[I]t is axiomatic that this court, as an appellate tribunal, cannot find facts . . . ." (Internal quotation marks omitted.) *Nowak* v. *Environmental Energy Services*, *Inc.*, 218 Conn. App. 516, 526, 292 A.3d 4 (2023). Moreover, without a finding by the trial court concerning the fair market value of the defendant's home, this court would have to resort to speculation to resolve her claim. See, e.g., *Lederle* v. *Spivey*, 151 Conn. App. 813, 816–18, 96 A.3d 1259 (declining to review appellant's claim due to inadequate record when resolving claim would have required this court to "speculate as to the existence and nature" of underlying facts), cert. denied, 314 Conn. 932, 102 A.3d 84 (2014); *Caciopoli* v. *Howell*, 124 Conn. App. 273, 277–79, 5 A.3d 509 (2010) (declining to review claim challenging amount of prejudgment remedy due to inadequate record).

Accordingly, because the defendant's claim regarding the homestead exemption was raised for the first time in the defendant's posthearing brief and because the

[7] The defendant concedes that there is no evidence in the record of the fair market value of her home in Middlefield; however, she contends that the municipal tax assessment that she attached to her posthearing brief; see footnote 5 of this opinion; provides a sufficient basis from which this court could determine the value of her home and, thus, review her claim. The plaintiff counters that, because the tax assessment was never presented to the court at the hearing on the prejudgment remedy application, it was never authenticated or submitted into evidence; therefore, it "is not even evidence before this court . . . ." The plaintiff further asserts that, even if this court were to consider the tax assessment as evidence, "[a]ssessed value does not constitute fair market value." We agree with the plaintiff that the tax assessment is not properly before this court. See *In re Corey C.*, 198 Conn. App. 41, 62 n.18, 232 A.3d 1237 ("[W]e cannot consider evidence not available to the trial court to find adjudicative facts for the first time on appeal. . . . It is well established that this court does not find facts." (Internal quotation marks omitted.)), cert. denied, 335 Conn. 930, 236 A.3d 217 (2020); see also *Bethel Baseball Assn.*, *Inc.* v. *Dyer*, 231 Conn. App. 721, 742–43 n.11, 334 A.3d 1034 (2025) (declining to review claim predicated on evidence not in record).

record is inadequate for review, we decline to reach the merits of the defendant's claim. See *Connex Credit Union* v. *Thibodeau*, supra, 208 Conn. App. 874.

The judgment is affirmed.

In this opinion the other judges concurred.

JAMES DIXON *v.* COMMISSIONER OF CORRECTION (AC 46900)

Elgo, Suarez and Sheldon, Js.

Syllabus

The petitioner, who previously had been convicted of, inter alia, felony murder, appealed following the denial of his petition to appeal from the judgment of the habeas court denying his petition for a writ of habeas corpus. He claimed, inter alia, that the court abused its discretion by denying his petition for certification to appeal. *Held*:

The habeas court did not abuse its discretion in denying the petitioner certification to appeal, as the petitioner failed to show that his claim involved issues that were debatable among jurists of reason, that a court could resolve them in a different manner or that they were adequate to deserve encouragement to proceed further.

The habeas court properly determined that the petitioner did not meet his burden of demonstrating that his habeas counsel rendered ineffective assistance by failing to raise a claim that his criminal trial counsel provided constitutionally inadequate advice on a pretrial plea offer, as the court's finding that there was not a reasonable probability that the petitioner would have accepted the pretrial plea offer but for the deficient performance of his criminal trial counsel was not clearly erroneous and, thus, the petitioner could not establish prejudice resulting from any deficiency in the advice provided by his criminal trial counsel on that plea offer.

Argued February 5—officially released July 22, 2025

Procedural History

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

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

Deren Manasevit, assigned counsel, for the appellant (petitioner).

James A. Killen, senior assistant state's attorney, with whom, on the brief, were *Sharmese Walcott*, state's attorney, and *Angela Macchiarulo*, supervisory assistant state's attorney, for the appellee (petitioner).

Opinion

ELGO, J. The petitioner, James Dixon, appeals from the denial of his petition for certification to appeal from the judgment of the habeas court denying his petition for a writ of habeas corpus. On appeal, the petitioner contends that the court abused its discretion in denying his petition for certification to appeal and improperly rejected his claim that his first habeas counsel rendered ineffective assistance by failing to raise a claim that his criminal trial counsel did not provide adequate advice on a pretrial plea offer. We conclude that the habeas court did not abuse its discretion in denying the petition for certification to appeal and, accordingly, dismiss the appeal.

This case involves a homicide in Hartford. As recounted in the petitioner's direct appeal, "[o]n the evening of October 21, 1998, the [petitioner], Eddie Abernathy, Anthony 'Tone' Cannon, Raymond 'Flip' Hite, Michael Homes, Tamaika Easterling, Lacrisha Williams and others gathered at Tasheeka 'Chicken' Contrelle's apartment, at 99 Wyllys Street in Hartford, where they drank liquor and smoked marijuana. Later that

evening, Homes led the [petitioner], Abernathy, Cannon and Hite into Contrelle's bedroom, shut the door and proposed that they commit a robbery. After some discussion, the five men exited the bedroom and entered the kitchen, where they drank more liquor and smoked more marijuana. . . .

"[A]t about 10 p.m., the [petitioner], Abernathy and Cannon left the party together. The [petitioner] had in his possession a small, chrome .25 caliber handgun, and Abernathy had in his possession a black, nine millimeter handgun. The three men entered a black Honda Prelude . . . and drove throughout Hartford . . . . [W]hile driving on Green Street, [they] saw a man . . . walking in the middle of the road. Abernathy, who was driving, drove the Honda to the side of the road, conversed briefly with the [petitioner] and turned off the engine. He then turned toward Cannon, who was in the backseat, handed him a mask and the black, nine millimeter handgun and told him to rob the man walking in the middle of the road. Cannon accepted the handgun and put on the mask, and he and the [petitioner] exited the Honda together. As they approached the man, Cannon said, 'What up?' The man, Baze 'Burt' Privette, recognized Cannon's voice and responded, 'Tone?'

"Cannon hesitated and asked Privette for a cigarette. Privette replied that he did not have one. Cannon then backed away from him, but the [petitioner], who had been standing to Cannon's right, did not. Rather, he drew the chrome .25 caliber handgun, held it to Privette's head and ordered him to 'run everything.' He then grabbed Privette and led him into an alley nearby. Halfway down the alley, the [petitioner] shot Privette in the head, killing him. He searched Privette's pockets and then ran out of the alley. He and Cannon entered the Honda and told Abernathy what had occurred. Abernathy ordered them to give him the mask and guns and

to keep quiet. The [petitioner] and Cannon complied. The three men then drove away . . . .

"All three men later were arrested and charged in connection with the incident. The [petitioner] was charged with murder in violation of General Statutes § 53a-54a (a), felony murder, robbery in the first degree, conspiracy to commit robbery in the first degree and carrying a pistol or revolver without a permit. The jury returned a verdict of not guilty as to the murder count, and a verdict of guilty of felony murder, conspiracy to commit robbery in the first degree, carrying a pistol or revolver without a permit and the lesser offense of attempt to commit robbery in the first degree. The court rendered judgment accordingly and later sentenced the [petitioner] to a total effective term of fifty years [of] imprisonment." *State* v. *Dixon*, 72 Conn. App. 852, 855–56, 806 A.2d 1153, cert. denied, 262 Conn. 926, 814 A.2d 380 (2002). The petitioner directly appealed from that judgment of conviction, which this court affirmed. Id., 861.

The petitioner commenced his first habeas action in 2011, alleging that his criminal trial counsel, Attorney Donald O'Brien, rendered ineffective assistance by failing (1) to elicit testimony from two witnesses, Gloria Allen and Shamish Banks, regarding their observations of Privette lying on the ground, (2) to establish a proper foundation for the admission of testimony from Banks under the residual exception to the hearsay rule, and (3) to establish a proper foundation for the impeachment of Cannon. Following a trial at which the petitioner was represented by Attorney Joseph Visone, the habeas court rejected each of those claims and denied the petition. See *Dixon* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-11-4004022-S (March 14, 2014). From that judgment, the petitioner unsuccessfully appealed to this court. See *Dixon* v. *Commissioner*

of Correction, 157 Conn. App. 904, 114 A.3d 1245, cert. denied, 318 Conn. 905, 122 A.3d 635 (2015).

The petitioner commenced a second habeas action in 2016. His operative petition, the July 11, 2022 amended petition for a writ of habeas corpus, contained five counts. Count one alleged ineffective assistance on the part of O'Brien in his capacity as trial counsel on a variety of grounds, including his "fail[ure] to adequately advise the petitioner regarding the prosecuting [attorney's] plea offer." Count two alleged that the petitioner's rights to due process and a fair trial were violated by the prosecutor's failure to disclose exculpatory evidence. Count three alleged that the petitioner's rights to due process and a fair trial were violated by the prosecutor's failure to correct false testimony at his criminal trial. Count four alleged ineffective assistance on the part of O'Brien in his capacity as appellate counsel due to his failure to raise on direct appeal the issues asserted in counts two and three. Count five alleged ineffective assistance on the part of Visone in the petitioner's first habeas action due to his failure to raise the issues asserted in counts one through four.

On August 1, 2022, the respondent, the Commissioner of Correction, filed a motion to dismiss predicated on successive petition and abuse of writ grounds. Following a hearing, the court dismissed count one of the operative petition. The petitioner subsequently withdrew counts two, three, and four of that petition. Accordingly, the only claim that remained at the time of trial was the petitioner's contention that Visone rendered ineffective assistance in his first habeas action by failing to allege that O'Brien had not adequately advised the petitioner about a plea offer. At the habeas trial, the court heard testimony from the petitioner, O'Brien, and Attorney Michael Gailor, who was the prosecutor at the petitioner's criminal trial.

