STEPHEN RICCIO *v.* COMMISSIONER OF CORRECTION (AC 47312)

Cradle, C. J., and Alvord and Clark, Js.

Syllabus

The petitioner, who had previously been convicted of, inter alia, violation of a protective order, appealed, on the granting of certification, from the habeas court's judgment dismissing his petition for a writ of habeas corpus. He claimed that the court erred by dismissing his petition for lack of subject matter jurisdiction on the ground that he was not in custody while on conditional discharge pursuant to the statute (§ 52-466) governing applications for writs of habeas corpus. *Held*:

The habeas court improperly determined that it lacked jurisdiction over the petition for a writ of habeas corpus, as the petitioner was in custody while on conditional discharge within the meaning of § 52-466, regardless of the conditions of discharge, because such an individual is subject to incarceration without the procedural safeguards enjoyed by members of the public, and that exposure, in itself, constitutes a severe restraint on an individual's liberty.

Argued March 18—officially released September 30, 2025

Procedural History

Petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where

the court, *Newson, J.*, granted the respondent's motion to dismiss and rendered judgment dismissing the petition, from which the petitioner, on the granting of certification, appealed to this court. *Reversed*; *further proceedings*.

Nicole Britt, assigned counsel, with whom, on the brief, was *Christopher Y. Duby*, assigned counsel, for the appellant (petitioner).

James A. Killen, senior assistant state's attorney, with whom, on the brief, were *John P. Doyle*, state's attorney, and *Angela Macchiarulo*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

CRADLE, C. J. In this certified appeal, the petitioner, Stephen Riccio, appeals from the judgment of the habeas court dismissing his petition for a writ of habeas corpus. The petitioner claims that the court erred by dismissing his petition for lack of subject matter jurisdiction on the ground that he was not in custody pursuant to General Statutes § 52-466[1] while on conditional discharge. We agree and, accordingly, reverse the judgment of the habeas court.

The following procedural history is relevant to our discussion of the petitioner's claim on appeal. On April 10, 2014, the petitioner pleaded guilty, under the *Alford* doctrine,[2] to violation of a protective order in violation of General Statutes § 53a-223, assault in the third degree in violation of General Statutes § 53a-61 and interfering

[1] General Statutes § 52-466 provides in relevant part: "(a) (1) An application for a writ of habeas corpus, other than an application pursuant to subdivision (2) of this subsection, shall be made to the superior court, or to a judge thereof, for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of such person's liberty. . . ."

[2] See *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

with an officer in violation of General Statutes § 53a-167a. On that same day, he was sentenced to a total effective sentence of five years of incarceration, execution suspended after one year, and three years of conditional discharge. The petitioner was discharged from incarceration on that day in consideration of time that he already had served. His period of conditional discharge therefore began on that day, April 10, 2014, and ended on April 10, 2017.[3] The conditions of the petitioner's conditional discharge were "no new crimes, no threats, [no] violence, [and no] unwanted contact [with the victim]."

On April 5, 2017, the petitioner filed a petition for a writ of habeas corpus alleging that his right to due process had been violated in that his guilty plea was not made knowingly, intelligently and voluntarily, and that his trial counsel rendered ineffective assistance.

On September 28, 2022, the respondent, the Commissioner of Correction, filed a motion to dismiss the petition, pursuant to Practice Book § 23-29 (1),[4] for lack of subject matter jurisdiction on the ground that the petitioner was not in custody within the meaning of § 52-466 at the time he filed his petition because he was on conditional discharge. The petitioner filed an objection to the respondent's motion, and an accompanying memorandum of law, arguing that he was in custody while on conditional discharge because he was

[3] General Statutes § 53a-31 (a) provides in relevant part: "A period of probation or conditional discharge commences on the day it is imposed, unless the defendant is imprisoned, in which case it commences on the day the defendant is released from such imprisonment. . . ."

Although § 53a-31 (a) has been amended by the legislature since the petitioner's conditional discharge in 2014; see Public Acts 2015, No. 15-211, § 1; that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[4] Practice Book § 23-29 provides in relevant part: "The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that: (1) the court lacks jurisdiction . . . ."

still serving his sentence. He further argued he was in custody because the conditions of his discharge constituted a restraint on his liberty.

On August 4, 2023, the court, *Newson*, *J.*, held an evidentiary hearing on the respondent's motion and the petitioner's objection, at which the respondent introduced the testimony of two individuals: Thomas Canny, a deputy director of the Judicial Branch's Court Support Services Division with a focus on probation matters, who testified that the Office of Adult Probation has no oversight of an individual who is on conditional discharge; and Michelle Deveau, who testified that the Department of Correction had no supervision over the petitioner while he was on conditional discharge.