In its subsequent memorandum of decision, the court concluded that the petitioner had not established deficient performance on the part of Visone in failing to raise a claim of ineffective assistance regarding O'Brien's advice on the plea offer or prejudice resulting therefrom. The court, therefore, denied the petition for a writ of habeas corpus. The petitioner then filed a petition for certification to appeal to this court, which the habeas court denied, and this appeal followed.

On appeal, the petitioner claims that the court abused its discretion in denying the petition for certification to appeal. Our standard of review for such claims is well established. "Faced with a habeas court's denial of a petition for certification to appeal, a petitioner can obtain appellate review of the dismissal of his petition for habeas corpus only by satisfying the two-pronged test enunciated by our Supreme Court in *Simms* v. *Warden*, 229 Conn. 178, 640 A.2d 601 (1994), and adopted in *Simms* v. *Warden*, 230 Conn. 608, 612, 646 A.2d 126 (1994). First, [the petitioner] must demonstrate that the denial of his petition for certification constituted an abuse of discretion. . . . Second, if the petitioner can show an abuse of discretion, he must then prove that the decision of the habeas court should be reversed on the merits. . . . A petitioner may establish an abuse of discretion by demonstrating that the issues are debatable among jurists of reason . . . [a] court could resolve the issues [in a different manner] . . . or . . . the questions are adequate to deserve encouragement to proceed further. . . . In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of the petitioner's underlying claims to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous." (Citation omitted; internal quotation marks omitted.) *Ramos* v. *Commissioner of Correction*, 172

Conn. App. 282, 294, 159 A.3d 1174, cert. denied, 327 Conn. 904, 170 A.3d 1 (2017).

A claim of ineffective assistance of habeas counsel "is commonly known as a habeas on a habeas, namely, a second petition for a writ of habeas corpus . . . challenging the performance of counsel in litigating an initial petition for a writ of habeas corpus . . . [that] had claimed ineffective assistance of counsel at the petitioner's underlying criminal trial or on direct appeal. . . . [A] petitioner asserting a habeas on a habeas faces the herculean task . . . of proving . . . both (1) that his appointed habeas counsel was ineffective, and (2) that his trial counsel was ineffective. . . . The second habeas petition is inextricably interwoven with the merits of the original judgment by challenging the very fabric of the conviction that led to the confinement." (Citation omitted; internal quotation marks omitted.) *Santaniello* v. *Commissioner of Correction*, 230 Conn. App. 741, 749, 331 A.3d 739, cert. denied, 351 Conn. 926, 333 A.3d 1109 (2025).

"A claim of ineffective assistance of counsel consists of two components: a performance prong and a prejudice prong. To satisfy the performance prong . . . the petitioner must demonstrate that his attorney's representation was not reasonably competent or within the range of competence displayed by lawyers with ordinary training and skill in the criminal law. . . . To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law.

To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." (Citation omitted; internal quotation marks omitted.) *Silver* v. *Commissioner of Correction*, 180 Conn. App. 592, 597, 184 A.3d 329, cert. denied, 328 Conn. 940, 184 A.3d 759 (2018).

Because a petitioner's failure to satisfy either prong is fatal to a habeas petition; see *Foster* v. *Commissioner of Correction*, 217 Conn. App. 658, 667, 289 A.3d 1206, cert. denied, 348 Conn. 917, 303 A.3d 1193 (2023); our courts, in reviewing ineffective assistance of counsel claims, "can find against a petitioner . . . on either the performance prong or the prejudice prong, whichever is easier." *Thomas* v. *Commissioner of Correction*, 141 Conn. App. 465, 471, 62 A.3d 534, cert. denied, 308 Conn. 939, 66 A.3d 881 (2013). Even if we assume, without deciding, that O'Brien's performance in advising the petitioner on the pretrial plea offer was deficient, the petitioner did not establish the requisite prejudice. He therefore cannot prevail on his claim that Visone was ineffective in failing to raise that ineffective assistance of trial counsel claim in the petitioner's first habeas action.

"It is well established that the failure to adequately advise a client regarding a plea offer from the state can form the basis for a sixth amendment claim of ineffective assistance of counsel." (Internal quotation marks omitted.) *Silver* v. *Commissioner of Correction*, supra, 180 Conn. App. 596–97. In the present case, it is undisputed that the state made a pretrial plea offer of twenty-five years of incarceration early in the case and before "much evidence or information was collected." It also is undisputed that O'Brien at that time did not

advise the petitioner to accept or reject that offer.[1] Instead, O'Brien was inclined to await the results of discovery and the possibility of an additional plea offer from the state.[2] As the petitioner testified, O'Brien's position "was basically, hey, the state is offering this [twenty-five year plea] and you know, we can keep going forward to see what they're going to offer [and to see] what's in the case. . . . O'Brien [was] basically saying he was still collecting evidence and he was still . . . trying to see if the state was going to offer something maybe different."

In his operative petition, the petitioner did not allege that, had O'Brien adequately advised him on the twenty-five year offer, he would have accepted that offer and pleaded guilty.[3] The petitioner also did not testify to that effect at the habeas trial. When asked on direct examination whether he was willing to take the twenty-five year plea offer, the petitioner stated: "I wouldn't say I was willing . . . to take the plea deal." In light of O'Brien's inclination to see what discovery disclosed and whether the state would make an additional offer, the petitioner testified that "that was my mind state more than just saying outright yeah I was going to take

[1] O'Brien testified at the habeas trial that, although he conveyed the plea offer to the petitioner, he could not recall his evaluation of the state's offer, as more than two decades had passed. O'Brien also explained that it was his general practice not to advise clients "about offers unless they're really small, the amount of time." In his testimony, the petitioner similarly indicated that O'Brien did not advise him on whether to accept that plea offer.

[2] The record indicates that the state made a subsequent plea offer to the petitioner following the commencement of his criminal trial. That offer was for a term of twenty-two years of incarceration and was contingent upon (1) Abernathy also accepting a plea offer made to him and (2) the consent of the victim's family. Because Abernathy rejected his plea offer, the second plea offer to the petitioner lapsed. As he acknowledges in his principal appellate brief, the petitioner has raised no claim in this appeal with respect to the twenty-two year plea offer.

[3] Instead, the petitioner alleged that "there is a reasonable probability that, but for [O'Brien's] deficient performance . . . the result of the proceeding would have been different and more favorable to the petitioner."

the deal . . . . It was sort of like just waiting to see what [O'Brien] actually was going to do with the case, you know."

At the habeas trial, O'Brien testified that the petitioner was not interested in the twenty-five year plea offer, stating: "[T]he offer initially was too high and [the petitioner] didn't want to accept it." O'Brien further testified that the petitioner "was not taking a [twenty] year sentence or [a twenty-five] year sentence" and that he "just didn't want to take anything that lengthy." When asked why the petitioner would not take a plea deal, O'Brien stated that it was because the petitioner did not want "to spend [twenty] years in jail" because "[h]e had nothing to do with the murder." In its memorandum of decision, the court credited that testimony.

As our Supreme Court has explained, "[i]n the context of rejected plea offers . . . the specific underlying question of whether there was a reasonable probability that a habeas petitioner would have accepted a plea offer but for the deficient performance of counsel is one of fact, which will not be disturbed on appeal unless clearly erroneous." *Barlow* v. *Commissioner of Correction*, 343 Conn. 347, 357, 273 A.3d 680 (2022). "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the [habeas] court's function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the [habeas] court's ruling." (Internal quotation marks omitted.) Id., 357–58.

At the habeas trial, O'Brien testified that the petitioner was unwilling to accept a plea offer that involved a twenty-five year term of incarceration. The court credited that testimony, as was its exclusive prerogative as arbiter of credibility. It is well established that the appellate courts of this state cannot "evaluate the credibility of the witnesses. . . . Rather, we must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude. . . . The habeas judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony." (Internal quotation marks omitted.) *Taylor* v. *Commissioner of Correction*, 324 Conn. 631, 643–44, 153 A.3d 1264 (2017); see also *Perez* v. *Commissioner of Correction*, 194 Conn. App. 239, 242, 220 A.3d 901 ("[a]ppellate courts do not second-guess [the habeas court as] the trier of fact with respect to credibility" (internal quotation marks omitted)), cert. denied, 334 Conn. 910, 221 A.3d 43 (2019); *Corbett* v. *Commissioner of Correction*, 133 Conn. App. 310, 316, 34 A.3d 1046 (2012) ("[a]s an appellate court, we do not reevaluate the credibility of testimony" (internal quotation marks omitted)). The court's decision to credit O'Brien's testimony that the petitioner was unwilling to accept the twenty-five year plea offer, therefore, is one we cannot disturb.

In light of that evidence, we conclude that the court's finding that there was not a reasonable probability that the petitioner would have accepted the pretrial plea offer but for the deficient performance of counsel is not clearly erroneous. Accordingly, the petitioner cannot establish prejudice resulting from any deficiency in the advice provided by O'Brien on that plea offer. See *Missouri* v. *Frye*, 566 U.S. 134, 147, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012) ("[t]o show prejudice from ineffective assistance of counsel where a plea offer has lapsed or

been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel").

On our thorough review of the record, we conclude that the habeas court properly determined that the petitioner had not met his burden of demonstrating that his habeas counsel rendered ineffective assistance by failing to raise a claim that O'Brien provided constitutionally inadequate advice on the pretrial plea offer. The petitioner failed to establish that the issues he raised are debatable among jurists of reason, that a court could resolve them in a different manner or that the questions he raised are adequate to deserve encouragement to proceed further. See *Santana* v. *Commissioner of Correction*, 208 Conn. App. 460, 470, 264 A.3d 1056 (2021), cert. denied, 340 Conn. 920, 267 A.3d 857 (2022). We therefore conclude that the habeas court did not abuse its discretion in denying the petition for certification to appeal from the judgment denying his amended petition for a writ of habeas corpus.

The appeal is dismissed.

In this opinion the other judges concurred.

LIAM STANFORD ET AL. *v.* CLAYTON NOGIEC ET AL.
(AC 47116)

Moll, Suarez and Westbrook, Js.

Syllabus

The plaintiffs appealed from the trial court's judgment granting the defendant rental car company's motion for summary judgment on the plaintiffs' complaint alleging, inter alia, negligent entrustment. N, whose driver's license was subject to an ignition interlock device restriction, rented a motor vehicle from the defendant and, later that same day, while driving the vehicle while

under the influence of alcohol or drugs, struck the plaintiff L, a pedestrian. The plaintiffs claimed that the court improperly concluded that the defendant did not have a duty to determine whether N's driver's license was subject to restrictions before renting him a vehicle. *Held*:

The trial court properly determined that the defendant did not have a duty pursuant to the statute (§ 14-153) governing the renting of motor vehicles to use an online database to confirm whether N's license was subject to any restrictions, as the plain language and legislative history of § 14-153 indicated that the defendant was required only to inspect N's physical driver's license card to confirm that it was facially valid and unexpired.

The trial court properly granted the defendant's motion for summary judgment, as the defendant's employee who rented the motor vehicle to N submitted an affidavit in which he averred that, before renting the vehicle, he had inspected N's driver's license and confirmed that it was facially valid and unexpired, and, because the plaintiffs did not present any evidence to the contrary regarding that issue of fact in opposing summary judgment, no genuine issue of material fact existed as to whether the defendant fulfilled its duties pursuant to § 14-153.

This court concluded that, under the circumstances of this case, the defendant did not have an affirmative common-law duty to inspect N's driver's license using an online database in the absence of readily apparent facts providing a reason to suspect that a prospective renter has any limitation on his ability to drive, and, thus, no genuine issues of material fact existed and the defendant was entitled to judgment as a matter of law on the plaintiffs' negligent entrustment claims.

Argued March 26—officially released July 22, 2025

Procedural History

Action to recover damages for personal injuries sustained by the named plaintiff as a result of the named defendant's alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the complaint was withdrawn as to the named defendant; thereafter, the court, *Sicilian, J.*, granted the motion for summary judgment filed by the defendant EAN Holdings, LLC, and rendered judgment thereon, from which the plaintiffs appealed to this court. *Affirmed.*

Michael S. Taylor, with whom were *Brendon P. Levesque* and, on the brief, *Corinne A. Burlingham*, for the appellants (plaintiffs).

Jenna M. Scoville, with whom were *Scott T. Garosshen* and, on the brief, *Linda L. Morkan* and *Yelena Akim*, for the appellee (defendant EAN Holdings, LLC).

Opinion

WESTBROOK, J. In this personal injury action arising out of an accident involving a driver of a rental car and a pedestrian, the plaintiffs, Hope Stanford, Sarah Stanford, and Liam Stanford, individually and as next friend for his two minor children, appeal from the trial court's rendering of summary judgment in favor of the defendant EAN Holdings, LLC, also known as Enterprise Rental Car.[1] The plaintiffs claim that the court improperly concluded that the defendant did not have a duty to determine whether the driver's license of a renter of a motor vehicle was subject to restrictions before renting him a vehicle. We disagree and, accordingly, affirm the judgment of the court.

The following undisputed facts and procedural history are relevant to our resolution of this appeal. The defendant and CAMRAC, LLC (CAMRAC), are affiliates "engaged in the auto rental or leasing business." On August 24, 2019, Clayton Nogiec rented a motor vehicle through CAMRAC.[2] Before renting the motor vehicle to Nogiec, an employee looked at his driver's license and confirmed that it was "facially valid, contained no restrictions on its face, and was unexpired." Additionally, the employee observed that Nogiec "did not demonstrate any signs of mental or physical impairment,

[1] The plaintiffs' complaint additionally named the driver of the rental vehicle, Clayton Nogiec, as a defendant, but the action was withdrawn as to him following the plaintiffs' acceptance of his offer of compromise. Accordingly, all references to the defendant herein are to EAN Holdings, LLC, also known as Enterprise Rental Car.

[2] The court determined that "[the defendant] has not satisfied its burden to demonstrate the absence of genuine disputes of material facts as to whether and how it was involved in or responsible for the transaction by which Nogiec rented the vehicle that he was driving when he struck Liam Stanford."

or any other unfitness to operate a motor vehicle." At the time that Nogiec rented the vehicle, the defendant was unaware that "[he] was prohibited from operating a vehicle that did not have an ignition interlock device[3] installed."[4] (Footnote added.) The motor vehicle rented by Nogiec, which was owned either by CAMRAC or by the defendant, did not have an ignition interlock device. Later that same day, Nogiec was driving the rental vehicle when he struck the plaintiff Liam Stanford, a pedestrian. Police officers conducted a field sobriety test, which Nogiec failed, and subsequently arrested him for operating a motor vehicle while under the influence of alcohol or drugs in violation of General Statutes § 14-227a.

On April 23, 2020, the plaintiffs commenced the present action. Their complaint sets forth the following causes of action against the defendant: (1) vicarious liability, (2) negligent rental and/or entrustment, (3) loss of consortium, and (4) bystander emotional distress. The plaintiffs alleged, inter alia, that the defendant owned and rented the motor vehicle that Nogiec was driving at the time of the incident and that the "defendant knew, or should have known, that renting, leasing or providing motor vehicles to person[s], customers or drivers who have suspended licenses and/or are required to have ignition interlock devices in their vehicles was unsafe and could reasonably anticipate that such person, customer or driver could cause injury to another." The defendant filed an answer and a special

[3] "Ignition interlock device means a device installed in a motor vehicle that measures the blood alcohol content of the operator and disallows the mechanical operation of such motor vehicle until the blood alcohol content of such operator is less than twenty-five thousandths of one per cent." (Internal quotation marks omitted.) General Statutes § 14-227j (a).

[4] The record does not reflect why Nogiec's driver's license was subject to an ignition interlock device requirement, but it is undisputed that his license was subject to such requirement at the time that he rented the vehicle.

defense in which it alleged that "[a] rental car owner or affiliate cannot be held vicariously liable for harm to persons or property that arises out of the use, operation or possession of a rented motor vehicle during the period of rental."

The defendant thereafter moved for summary judgment on all claims against it. It argued, inter alia, that the plaintiffs' vicarious liability claims were barred by 49 U.S.C. § 30106, commonly known as the Graves Amendment,[5] and that it was entitled to judgment as a matter of law on the remainder of the plaintiffs' claims because rental car companies do not have a duty to investigate the driver's license status, motor vehicle history, or criminal history. The plaintiffs filed an opposition to the defendant's motion for summary judgment.

Following oral argument, the court, *Sicilian*, *J.*, issued a memorandum of decision in which it rendered summary judgment in favor of the defendant on all counts. In its memorandum, the court stated that the plaintiffs' claims against the defendant "fall squarely within the scope of the Graves Amendment and are preempted unless an exception to the preemption applies . . . [such as] where the lessor commits independent acts of negligence . . . . The plaintiffs' only claims of independent negligence on the part of [the defendant] are their claims that [the defendant] was negligent in renting or entrusting the subject vehicle to Nogiec. . . . If those claims fail, then the claims for

[5] The Graves Amendment, 49 U.S.C. § 30106, provides in relevant part: "(a) An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner). . . ."

vicarious liability must also fail. In short, [the defendant's] motion for summary judgment as to all counts turns on whether it is entitled to summary judgment on its claims of negligent entrustment."[6]

In addressing the plaintiffs' negligent entrustment claims, the court stated: "The plaintiffs' [negligent entrustment] claim rests on the proposition that [the defendant] had a duty to investigate the status of Nogiec's license and therefore should have known that his license was restricted. The plaintiffs' argument is inconsistent with the weight of authority holding that . . . a rental car company has no duty to do anything more than [assess] the facial validity of a renter's license and [compare] the signature on the license to that on the contract, as required by General Statutes § 14-153 . . . . The court concludes that there are no disputed issues of material fact regarding [the defendant's] lack of actual or constructive knowledge that Nogiec was prohibited from operating a motor vehicle without an ignition interlock device or was otherwise incompetent to operate a motor vehicle. Therefore, [the defendant] is entitled to judgment as a matter of law on the plaintiffs' claims for negligent entrustment. . . . [The defendant's] motion for summary judgment on all the counts of the plaintiffs' complaint against [the defendant] is granted." (Citations omitted; internal quotation marks omitted.) This appeal followed.

As a threshold matter, we set forth the relevant standard that governs our review of a court's decision to

[6] The plaintiffs' claims of loss of consortium and bystander emotional distress are derivative causes of action that rise and fall with the validity of their negligent entrustment claims. See *Gilman* v. *Shames*, 189 Conn. App. 736, 747–48, 208 A.3d 1279 (2019) ("Like a loss of consortium claim, a claim for bystander emotional distress is a derivat[ive] claim. . . . Consequently, it cannot be brought as a freestanding claim where there is no valid underlying predicate action." (Citation omitted; internal quotation marks omitted.)).

grant a motion for summary judgment. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party moving for summary judgment is held to a strict standard. . . . To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § [17-45]. . . . Our review of the trial court's decision to grant [a] motion for summary judgment is plenary." (Internal quotation marks omitted.) *Belevich* v. *Renaissance I, LLC*, 207 Conn. App. 119, 124, 261 A.3d 1 (2021). "We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record." (Internal quotation marks omitted.) *Adams* v. *Aircraft Spruce & Specialty Co.*, 215 Conn. App. 428, 441, 283 A.3d 42, cert. denied, 345 Conn. 970, 286 A.3d 448 (2022).