On November 8, 2023, the court issued a memorandum of decision wherein it dismissed the petition for lack of subject matter jurisdiction on the ground that the petitioner was not in custody when he filed it. The court reasoned: "In the present case, the conditional discharge the petitioner was under required him to refrain from committing 'new crimes' or engaging in 'threats, violence or *unwanted* contact' with the victim. It would appear without need of citation . . . that no individual has a 'liberty interest' in committing crimes or in engaging in threatening, violent or unwanted contact with another person. . . . As such, the conditions of the discharge the petitioner was under at the time he filed this habeas petition did not impose any 'restraints on [his] liberty . . . not shared by the public generally' because the general public does not have the right to commit crimes or to threaten another person's safety and security. . . . Said another way, the terms of his conditional discharge only prohibited him from doing things he could not lawfully do in the first place. . . . Nothing about the conditions of his discharge required him to be at any place, to affirmatively perform any particular acts, such as community service, or to refrain

from doing something, or from going to some place, that he otherwise had a right to. . . . Although he faced a [four] year suspended sentence attached to the conditional discharge, the petitioner could only suffer that penalty by engaging in conduct that was inherently illegal. . . . Therefore, that suspended sentence was more akin to a collateral consequence or a sentence enhancement than a direct restraint on the petitioner's liberty. Therefore, under the circumstances of this particular case, the petitioner was not 'in custody' within the meaning of . . . § 52-466 because the conditional discharge did not restrict him from doing 'those things which in this country free [people] are entitled to do.' . . . It must be reiterated that this decision is not *because* the petitioner was on a conditional discharge, but because of the nature of the conditions that were imposed." (Citations omitted; emphasis in original; footnote omitted.) The court thereafter granted the petitioner's petition for certification to appeal, and this appeal followed.

On appeal, the petitioner asserts that an individual is in custody within the meaning of § 52-466 simply by virtue of his status of being on conditional discharge, regardless of the conditions imposed, because that status constitutes a severe restraint on his liberty for purposes of that statute. The respondent rejects such a wholesale approach and argues, consistent with the habeas court's reasoning, that the determination of whether an individual is in custody within the meaning of § 52-466 while on conditional discharge depends on the nature of the conditions imposed by the court. The respondent concedes that "[t]here may, in fact, be situations in which the particular conditions set by the court during a conditional discharge restrain a person to a sufficient degree, and in a manner not shared by the public generally, that he may be deemed in custody for purposes of establishing habeas jurisdiction," but

argues that this is not such a situation. For the reasons that follow, we agree with the petitioner.

We begin our analysis with the relevant legal principles regarding a habeas court's jurisdiction and the applicable standard of review. Our Supreme Court has noted that "the history and purpose of the writ of habeas corpus establish that the habeas court lacks the power to act on a habeas petition absent the petitioner's allegedly unlawful custody." (Internal quotation marks omitted.) *Ajadi* v. *Commissioner of Correction*, 280 Conn. 514, 537, 911 A. 2d 712 (2006); see also *Lebron* v. *Commissioner of Correction*, 274 Conn. 507, 526, 876 A.2d 1178 (2005), overruled in part on other grounds by *State* v. *Elson*, 311 Conn. 726, 91 A.3d 862 (2014). In order to satisfy the custody requirement of § 52-466, the petitioner must "be in custody on the conviction under attack at the time the habeas petition is filed . . . ." *McCarthy v. Commissioner of Correction*, 274 Conn. 557, 562, 877 A.2d 758 (2005). "[W]hether the petitioner is in custody for purposes of a habeas petition implicates the habeas court's subject matter jurisdiction." (Internal quotation marks omitted.) *Coleman* v. *Commissioner of Correction*, 231 Conn. App. 223, 230, 333 A.3d 113, cert. denied, 351 Conn. 927, 333 A.3d 1109 (2025). "A determination regarding a habeas court's subject matter jurisdiction is a question of law over which we exercise plenary review." Id.

"It is well established that, in determining the scope of the writ of habeas corpus under state law, we look to the scope of the writ under federal law." *Lebron* v. *Commissioner of Correction*, supra, 274 Conn. 529 n.17 ("the legislature did not intend to make the state writ of habeas corpus broader than its federal counterpart"). "The history of Connecticut's habeas corpus jurisprudence is wholly in accord with federal habeas corpus jurisprudence." (Internal quotation marks omitted.)