We now turn to the plaintiffs' claims on appeal. The plaintiffs claim that the court improperly concluded

that the defendant did not have a duty to determine whether Nogiec's license was subject to an ignition interlock device requirement before renting him a vehicle. Specifically, the plaintiffs argue that the defendant had a duty to use an online database to confirm the status of Nogiec's license pursuant to (1) § 14-153 and/or (2) the common law. We address each argument in turn.

I

We first consider the plaintiffs' argument that the defendant "had a duty under . . . § 14-153 to inspect the validity of Nogiec's license using an online database"[7] and to confirm "that the proffered license is not suspended or otherwise limited . . . ." The defendant counters that § 14-153 does not require car rental companies to search online databases to confirm the validity or status of a renter's license. Rather, the defendant contends that the statute required it only to inspect Nogiec's physical driver's license card to confirm its facial validity. We agree with the defendant that § 14-153 did not require it to search an online database or other sources to confirm the status of Nogiec's driver's license.

Whether § 14-153 imposes a duty on car rental companies to search online databases to confirm the validity or status of a prospective renter's driver's license is a question of statutory interpretation. "When construing

[7] In connection with their opposition to the defendant's motion for summary judgment, the plaintiffs submitted an affidavit of Lloyd D. Rae, an expert in the automobile rental business, which provides in relevant part that the defendant had access to "commercially or publicly available services to confirm the license status of Nogiec prior to renting a motor vehicle to Nogiec including the Connecticut Department of Motor Vehicles Credential Verification website which is a free service [and/or] [the] [LexisNexis] website of which they are subscribers." The plaintiffs contend that whether such sources are available to car rental companies for the purpose of confirming the status of a driver's license is a question of fact that they would bear the burden of proving at trial.

a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and [common-law] principles governing the same general subject matter . . . .'' (Internal quotation marks omitted.) *Meriden* v. *Freedom of Information Commission*, 338 Conn. 310, 320–21, 258 A.3d 1 (2021). ''[I]ssues of statutory construction raise questions of law, over which we exercise plenary review.'' (Internal quotation marks omitted.) *Seramonte Associates, LLC* v. *Hamden*, 202 Conn. App. 467, 476, 246 A.3d 513 (2021), aff'd, 345 Conn. 76, 282 A.3d 1253 (2022).

We begin with the text of the statute. Section 14-153 provides in relevant part: ''Any person, firm or corporation which rents a motor vehicle . . . *shall inspect or cause to be inspected the motor vehicle operator's license of the person initially operating such motor vehicle*, shall compare the signature on such license with that of the alleged licensee written in his presence and shall keep and retain for a period of one year a record of the name of such licensee, the number of his license and the date of issue thereof, the registration

number of the motor vehicle so rented and the mileage reading displayed by the odometer of such vehicle at the time such vehicle leaves and returns to the lessor's place of business . . . ." (Emphasis added.) The relevant statutory scheme does not provide any definitions relating to the phrase "inspect . . . the motor vehicle operator's license . . . ." General Statutes § 14-153.

"In the absence of a definition of terms in the statute itself, [w]e may presume . . . that the legislature intended [a word] to have its ordinary meaning in the English language, as gleaned from the context of its use. . . . Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Meriden* v. *Freedom of Information Commission*, supra, 338 Conn. 322. "Dictionaries in print at the time of the statute's enactment are the most instructive. . . . [L]ater editions also can be instructive, particularly those from the time when a statute is revised but retains the language at issue." (Citation omitted; internal quotation marks omitted.) *9 Pettipaug, LLC* v. *Planning & Zoning Commission*, 349 Conn. 268, 280, 316 A.3d 318 (2024).

The plaintiffs assert that "[w]hether [the defendant] owed a duty to determine whether Nogiec was subject to an [ignition interlock device] requirement under . . . § 14-153 centers on the meaning of the word 'inspect' in this statute." At the time of the statute's enactment, Webster's New International Dictionary of the English Language defined the term "inspect" in relevant part as "[t]o look upon; to view closely and critically . . . to examine; scrutinize [or] investigate." Webster's New International Dictionary of the English Language (4th Ed. 1931) p. 1117. When the legislature last amended the statute in 1987, the statute retained the language at issue, but the dictionary defined "inspect" as "to view

closely in critical appraisal," to "look over," or "to examine officially." Webster's Ninth New Collegiate Dictionary (1986) p. 626. The parties dispute whether "inspect," as used in the statute, requires a car rental company to *look at* a prospective renter's driver's license and *examine* its facial validity or to *investigate* the validity of such license using outside sources. Because the definition at the time of enactment included "to investigate," but the definition at the time of amendment did not, the dictionary definitions reasonably could be read to support both parties' interpretations. The term "inspect" is, therefore, ambiguous because it "is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Pizzoferrato* v. *Community Renewal Team, Inc.*, 211 Conn. App. 458, 462, 272 A.3d 1145 (2022). Accordingly, we look to other parts of the statute, as well as the legislative history and circumstances surrounding the statute's enactment, for guidance.

The subject of the statute's inspection requirement is the "motor vehicle operator's license" and, therefore, we consider the term "inspect" in light of the term "license," as used in § 14-153. The plaintiffs argue that the term "license" refers to the renter's *authority* to operate a motor vehicle and, therefore, car rental companies must confirm that a prospective renter's driver's license is valid and free from restrictions. The defendant, however, argues that the term "license," as used in the statute, merely refers to a prospective renter's *physical* driver's license card. Webster's New International Dictionary of the English Language contemporaneously defined the term "license" in relevant part as the "[a]uthority or . . . permission given to do something (specified) . . . ; also, the document embodying such permission . . . ." Webster's New International Dictionary of the English Language, supra, p. 1244. The

context provided by the text of the statute, in conjunction with the foregoing definitions, suggests that the term "license" refers to the physical license "document," rather than the abstract "permission" to operate a motor vehicle.

Section 14-153 uses the term "license" three times: anyone who rents a motor vehicle "shall inspect . . . the *motor vehicle operator's license* of the person initially operating such motor vehicle, shall compare the signature on *such license* with that of the alleged licensee written in his presence and shall keep and retain . . . a record of . . . *the number of his license* and *the date of issue thereof* . . . ." (Emphasis added.) "It is a familiar principle of statutory construction that [when] the same words are used in a statute two or more times they will ordinarily be given the same meaning in each instance . . . ." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 727, 6 A.3d 763 (2010). The latter two uses of the term "license" in § 14-153 unambiguously refer to the signature, number, and issuance date on the physical driver's license card. Although the first use of the term could be read as referring to the authority to operate a motor vehicle, the statute as a whole does not present any indication that the "legislature would have intended that the same term be given a different meaning in different parts of the statute." *Dept. of Public Safety* v. *Freedom of Information Commission*, supra, 728. This is especially true in light of the statute's use of the phrase "*such* license," which indicates that the preceding use of "license" has the same meaning. (Emphasis added.) General Statutes § 14-153; see also *Dept. of Public Safety* v. *Freedom of Information Commission*, supra, 728. Thus, the statute's inspection requirement—like the signature, number, and issuance date requirements—must also refer to the physical driver's license card presented by the

prospective renter, rather than to the renter's abstract authority to operate a motor vehicle.

Turning to the legislative history of § 14-153, the plaintiffs argue that the legislature intended § 14-153 to require car rental companies to ascertain the status of a prospective renter's driver's license. In support of this argument, they point to the portion of the legislative history showing that House Bill No. 642, 1931 Sess., was originally entitled "Renting Motor Vehicle to Unlicensed Person." Conn. Joint Standing Committee Hearings, Motor Vehicles, 1931 Sess., p. 156. They additionally point to the following statement given at the Joint Standing Committee hearing on the substitute bill, entitled "An Act concerning the Renting of Motor Vehicles": "[Substitute House Bill No. 642] makes it necessary for the person or corporations renting automobiles under the so-called 'U-Drive' plan to ascertain from the lessee whether or not he is a *properly licensed* operator before allowing him to operate his car on the highway. The Committee feels that this is a safety measure for the protection of the public and therefore recommends the passage of the Bill." (Emphasis added.) Conn. Joint Standing Committee Hearings, supra, p. 190. The defendant, however, argues that "the statute was targeted at catching drivers who had no license at all . . . ." In support of its argument, the defendant directs us to the stated purpose of House Bill No. 642, as expressed at the Joint Standing Committee Hearing on the original bill: "The purpose of the Bill is to make it possible . . . through identification to make sure that [the prospective renter] has a license . . . [and require] [t]he person who rents the vehicle to ascertain whether [the prospective renter] has a license." Conn. Joint Standing Committee Hearings, supra, p. 157.

Although the plaintiffs point to one instance in which the legislature expressed that a renter should be "properly licensed," the legislature's intended meaning of that

phrase is vague because "properly" could mean a valid, unrestricted license, or it could mean that the renter obtained a license by proper means. The plaintiffs do not direct our attention to any portions of the legislative history that show that the legislature intended car rental companies to use outside sources to investigate the status of a renter's license. To the contrary, the stated purpose indicates that car rental companies need only use a prospective renter's identification to ensure that such renter has a driver's license. In light of that stated purpose, as well as our determination that the statute's use of the term "license" refers to a physical driver's license card, we are persuaded that the legislature intended the statute to require car rental companies to ascertain whether a prospective renter possesses a physical driver's license card.

The circumstances surrounding the statute's enactment further support our interpretation of the statute's text and legislative history because the use of online databases to confirm the status of a driver's license did not exist. In fact, the plaintiffs argue that § 14-153 "limits those who can rent vehicles to those who have valid driver's licenses" and, because "[a] *modern* Connecticut license may be suspended or restricted with no visible change to the physical document," the plaintiffs argue that "confirming the validity of a license in our *modern era* includes checking the status of a [driver's] license online . . . ." (Emphasis added.)

"Our case law is clear . . . that when the legislature chooses to act, it is presumed to know how to draft legislation consistent with its intent . . . ." (Internal quotation marks omitted.) *King* v. *Volvo Excavators AB*, 333 Conn. 283, 296, 215 A.3d 149 (2019); see also *Adesokan* v. *Bloomfield*, 347 Conn. 416, 439, 297 A.3d 983 (2023) ("[h]ad the legislature intended to include [certain conduct within the meaning of the statute], it could have done so"). The plaintiffs acknowledge that

"[t]he relevant language of § 14-153 has been in place since at least 1931." Indeed, the legislature has amended § 14-153 numerous times, but it has not substantively changed the relevant language. See General Statutes (Cum. Supp. 1931) § 628c.[8] The plaintiffs themselves argue that the standards for determining the status of a license have changed since the statute's enactment and that the use of online databases for that purpose is a "*modern* system . . . ." (Emphasis added.) We presume, therefore, that if the legislature had intended to impose duties related to modern technological developments, it would have revised the language of the inspection requirement accordingly.[9]

[8] General Statutes (Cum. Supp. 1931) § 628c provides in relevant part: "Any person who shall rent a motor vehicle without a driver shall inspect or cause to be inspected the motor vehicle operator's license of the person by whom such motor vehicle is to be operated, shall compare the signature on such license with that of the alleged licensee written in his presence and shall keep a record of the name of such licensee, the number of his license and the date of issue thereof . . . ."

[9] The plaintiffs attempt to overcome our well settled law that the legislature "is presumed to know how to draft legislation"; (internal quotation marks omitted) *King* v. *Volvo Excavators AB*, supra, 333 Conn. 296; by analogizing the lack of legislative intervention in the present case with the alleged lack of legislative intervention in the practice of witch trials. Specifically, the plaintiffs, in their reply brief, state: "At one time, Connecticut drowned people, in a process known as the 'ducking test,' to determine whether they were witches possessed by evil spirits. . . . There is no clear indication that the General Assembly ever passed a law to end our state's use of the ducking test, but we can safely conclude that the good people of Connecticut came to realize—even without legislative intervention—that the test did not serve the public policy for which it originally was intended. Here, the court is confronted with two statutes that should act to protect the lives and safety of Connecticut residents . . . § 14-153 . . . and General Statutes § 14-227j . . . . If someone with a court imposed [ignition interlock device] restriction on their license can freely rent a vehicle without an [ignition interlock] device, and if the rental agent has no obligation beyond visually confirming that the lessee possesses a valid looking piece of plastic, then both statutes are undermined, and the test no longer serves the policy behind either." First, the plaintiffs' assertion that the legislature never intervened to prohibit the "ducking test" is undercut by the legislature's adoption of statutes criminalizing homicide. See General Statutes §§ 53a-54a through 53a-58. Second, any prohibition on the "ducking test" concerns a *negative* duty to refrain from drowning another person. The plaintiffs, however, ask us to read into § 14-153 an *affirmative* duty for car rental companies to investigate the

Moreover, "[courts] are not in the business of writing statutes; that is the province of the legislature. Our role is to interpret statutes as they are written. . . . [We] cannot, by [judicial] construction, read into statutes provisions [that] are not clearly stated." (Internal quotation marks omitted.) *Aldin Associates Ltd. Partnership* v. *State*, 230 Conn. App. 223, 249, 330 A.3d 613, cert. granted, 351 Conn. 911, 330 A.3d 882 (2025); see also, e.g., *PPC Realty, LLC* v. *Hartford*, 350 Conn. 347, 358, 324 A.3d 780 (2024) (declining to graft onto statutes language that does not exist); *PJM & Associates, LC* v. *Bridgeport*, 292 Conn. 125, 138, 971 A.2d 24 (2009) ("[w]hen a court interprets [a statute], it cannot change the inherent meaning of words or supply additional terms to change the meaning of the provision at issue" (internal quotation marks omitted)); *Lucarelli* v. *State*, 16 Conn. App. 65, 70, 546 A.2d 940 (1988) (we may not "interpret [a] statute as including . . . expressions [that] would . . . alter its meaning").

The defendant argues that for this court to adopt the plaintiffs' position, we would have to read provisions into the statute that do not exist. We agree. The language in the statute is silent as to any requirement that car rental companies use electronic tools to verify the validity or status of a prospective renter's license. The legislature has, however, expressly permitted similar verification in other statutes, which indicates that it knows how to impose such a requirement if it so intended. See, e.g., General Statutes § 30-86 (c) (1) (seller of alcohol "may perform a transaction scan[10] to check the validity of a driver's license or identity card presented

status of a prospective renter's driver's license. Accordingly, we are not persuaded that the tragic history of witch trials in Connecticut is relevant to the issue of whether certain duties exist pursuant to § 14-153.

[10] General Statutes § 30-86 (a) (3) defines "transaction scan" as "the process by which a permittee or permittee's agent or employee checks, by means of a transaction scan device, the validity of a driver's license or an identity card . . . ."

by a cardholder" (footnote added)); General Statutes § 53-344 (d) (2) (seller of tobacco products "may perform a transaction scan to check the validity of a driver's license or identity card presented by a cardholder"). Additionally, the legislature knows how to instruct car rental companies to limit their services to those drivers with certain licenses. See, e.g., General Statutes § 14-227j (e) ("[n]o provision of this section shall be construed to authorize the operation of a motor vehicle by any person whose motor vehicle operator's license has been refused, suspended or revoked, or who does not hold a valid motor vehicle operator's license"). In fact, § 14-153 expressly requires car rental companies to refuse service to minors without the written consent of a parent or guardian. See General Statutes § 14-153 ("no person shall rent or lease any motor vehicle without a driver to a minor without the written consent of a parent or guardian of such minor"). The statute does not, however, expressly require car rental companies to refuse service to other types of licensed drivers, such as those with restricted licenses. To interpret the statute as including a duty to search online databases to confirm the status of a prospective renter's driver's license would alter the statute's meaning by placing additional burdens on car rental companies. "If the legislature had wished to" place such burdens on rental car companies, "it easily could have done so." *Lucarelli* v. *State*, supra, 16 Conn. App. 70.

Because we conclude that § 14-153 required only that the defendant inspect Nogiec's physical driver's license card to confirm its facial validity, the trial court properly determined that the defendant did not have a duty pursuant to § 14-153 to use an online database to confirm whether Nogiec's license was subject to any restrictions. In the present case, the employee who rented the motor vehicle to Nogiec submitted an affidavit in which he averred that, before renting the vehicle to Nogiec,

he had inspected Nogiec's driver's license and confirmed that it was facially valid and unexpired. The plaintiffs did not present any evidence to the contrary regarding that issue of fact in opposing summary judgment. Thus, the court properly concluded that no genuine issue of material fact exists as to whether the defendant fulfilled its duties pursuant to § 14-153.

II

We next consider the plaintiffs' argument that the common law imposed on the defendant "a duty to inspect the validity of Nogiec's license using an online database because a reasonable person under these circumstances would know that the plaintiffs' injuries were a likely result from a failure to do so." The plaintiffs argue that, "[h]ad [the defendant] exercised reasonable care in determining the status of Nogiec's license using online [Department of Motor Vehicles] records, it would have discovered the [ignition interlock device] requirement and been aware of his incompetence to drive or drive the vehicle rented to him." The defendant, however, argues that "Connecticut negligent entrustment cases do not support . . . [an] affirmative duty to investigate license status." It asserts that "[t]he plaintiffs seek to stretch the common law" and urges this court to "decline the invitation." We conclude that, under the circumstances of this case, the defendant did not have an affirmative common-law duty to determine whether Nogiec's license was subject to an ignition interlock device restriction before renting him a motor vehicle.

The following legal principles are relevant to our resolution of this issue. "[G]eneral common-law principles . . . [provide] that the test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would

anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case. . . . Additionally, [a] duty to use care may arise from a contract, from a statute, or from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act. . . . Our law makes clear, however, that [a] simple conclusion that the harm to the plaintiff was foreseeable . . . cannot by itself mandate a determination that a legal duty exists. Many harms are quite literally foreseeable, yet for pragmatic reasons, no recovery is allowed." (Citations omitted; internal quotation marks omitted.) *Glover* v. *Bausch & Lomb, Inc.*, 343 Conn. 513, 532–33, 275 A.3d 168 (2022).

"It is a well accepted general tort principle that a person ordinarily will not be deemed liable for the actions of another that result in an injury to a third party. . . . There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless [an exception applies]. . . . The tort of negligent entrustment is [an] exception to this general tort principle. The rationale underlying the imposition of negligent entrustment liability on suppliers of chattels is that one has a duty not to supply a chattel to another who is likely to misuse it in a manner causing unreasonable risk of physical harm to the entrustee or others." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 215 Conn. App. 441–42. "[T]he elements of a cause of action sounding in negligent entrustment of an automobile are (1) the owner of an automobile entrusts it to another person

(2) whom the owner knows or should reasonably know is so incompetent to operate it that injury to others should reasonably be anticipated, and (3) such incompetence results in injury." (Internal quotation marks omitted.) Id., 445.