Ford v. *Commissioner of Correction*, 59 Conn. App. 823, 826, 758 A.2d 853 (2000).

Under the federal habeas statutes, like our state habeas statute, courts can only review petitions of those who are in custody. See 28 U.S.C. §§ 2241 (c), 2254 (a) and 2255 (a) (2018). "Although the custody requirement has been construed liberally . . . it has never been extended to the situation where a habeas petitioner suffers no present restraint from a conviction." (Emphasis omitted; footnote omitted; internal quotation marks omitted.) *Ajadi* v. *Commissioner of Correction*, supra, 280 Conn. 538. Historically, "in custody" meant physical restraint or imprisonment, but in *Jones* v. *Cunningham*, 371 U.S. 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963), the United States Supreme Court broadened the concept to include circumstances in which the petitioner is not physically confined. In *Jones*, the court held that an individual on parole in Virginia is in custody for purposes of invoking habeas jurisdiction. Id., 243. The court began by noting that "[h]istory, usage, and precedent can leave no doubt that, besides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus." Id., 240. The court then recounted that as a result of his being on parole, the petitioner was "confined . . . to a particular community, house, and job at the sufferance of his parole officer." Id., 242. The court explained: "[The] [p]etitioner must not only faithfully obey these restrictions and conditions but he must live in constant fear that a single deviation, however slight, might be enough to result in his being returned to prison to serve out the very sentence he claims was imposed upon him in violation of the United States [c]onstitution. He can be rearrested at any time the [parole] [b]oard or parole officer believes he has violated a term or condition of his parole

. . . and he might be thrown back in jail to finish serving the allegedly invalid sentence with few, if any, of the procedural safeguards that normally must be and are provided to those charged with crime." (Footnote omitted.) Id. The court held that all of these requirements demonstrated that the petitioner was in custody even though he was not physically confined. Id., 243. The court reasoned that "what matters is that [the conditions imposed] significantly restrain [the] petitioner's liberty to do those things which in this country free men are entitled to do. Such restraints are enough to invoke the help of the [writ of habeas corpus]."[5] Id.

Consistent with the principles espoused in *Jones*, it is well established in federal[6] and Connecticut jurisprudence that individuals who are on probation or parole

[5] The court noted that "[e]ven the condition which requires [the] petitioner not to violate any penal laws or ordinances, at first blush innocuous, is a significant restraint because it is the [p]arole [b]oard members or the parole officer who will determine whether such a violation has occurred." *Jones* v. *Cunningham*, supra, 371 U.S. 242 n.19.

[6] See *Lawrence* v. *48th District Court*, 560 F.3d 475, 480–81 (6th Cir. 2009) (petitioner was in custody where court could revoke probation and incarcerate petitioner if he violated terms of his probation or community service); *Earley* v. *Murray*, 451 F.3d 71, 75 (2d Cir. 2006) ("[p]ost-release supervision, admitting of the possibility of revocation and additional jail time, is considered to be custody" (internal quotation marks omitted)), cert. denied sub nom. *Burhlre* v. *Earley*, 551 U.S. 1159, 127 S. Ct. 3014, 168 L. Ed. 2d 752 (2007); *Chaker* v. *Crogan*, 428 F.3d 1215, 1219 (9th Cir. 2005) ("a petitioner is in custody for the purposes of habeas jurisdiction while he remains on probation" (internal quotation marks omitted)), cert. denied, 547 U.S. 1128, 126 S. Ct. 2023, 164 L. Ed. 2d 780 (2006); *Jackson* v. *Coalter*, 337 F.3d 74, 78–79 (1st Cir. 2003) (petitioner was in custody while on probation); *Peck* v. *United States*, 73 F.3d 1220, 1224 n.5 (2d Cir. 1995) ("a term of supervised release, which carries with it the possibility of revocation and additional jail time, satisfies the 'in custody' requirement"), judgment vacated on other grounds on rehearing, 106 F.3d 450 (2d Cir. 1997); *Scanio* v. *United States*, 37 F.3d 858, 860 (2d Cir. 1994) (holding that, upon expiration of period of supervised release, habeas petitioner was no longer in custody); *McVeigh* v. *Smith*, 872 F.2d 725, 727 (6th Cir. 1989) ("individuals on parole, probation, or bail may be in custody for purposes of [28 U.S.C. §] . . . 2254"); *United States* v. *Spawr Optical Research, Inc.*, 864 F.2d 1467, 1470 (9th Cir. 1988) ("[a] probationary term is sufficient custody to confer jurisdiction"), cert. denied, 493 U.S. 809, 110 S. Ct. 51, 107 L. Ed. 2d 20 (1989); *Yoder*