Neither this court nor our Supreme Court has specifically addressed the question of whether a car rental company may be held liable for negligent entrustment of a motor vehicle for failing to investigate whether a renter's driver's license is subject to an ignition interlock device requirement. Nevertheless, the decisions addressing the issue of negligent entrustment in *Turner* v. *American District Telegraph & Messenger Co.*, 94 Conn. 707, 110 A. 540 (1920); *Greeley* v. *Cunningham*, 116 Conn. 515, 165 A. 678 (1933); *Shea* v. *Brown*, 146 Conn. 631, 153 A.2d 419 (1959); and *Soto* v. *Bushmaster Firearms International, LLC*, 331 Conn. 53, 202 A.3d 262, cert. denied sub nom. *Remington Arms Co., LLC* v. *Soto*, U.S. , 140 S. Ct. 513, 205 L. Ed. 2d 317 (2019); are relevant to our analysis.

First, in *Turner* v. *American District Telegraph & Messenger Co.*, supra, 94 Conn. 707, "the defendant security company entrusted a loaded pistol to an employee who later instigated a fight with and ultimately shot the plaintiff . . . . [Our Supreme Court] held that there was insufficient evidence to support a verdict for the plaintiff on his negligent entrustment claim because there was *not even a scintilla of evidence* that the defendant had or [should] have had knowledge *or even suspicion* that [its employee] possessed any of the traits . . . attributed to him by the plaintiff, including that he was a reckless person, liable to fall into a passion, and unfit to be [e]ntrusted with a deadly weapon . . . . The court then stated [that] [w]ithout this vitally important fact . . . the plaintiff's [negligent entrustment] claim falls to the ground . . . ." (Citation omitted; emphasis added; internal quotation marks

omitted.) *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 215 Conn. App. 443–44.

Next, in *Greeley* v. *Cunningham*, supra, 116 Conn. 515, our Supreme Court considered whether the owner of a vehicle was liable for negligent entrustment when he allowed the codefendant, an unlicensed driver, to drive his motor vehicle under the supervision of a licensed driver. Id., 517. The court stated: "[T]he owner [of a motor vehicle] may be liable for injury resulting from the operation of an automobile he loans to another, when he knows or ought reasonably to know that the one to whom he [entrusts] it is so incompetent to operate it, by reason of inexperience or other cause, that the owner ought reasonably to anticipate the likelihood that in its operation injury will be done to others." Id., 518. "While [the operator] had not received a license to operate an automobile," the owner of the vehicle had reason to believe she was competent to do so, and he complied with the requirements of the applicable statute[11] by ensuring she was supervised by a licensed driver. Id., 521. The court concluded that the owner was not liable for negligent entrustment of his automobile because "[t]he statute amounts to a legislative affirmance that an unlicensed person operating an automobile under the conditions specified in the statute, is not to be deemed so incompetent that the general safety of the public requires that he be kept off the highways." Id.

Then, in *Shea* v. *Brown*, supra, 146 Conn. 631, the issue was whether car dealers could be held liable for negligent entrustment when their salesman allowed a prospective buyer with a suspended driver's license to

[11] The applicable statute in *Greeley* provided "that an unlicensed person over sixteen years of age, who has not had a license issued to him suspended or revoked, may operate a motor vehicle upon the highways while under the instruction of and accompanied by a licensed operator, who shall have full control of the vehicle." *Greeley* v. *Cunningham*, supra, 116 Conn. 521.

borrow a motor vehicle for a test drive. Id., 631–32. The dealers had "made no attempt to ascertain from the salesman whether [the buyer] possessed an operator's license or was otherwise qualified to operate a motor vehicle." Id., 632. The plaintiff claimed that the dealers knew or should have known that the buyer was so incompetent to operate a motor vehicle that they "ought reasonably to anticipate the likelihood of injury to others by reason of that incompetence . . . ." (Internal quotation marks omitted.) Id. Our Supreme Court concluded that the dealers were not liable for negligent entrustment because "[t]he fact that [the buyer's] license had been suspended did not as a matter of law establish that he was an incompetent operator. To have obtained the license in the first place, he had to pass an examination to prove his competency. . . . [T]here was nothing to show that [the buyer] lacked the skill, technique or capability necessary for the operation of an automobile. In addition, [General Statutes § 14-60 (a) (1)] permits a dealer to loan a motor vehicle . . . for not more than [thirty] days for the purpose of trial of a motor vehicle." Id., 633.

Lastly, in *Soto* v. *Bushmaster Firearms International, LLC*, supra, 331 Conn. 53, the issue was whether the manufacturer and sellers of a rifle were liable for negligent entrustment when a mother purchased a rifle and thereafter gave it to her son, who used it to perpetrate a school shooting. Id., 71–72. Our Supreme Court concluded: "The rule that a cause of action for negligent entrustment will lie only when the entrustor knows or *has reason to know* that the direct entrustee is likely to use a dangerous instrumentality in an unsafe manner would bar the plaintiffs' negligent entrustment claims. Specifically, there is no allegation in this case that there was *any reason to expect* that [the] mother was likely to use the rifle in an unsafe manner." (Emphasis added.) Id., 81.

In each of these cases, the court declined to hold an entrustor liable under a negligent entrustment theory when no circumstances gave the entrustor a reason to suspect that the entrustee was likely to use the entrusted item in a way that would cause injury to others. Accordingly, our review of Connecticut's negligent entrustment case law suggests that whether a car rental company may be held liable for negligent entrustment of a motor vehicle does not depend on whether the company could have taken *affirmative steps* to learn about the renter's incompetence; rather, it depends on whether readily apparent facts gave the company a reason to suspect that the renter was incompetent to operate a motor vehicle. See id., 80 (our Supreme Court "never has suggested that a cause of action for negligent entrustment—whether involving a vehicle, a weapon, or some other dangerous item—will lie in the absence of evidence that the direct entrustee is likely to use the item unsafely"). Moreover, our case law suggests that when a statute governs a particular type of entrustment, the entrustor is not required to do more than comply with the statute unless the circumstances indicate that the entrustee is likely to use the item in a way that will injure others. Accordingly, we are persuaded that, in the absence of readily apparent facts indicating that a prospective renter is incompetent to operate a motor vehicle, car rental companies do not have a duty to take steps beyond the requirements of § 14-153 to confirm the status of the prospective renter's driver's license.

The plaintiffs have not cited a single case in Connecticut or any other jurisdiction holding that a car rental company is obligated to verify the status of a renter's license using an online database, in the absence of any reason to suspect that the renter has any limitation on his ability to drive. In fact, the plaintiffs concede that "other jurisdictions have not found a duty for rental car agencies to assess the present status of a potential

renter's driver's license using online [Department of Motor Vehicles] databases." Indeed, courts in other states that have considered this issue have uniformly held that there is no such duty or that it is the function of the legislature, not the courts, to impose such a duty. See, e.g., *Flores* v. *Enterprise Rent-A-Car Co.*, 188 Cal. App. 4th 1055, 1059, 116 Cal. Rptr. 3d 71 (2010) ("a rental car agency is not liable for negligent entrustment where the agency has fully complied with the [statutory] requirements . . . and the customer does not appear impaired or otherwise unfit to drive at the time of rental"); *Young* v. *U-Haul Co. of D.C.*, 11 A.3d 247, 250 (D.C. App. 2011) (motor vehicle rental company had no duty to inquire into competency of renter to drive motor vehicle when renter presented facially valid, unexpired driver's license and did not appear physically or mentally impaired); *Rivers* v. *Hertz Corp.*, 121 So. 3d 1078, 1080 (Fla. App. 2013) (holding that, "[a]bsent any facts to demonstrate [car rental company] had some knowledge of the deficient driver's license, there can be no duty imposed upon [it] to investigate and discover [the renter's] suspended driver's license"), review denied, 147 So. 3d 526 (Fla. 2014); *Cowan* v. *Jack*, 922 So. 2d 559, 567 (La. App. 2005) (car rental company was not liable for negligent entrustment when renter "presented a facially valid, unexpired driver's license and . . . did not appear physically or mentally impaired at the time of the rental"), cert. denied, 926 So. 2d 544 (La. 2006); *Nunez* v. *A&M Rentals, Inc.*, 63 Mass. App. 20, 25, 822 N.E.2d 743 (2005) (rejecting claim that car rental company had duty to use online database to verify status of renter's license); *Cousin* v. *Enterprise Leasing Co.-South Central, Inc.*, 948 So. 2d 1287, 1292 (Miss. 2007) (holding that Mississippi law "only places a burden on rental car companies to accept facially valid, unexpired driver's licenses"); *Weber* v. *Budget Truck Rental, LLC*, 162 Wn. App. 5, 14, 254 P.3d 196

(motor vehicle rental company did not have duty to do more than look at face of license and confirm that it is unexpired, belongs to person presenting it, and bears no marks indicating suspension or revocation), review denied, 172 Wn. 2d 1015, 262 P.3d 64 (2011).[12] Our review of the case law in Connecticut and other jurisdictions persuades us that car rental companies do not have a duty to confirm the validity or status of a renter's driver's license using an online database in the absence of readily apparent facts providing a reason to suspect that a prospective renter has any limitation on his ability to drive.[13]

[12] The plaintiffs argue that cases from other jurisdictions are not relevant to our analysis because they do not "directly [address] the issue of a rental to a person with an [ignition interlock device] requirement" and that most of those cases hold "that investigating the status of the operator's license, even if required, would not have been relevant, because the suspended license was not evidence that the operator was unfit to drive and thus could not form the basis of a negligent entrustment claim." Although none of the cases we cite to specifically address licenses that are subject to an ignition interlock device restriction, we disagree that these cases are not relevant to our analysis. Our review of the case law from other jurisdictions reveals that most jurisdictions have consistently held that a car rental company does not have a duty to take additional steps to ascertain the competence of the renter or the validity of their license, provided (1) a car rental company complies with its state's statutory requirements for renting a motor vehicle; (2) the renter presents a facially valid and unexpired license; and (3) the renter, at the time of the rental, did not display any signs of mental or physical unfitness to operate a motor vehicle. See, e.g., *Cowan* v. *Jack*, supra, 922 So. 2d 567. We see no reason why this case law is not relevant to all limitations or restrictions on a license, including an ignition interlock device requirement.

[13] We note that every Superior Court decision that has considered the issue of whether § 14-153 imposes a duty to inspect renters' driving histories or criminal records has reached a similar conclusion, namely, that car rental companies need only inspect the facial validity of renters' physical driver's license cards. See, e.g., *Flaherty* v. *Sood*, Docket No. CV-20-6047916-S, 2020 WL 8455466, *7 (Conn. Super. December 7, 2020) ("[c]ase law . . . concludes [that] car rental companies presented with a facially valid driver's license have no duty to investigate the driver's competence or driving history"); *Wells* v. *Hertz Corp.*, Docket No. CV-18-6080391-S, 2019 WL 5172239, *5 (Conn. Super. September 17, 2019) ("a rental car company is under a duty to check the prospective renter's driver's license to ensure that it is facially valid"); *Chapman* v. *Herren*, Docket No. CV-07-5005067, 2010 WL 2927377, *7 (Conn. Super. June 24, 2010) ("a rental car company is not

In the present case, the employee who rented the motor vehicle to Nogiec averred that he had inspected Nogiec's driver's license card and confirmed that it was facially valid and was unexpired and that Nogiec had not demonstrated any signs of mental or physical impairment or any other unfitness to operate a motor vehicle. As we have previously indicated, and as noted by the trial court, the plaintiffs presented no contradictory evidence in opposing the motion for summary judgment that raised a genuine issue of material fact as to whether the defendant had reason to know that Nogiec's license was subject to an ignition interlock device requirement or that he was otherwise incompetent to operate a motor vehicle. Additionally, as discussed in part I of this opinion, the defendant complied with the inspection requirement of § 14-153. Accordingly, the trial court properly concluded that no genuine issues of material fact existed and that the defendant was entitled to judgment as a matter of law on the plaintiffs' negligent entrustment claims.

The judgment is affirmed.

In this opinion the other judges concurred.

JOHN MOYE *v.* COMMISSIONER OF CORRECTION (AC 47171)

Alvord, Clark and Lavine, Js.

Syllabus

The petitioner, who had previously been convicted, following a jury trial, of, inter alia, murder, appealed, on the granting of certification, from the judgment of the habeas court denying his petition for a writ of habeas corpus. He claimed, inter alia, that the court erred in concluding that his criminal trial counsel did not provide ineffective assistance by not retaining a crime scene reconstruction expert. *Held*:

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required to investigate a potential renter's driving record; rather, the rental car company must only assess the facial validity of a driver's license before renting to that driver").

The habeas court correctly determined that the petitioner failed to establish prejudice pursuant to *Strickland* v. *Washington* (466 U.S. 668), as this court's review of the record led it to conclude that any purported error by criminal trial counsel in failing to retain a crime scene reconstruction expert did not establish a reasonable probability that the result of the petitioner's criminal trial would have been different and, thus, the petitioner's ineffective assistance of counsel claim against his criminal trial counsel necessarily failed. As the habeas court correctly determined that the petitioner's criminal trial counsel did not provide ineffective assistance in failing to retain a crime scene reconstruction expert, the petitioner's claim that his counsel in his first habeas action rendered ineffective assistance by failing to challenge the effectiveness of the petitioner's criminal trial counsel on that same claim necessarily failed.

Argued April 21—officially released July 22, 2025

Procedural History

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

Trent A. LaLima, with whom, on the brief, was *Virginia M. Gillette*, for the appellant (petitioner).

Nicholas L. Scarlett, deputy assistant state's attorney, for the appellee (respondent).

Opinion

LAVINE, J. Following the granting of his petition for certification to appeal, the petitioner, John Moye, appeals from the judgment of the habeas court denying his petition for a writ of habeas corpus. On appeal, the petitioner claims that the habeas court improperly failed to conclude that (1) his criminal trial counsel provided ineffective assistance by not retaining a crime scene reconstruction expert and (2) his prior habeas counsel provided ineffective assistance by failing to raise in a previous habeas action the foregoing claim

of ineffective assistance directed at his trial counsel. We affirm the judgment of the habeas court.

The following facts underlying the petitioner's criminal conviction, as reasonably could have been found by the jury, are summarized from the petitioner's direct appeal. See *State* v. *Moye*, 119 Conn. App. 143, 986 A.2d 1134, cert. denied, 297 Conn. 907, 995 A.2d 638 (2010). On the evening of April 30, 2005, Jerry Booker gave a ride to Clarence Jones (victim), Roderick Coleman, and the petitioner. Id., 146. Booker then picked up Tamara Wilson, who was Coleman's girlfriend, Tawana Little, and a third woman named Jada. Id. Booker was the driver, the victim and Jada rode in the front passenger seat, the petitioner sat behind Booker, Little was seated next to the petitioner, and Wilson sat on Coleman's lap behind the front passenger seat. Id.

Booker drove to a nearby gasoline station and he, the victim, and Jada entered the gasoline station. Id. With the two men and Jada out of the car, the petitioner began telling the other passengers about his belief that Booker and the victim planned to rob him. Id., 146–47. He said that he was going to "act up." Id., 147. After the three who had gone into the gasoline station returned to the car, the group left to drop off Jada. Id. As Booker was driving to Jada's house, he answered his ringing cell phone and handed it to the victim upon realizing that it was the victim's mother calling. Id. The petitioner, who was seated in the backseat, then shot the victim in the head while he was seated in the front passenger seat. Id., 149. The victim's mother heard someone say: "Call 911. He's been shot." Id., 147. The petitioner, holding a gun, ordered everyone out of the car. Id. Booker and Jada exited the car, and the petitioner moved into the driver's seat, pushed the victim's body out of the car, and drove away. Id.

After driving a short distance, the petitioner stopped the car, wiped down the steering wheel and car handles,

and exited the car with Little, Wilson, and Coleman. Id. The group got into a taxicab and went to Little's house. Id. Once at Little's house, the petitioner again told the others that he believed that he was going to be robbed and that was why he shot the victim. Id. He told Little that he had tried to shoot the victim in the face and told Little and Wilson that they should "take it to the grave." Id. The petitioner was convicted, following a jury trial, of murder in violation of General Statutes § 53a-54a (a) and carrying a pistol without a permit in violation of General Statutes (Rev. to 2005) § 29-35 (a). Id., 145. The judgment of conviction as to those two charges was affirmed on direct appeal.[1] Id., 164.

The petitioner filed a petition for a writ of habeas corpus and, following a trial, the court, *Fuger*, *J.*, denied the petition. Thereafter, the petitioner's appeal following that denial was dismissed. *Moye* v. *Commissioner of Correction*, 168 Conn. App. 207, 145 A.3d 362 (2016), cert. denied, 324 Conn. 905, 153 A.3d 653 (2017).

The petitioner filed a second petition for a writ of habeas corpus, and in his operative third amended petition alleged that (1) his trial counsel, Attorney Gary Mastronardi, provided ineffective assistance by not retaining and presenting the testimony of a crime scene reconstruction expert and (2) his first habeas counsel, Attorney April Brodeur, provided ineffective assistance by failing to raise that claim in the first habeas proceeding.

Following a trial, the habeas court, *Bhatt*, *J.*, issued a memorandum of decision denying the operative petition and, thereafter, granted the petitioner's petition for certification to appeal. This appeal followed. Additional

[1] The petitioner was also convicted, following a plea of guilty pursuant to *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), of criminal possession of a pistol in violation of General Statutes (Rev. to 2005) § 53a-217c (a) (1). The judgment was reversed as to that conviction on direct appeal. See *State* v. *Moye*, supra, 119 Conn. App. 161–64.

facts and procedural history will be set forth as necessary.

We begin by setting forth our standard of review and the legal principles that govern claims of ineffective assistance of counsel. "In a habeas appeal, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, but our review of whether the facts as found by the habeas court constituted a violation of the petitioner's constitutional right to effective assistance of counsel is plenary. . . .

"To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). . . . In *Strickland* . . . the United States Supreme Court established that for a petitioner to prevail on a claim of ineffective assistance of counsel, he must show that counsel's assistance was so defective as to require reversal of [the] conviction . . . . That requires the petitioner to show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defense. . . .

"With respect to the prejudice component of the *Strickland* test, the petitioner must demonstrate that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. . . . It is not enough for the [petitioner] to show that the errors had some conceivable effect on the outcome of the proceedings. . . . Rather, [t]he [petitioner] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . A reasonable probability is a probability sufficient to undermine confidence in the outcome." (Citations omitted; internal quotation marks omitted.) *Mukhtaar* v. *Commissioner*

of Correction, 158 Conn. App. 431, 437–38, 119 A.3d 607 (2015).

I

The petitioner first claims that the court improperly determined that he had failed to satisfy the prejudice prong of *Strickland* with respect to his claim that Mastronardi rendered ineffective assistance by failing to retain a crime scene reconstruction expert.[2] We disagree.