satisfy the custody requirement necessary to invoke the jurisdiction of the habeas court. Quoting the United States Supreme Court's decision in *Morrissey* v. *Brewer*, 408 U.S. 471, 480, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972), our Supreme Court explained: "Probation, like incarceration, is a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty. . . . Probation is simply one point (or, more accurately, one set of points) on a continuum of possible punishments ranging from solitary confinement in a maximum security facility to a few hours of mandatory community service. A number of different options lie between those extremes . . . . To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions." (Internal quotation marks omitted.) *State* v. *Smith*, 207 Conn. 152, 165, 540 A.2d 679 (1988); see also *State* v. *Faraday*, 268 Conn. 174, 180, 842 A.2d 567 (2004) ("[p]robation is, first and foremost, a penal alternative to incarceration" (internal quotation marks omitted)); *Guerra* v. *State*, 150 Conn. App. 68, 76, 89 A.3d 1028 (petitioner was no longer in custody when sentence expired upon completion of probation), cert. denied, 314 Conn. 903, 99 A.3d 1168 (2014); *Koslik* v. *Commissioner of Correction*, 127 Conn. App. 801, 803 n.2, 16 A.3d 753 ("[a]t the time the petition was filed,

v. *Celebrezze*, Docket No. 87-4094, 1988 WL 93102, *1 (6th Cir. September 8, 1988) (unpublished opinion) (because probationary period ended prior to filing of habeas corpus petition, there was no jurisdiction), cert. denied, 490 U.S. 1089, 109 S. Ct. 2428, 104 L. Ed. 2d 985 (1989); *Sammons* v. *Rodgers*, 785 F.2d 1343, 1345 (5th Cir. 1986) ("[a] suspended sentence which has not yet run does establish jurisdiction in the federal court of the state where the sentence continues to exist"); *United States* v. *Hopkins*, 517 F.2d 420, 423 (3d Cir. 1975) ("imposition of a suspended sentence which carried with it the threat of incarceration for failure to comply with certain conditions was sufficient to establish federal habeas corpus jurisdiction").

the petitioner was serving the probationary portion of his sentence, which fulfilled the jurisdictional requirement of . . . § 52-466 that a habeas petitioner be in custody"), appeal dismissed, 301 Conn. 937, 23 A.3d 731 (2011).

Like probation and parole, a conditional discharge is a type of sentence imposing certain conditions. A defendant serving such a sentence remains exposed to the entire unexecuted portion of his sentence until the term of the sentence expires. Although a sentence of conditional discharge is less restrictive than a sentence of probation or parole and does not involve monitoring or direct supervision by the state, it enables the Office of the State's Attorney to seek a violation if it determines that a defendant has violated a condition of his or her release into the community. Moreover, an individual on conditional discharge, like an individual on probation, may be incarcerated for the unexecuted portion of his suspended sentence upon a finding of a violation of his conditional discharge in a civil proceeding that lacks the procedural and constitutional safeguards afforded to members of the public facing criminal charges.

While the issue of whether an individual is in custody while on probation or parole is well settled, the case law pertaining specifically to conditional discharge, by contrast, is sparse. In *Nowakowski* v. *New York*, 835 F.3d 210 (2d Cir. 2016), the United States Court of Appeals for the Second Circuit addressed whether a petitioner who was serving a sentence of one year conditional discharge was in custody within the meaning of the federal habeas statute. Id., 213. In that case, the petitioner had been convicted after a court trial of harassment in the second degree, a violation under New York law. Id., 214. Although the petitioner was ordered to pay a fine, the fine was later vacated and he received a sentence of a one year conditional discharge requiring him to complete one day of community service within

the year, which he completed following the filing of his petition for habeas relief. Id. The District Court dismissed his petition as moot reasoning that his conditional discharge had expired and he could no longer demonstrate a continuing collateral consequence. Id., 215.