In its memorandum of decision, the habeas court reasoned, when addressing the prejudice prong of *Strickland*, that, although "the court understands the import of the testimony of a crime scene reconstructionist, the court cannot conclude that the evidence presented to it undermines its confidence in the verdict, especially when there was no expert testimony [on crime scene reconstruction] presented to the jury at the criminal trial by the state; the state's theory did not depend on the precise angle of the gunshot; the jury heard from [the petitioner] that there was a struggle and the evidence presented to this court through [Peter Massey, the petitioner's expert in crime scene reconstruction] is that the bullet hole is consistent with [the petitioner's] version of events—but Massey himself did not reconstruct the scene. . . . It is also important to note that both sides agreed that the only question for the jury was [the petitioner's] intent when the weapon fired. While it is certainly possible that the events

[2] Because we decide the petitioner's claim on the basis of the prejudice prong, we need not address the petitioner's argument concerning the performance prong. See, e.g., *Crocker* v. *Commissioner of Correction*, 126 Conn. App. 110, 117, 10 A.3d 1079 ("Because both prongs [of *Strickland*] must be established for a habeas petitioner to prevail, a court may dismiss a petitioner's claim if he fails to meet either prong. . . . Accordingly, a court need not determine the deficiency of counsel's performance if consideration of the prejudice prong will be dispositive of the ineffectiveness claim." (Internal quotation marks omitted.)), cert. denied, 300 Conn. 919, 14 A.3d 333 (2011).

occurred as [the petitioner] says they did, the jury already considered that possibility. . . . After deliberating, the jury rejected [the petitioner's] version of events. Massey testified that his report could not speak to [the petitioner's] intent at the time of the shot. It is just as possible to accidentally discharge a weapon during a struggle as it is to intentionally do so. The court has no evidence that [the petitioner's] version of an accidental discharge is the only one possible to the exclusion of all others. Based on the above, the failure to call a crime scene reconstruction expert does not undermine this court's confidence in the verdict, since the court does not believe there is a reasonable likelihood of a different outcome in light of all the evidence presented at both the criminal trial and this habeas trial."

We agree with the habeas court that the petitioner failed to establish prejudice. Our review of the record leads us to conclude that any purported error by Mastronardi in failing to retain a crime scene reconstruction expert did not establish a reasonable probability that the result of the petitioner's criminal trial would have been different. The essential objective of presenting the testimony of a crime scene reconstruction expert would have been to establish that the gun accidentally was discharged as a result of a struggle and, therefore, the petitioner did not intend to kill the victim.[3] Massey testified at the habeas trial that the petitioner's "recollection [of events] is very possible based on the physical evidence." He clarified: "I can't tell you if they were arguing or not arguing or having a jocular discussion.

[3] "To establish a violation of § 53a-54a, the crime of murder, the state must prove beyond a reasonable doubt that the defendant, with intent to cause the death of another person . . . cause[d] the death of such person or of a third person. . . . [T]he specific intent to kill is an essential element of the crime of murder. To act intentionally, the defendant must have had the conscious objective to cause the death of the victim." (Internal quotation marks omitted.) *State* v. *Moye*, supra, 119 Conn. App. 148.

I just know that based on what [the petitioner] says, his recollection can fit the physical evidence."[4] The habeas court, however, questioned the impact that Massey's testimony would have had on the jury had it been presented at the petitioner's criminal trial, noting that "the evidence presented to this court through Massey is that the bullet hole is consistent with [the petitioner's] version of events—*but Massey himself did not reconstruct the scene*." (Emphasis added.)

The state did not present expert testimony on crime scene reconstruction, and the state's theory of the case did not depend on the precise position or angle of the gun when it was fired. Nonetheless, Mastronardi elicited testimony on cross-examination of the state's expert, Frank Evangelista, an associate medical examiner, that the barrel of the gun was "touching, almost touching" the victim's skin, the bullet hit the front passenger side window slightly above midrange, and that "[t]here's just too many variables to ever say exactly what position the head and the gun were in when this happened. . . . All I can say is that the entrance went in the left side of the head and came out the right side of the ear and based on different positions of the head or positions of how the gun was held, anything that fits this path would be normally consistent with the injury."

The petitioner testified at his criminal trial that, when the victim was talking on Booker's cell phone, he reached up to the side of the front passenger seat and grabbed the gun that the victim had placed in Jada's handbag in order to "get possession of the gun just to be comfortable so nothing [would] happen." The

[4] He further testified that photographic images by the Bridgeport Police Department that reconstructed the scene were misleading because, in those images, the trajectory of the bullet was traced through the vehicle's front passenger window using a straight laser despite the fact that the bullet hit the window at a steep angle. These images, however, were not admitted as exhibits at the petitioner's criminal trial.

petitioner explained that, as he held the gun at an angle, the victim turned around in his seat and grabbed hold of the gun as the petitioner pulled on it in the opposite direction. The petitioner specified that he did not intentionally pull the trigger and that the shooting was an accident. Mastronardi also elicited testimony from the victim's mother, who testified for the state that, during the phone call with the victim, she heard "moving and shuffling."

Mastronardi argued during closing that "[y]ou know there was a struggle and you got that from . . . the victim's own mother." He further argued to the jury that the position of the bullet hole in the front passenger window supported the defense theory of a struggle followed by an accidental shooting and reasoned that the petitioner had testified that "what caused that gun to go off was him pulling one way and [the victim] pulling this way violently. . . . [T]his was an accident." He noted that Evangelista testified that the barrel of the gun was "close up. It was either touching—it was either touching or it was very, very close to the entry" wound on the victim's head and argued that if the victim did not turn around and engage in a struggle for the gun then "that means [the petitioner would] have to stretch his arm out and who has an arm long enough to get a gun that close to [the victim] who's sitting all the way over in the front passenger seat? Nobody. It's total nonsense. It does not conform with the physical evidence in this case."

Accordingly, even if Mastronardi had presented testimony similar to Massey's, it is not reasonably likely that the result of the petitioner's criminal trial would have been different because Mastronardi sufficiently had placed before the jury, through the cross-examination of Evangelista, the recross-examination of the victim's mother, the petitioner's own testimony, and Mastronardi's closing argument, the argument that the

shooting was an accident that occurred as a result of a struggle between the petitioner and the victim. See *Michael T.* v. *Commissioner of Correction*, 307 Conn. 84, 102, 52 A.3d 655 (2012) (defense counsel's failure to call expert witness did not prejudice petitioner because trial counsel sufficiently established points essential to theory of defense through cross-examination of state's experts and in closing argument to jury).

Additionally, due to the strength of the state's case, there is not a reasonable probability that the result would have been different even if Mastronardi had presented testimony similar to Massey's.[5] At the petitioner's criminal trial, no occupant in the vehicle at the time of the shooting other than the petitioner testified that a struggle had preceded the shooting. Wilson testified that, while in the car at the gasoline station, the petitioner stated that he was going to "act up" because he thought that Booker and the victim were going to rob him. She further testified that, once everyone was back in the car, she was talking, turned her head, and saw the petitioner with his arm fully extended, holding a gun at the victim's head as the victim had his back to the petitioner. This is consistent with Evangelista's testimony that, at the time the gun was fired, its barrel made contact with, but was not pressed tightly against, the victim's skin.

Booker, who was the driver, testified that he handed his cell phone to the victim, heard a "bang," turned around in his seat, saw the petitioner holding a gun while looking at him, and heard the petitioner say,

[5] Wilson (who testified that she saw the petitioner holding a gun to the victim's head), Booker (who testified that after the shooting he saw the petitioner holding a gun in his hand), and Little (who testified that the petitioner stated that he tried to shoot the victim in the face), all provided testimony indicating that the petitioner intended to shoot the victim. Coleman testified that he was intoxicated and asleep at the time of the shooting. Jada did not testify at the petitioner's criminal trial.

"Nobody move." After realizing that the petitioner had shot the victim, Booker ran out of the car. Little testified that she did not see a struggle and that the victim was "[j]ust sittin' there" while the petitioner held a gun in his hand. Little explained that, after the shooting, the petitioner "told everybody to 'get the "f" out of the car,' " and after Booker and Jada exited the car, the petitioner got into the driver's seat, pushed the victim's body out of the front passenger seat, drove a short distance, and then wiped the steering wheel and car handles. Little stated that, later that night, the petitioner explained that he tried to shoot the victim in the face because he believed that the victim was going to rob him, then threatened her and Wilson by telling them to "take it to the grave." Additionally, evidence was also presented at the criminal trial that the police found the petitioner hiding by lying on the seats of several chairs under a table. Accordingly, the evidence adduced at the petitioner's criminal trial concerning the events surrounding the shooting, such as Little's testimony that the petitioner explained that he wanted to shoot the victim in the face, the petitioner having threatened Little and Wilson, and evidence of the petitioner's consciousness of guilt, strongly demonstrate that the petitioner intended to kill the victim.

On the basis of the foregoing, we conclude that the habeas court correctly determined that the petitioner failed to satisfy the prejudice prong under *Strickland*. Accordingly, the petitioner's ineffective assistance of counsel claim against Mastronardi necessarily fails.

II

The petitioner next claims that the court improperly determined that Brodeur did not render ineffective assistance by failing to challenge in the first habeas action the effectiveness of Mastronardi regarding his

failure to retain a crime scene reconstruction expert. We disagree.

"[A] petitioner claiming ineffective assistance of habeas counsel on the basis of ineffective assistance of [trial] counsel must essentially satisfy *Strickland* twice: he must prove both (1) that his appointed habeas counsel was ineffective, and (2) that his [trial] counsel was ineffective. . . . We have characterized this burden as presenting a herculean task . . . ." (Citation omitted; internal quotation marks omitted.) *Mukhtaar* v. *Commissioner of Correction*, supra, 158 Conn. App. 439; see also *Lozada* v. *Warden*, 223 Conn. 834, 613 A.2d 818 (1992).

As we have determined in part I of this opinion, the court properly concluded that Mastronardi did not render ineffective assistance concerning his decision not to retain a crime scene reconstruction expert. Accordingly, the petitioner's claim regarding the failure of Brodeur to raise that claim in his first habeas action necessarily fails.

The judgment is affirmed.

In this opinion the other judges concurred.