On appeal to the Second Circuit, the court first addressed whether the petitioner was "in custody pursuant to the judgment of a [s]tate court at the time the petition [was] filed." (Internal quotation marks omitted.) Id., 215. In considering that issue, the Second Circuit noted that "courts have considered even restraints on liberty that might appear short in duration or less burdensome than probation or supervised release severe enough because they required petitioners to appear in certain places at certain times, thus preventing them from exercising the free movement and autonomy available to the unrestricted public, *or exposed them to future adverse consequences on discretion of the supervising court*." (Emphasis added.) Id., 216.[7]

[7] In so holding, the court in *Nowakowski* cited the decision of the United States Court of Appeals for the Fifth Circuit in *Sammons* v. *Rodgers*, 785 F.2d 1343 (5th Cir. 1986). See *Nowakowski* v. *New York*, supra, 835 F.3d 216. In *Sammons*, the petitioner was convicted of state crimes in Tennessee and received a suspended sentence of five to fifteen years. *Sammons* v. *Rodgers*, supra, 1345. He subsequently was convicted of unrelated federal crimes and incarcerated for those crimes at a federal prison in Texas. Id., 1344–45. The petitioner filed a habeas petition attacking his Tennessee convictions, alleging that those convictions were adversely impacting his eligibility for parole for the federal offenses. Id., 1344. That petition was filed in a federal district court in Texas, where the petitioner was incarcerated, and was denied on the ground that the court lacked jurisdiction to address a challenge to the Tennessee convictions. Id., 1345. On appeal, the Fifth Circuit reversed the district court's denial of the petition, concluding that, because the petitioner alleged that his prior convictions affected his ability to obtain parole in Texas, where he was then imprisoned, the Texas court had jurisdiction over his habeas petition. Id. In dicta, the Fifth Circuit noted that a federal district court in Tennessee also would have jurisdiction to evaluate the constitutionality of his Tennessee convictions. Id. The court explained: "[The petitioner] was sentenced to a term of five to fifteen years

The court ultimately held that the petitioner was in custody while on conditional discharge because the restrictions of his release were not shared by the public generally in that they required the petitioner's "physical presence at particular times and locations, both for community service and court appearances . . . *and carr*[*ied*] *with them the potential for future adverse consequences during the term of the sentence*, *including arrest for noncompliance and modification or revocation of the conditional discharge . . . . They* [*were*] *wholly unlike the economic penalties suffered in fine-only or license-revocation sentences*, *where the punishments implicate only property*, *not liberty*." (Citations omitted; emphasis added; footnote omitted; internal quotation marks omitted.) Id., 217. Thus, the court in *Nowakowski*, while focusing in part on the conditions to which the petitioner was subject, also appeared to consider the possibility of revocation or modification of the release upon violation of the conditions to be a factor in determining whether the petitioner's conditional discharge was a restraint on his liberty.

The Second Circuit was faced with the same inquiry in *Vega* v. *Schneiderman*, 861 F.3d 72 (2d Cir. 2017), in which the petitioner was sentenced to one year of conditional discharge on the condition that she not violate a two year order of protection. Id., 73. The court held: "Although [the petitioner] faced the possibility of some new charge and future sanction if she were to violate the order of protection, we are not convinced that the entirely speculative possibility of a future charge for a future violation is sufficiently severe to

and the sentence was suspended. Nothing in the record indicates that the suspended sentence in this case does not carry with it possible revocation of suspension or other adverse action. Because the suspended sentence apparently has not expired, the federal district court in Tennessee would have jurisdiction to evaluate the constitutionality of the convictions and sentence. . . . A suspended sentence which has not yet run does establish jurisdiction in the federal court of the state where the sentence continues to exist." (Citation omitted.) Id.

place [the petitioner] 'in custody' for purposes of the habeas statute." Id., 75. In so holding, however, the court noted that "the order of protection did not expose [the petitioner] to future adverse consequences at the discretion of a supervising court as did the order in *Nowakowski*." Id. In other words, because the petitioner was on conditional discharge for one year and the order of protection was imposed for two years, she was no longer subject, once she satisfactorily served her conditional discharge, to adverse consequences associated with the sentence that she was serving on conditional discharge. The one year period of protection that extended beyond the conditional discharge thus was a collateral consequence of the petitioner's conviction and did not render her in custody for the purpose of seeking habeas relief.[8]

Although the question of whether an individual on conditional discharge is in custody for purposes of invoking the jurisdiction of the habeas court has not been squarely addressed in Connecticut,[9] we see no

[8] In *United States* v. *Rutigliano*, 887 F.3d 98 (2d Cir. 2018), the Second Circuit noted: "[A] sentence of conditional discharge may or may not so severely restrain liberty as to equate to custody depending on whether it requires a defendant's 'physical presence at particular times and locations, both for community service and court appearances,' *Nowakowski* v. *New York*, [supra, 835 F.3d 217] (holding defendant in custody in such circumstances), or only his refrainment from certain conduct, such as contact with a specified person, see *Vega* v. *Schneiderman*, [supra, 861 F.3d 75] (holding that conditional discharge requiring defendant to abide by order of protection did not equate to custody under [28 U.S.C.] § 2254)." *United States* v. *Rutigliano*, supra, 106. Although this suggests that the court viewed the crucial distinction between *Nowakowski* and *Vega* as being whether the individual was required to engage in specific acts at specific times or locations, this view was clearly dicta in that the issue in *Rutigliano* was whether restitution orders were custodial. Id., 100–101. Moreover, it overlooks the fact that the Second Circuit in *Vega* distinguished the petitioner's situation from the petitioner's situation in *Nowakowski* on the other grounds discussed herein.

[9] In *Coleman* v. *Commissioner of Correction*, supra, 231 Conn. App. 240, this court presumed that a petitioner is in custody when on conditional discharge when it was faced with the question of when the petitioner was released from imprisonment and when his period of conditional discharge commenced for purposes of determining the date his period of conditional

meaningful distinction between conditional discharge and probation in determining whether one is in custody and, therefore, has standing to bring a petition for a writ of habeas corpus. As this court has explained, probation and conditional discharge are "addressed in tandem . . . throughout the relevant statutes." *Coleman* v. *Commissioner of Correction*, supra, 231 Conn. App. 235.[10] Indeed, like proba-

discharge expired. The court held that "the habeas court properly interpreted the phrase 'such imprisonment' in [General Statutes] § 53a-31 (a) in determining that the petitioner's conditional discharge commenced by operation of law on November 10, 2016, when he completed the incarceration portions of his state sentences. As a result, in November, 2019, the petitioner had completed his period of conditional discharge and thus was not in custody on the New Haven conviction when he filed the underlying habeas petition in December, 2019. Therefore, the court properly dismissed the habeas petition for lack of subject matter jurisdiction." Id., 244–45.

[10] General Statutes § 53a-28 (b) sets forth the authorized sentences that a court may impose, which include "[a] term of imprisonment; or . . . a term of imprisonment, with the execution of such sentence of imprisonment suspended, entirely or after a period set by the court, and a period of probation or a period of conditional discharge . . . ."

General Statutes § 53a-29 (b) provides that "[t]he court may impose a sentence of conditional discharge for an offense . . . if it is of the opinion that: (1) Present or extended institutional confinement of the defendant is not necessary for the protection of the public; and (2) probation supervision is not appropriate." Section 53a-29 (c) establishes that "[w]hen the court imposes a sentence of conditional discharge, the defendant shall be released with respect to the conviction for which the sentence is imposed but shall be subject, during the period of such conditional discharge, to such conditions as the court may determine."

General Statutes § 53a-30 (a) sets forth various conditions that a court may order a defendant to comply with when imposing a sentence of probation or conditional discharge. Section 53a-30 (c) provides in relevant part: "At any time during the period of probation or conditional discharge, after hearing and for good cause shown, the court may modify or enlarge the conditions, whether originally imposed by the court under this section or otherwise, and may extend the period, provided the original period with any extensions shall not exceed the periods authorized by section 53a-29. . . ."

General Statutes § 53a-32 provides in relevant part: "(a) At any time during the period of probation or conditional discharge, the court or any judge thereof may issue a warrant for the arrest of a defendant for violation of any of the conditions of probation or conditional discharge, or may issue a notice to appear to answer to a charge of such violation, which notice shall be personally served upon the defendant. . . .

tion,[11] conditional discharge is one point on a continuum of possible punishments that a court may impose.[12] When an individual is released on probation or on conditional discharge, he is, unlike a member of the general public, serving a sentence for a crime of which he has been convicted.[13] Like a person on parole, a person on probation or conditional discharge "remains subject to

"(d) If [a] violation is established . . . the court may: (1) Continue the sentence of probation or conditional discharge; (2) modify or enlarge the conditions of probation or conditional discharge; (3) extend the period of probation or conditional discharge, provided the original period with any extensions shall not exceed the periods authorized by section 53a-29; or (4) revoke the sentence of probation or conditional discharge. If such sentence is revoked, the court shall require the defendant to serve the sentence imposed or impose any lesser sentence. Any such lesser sentence may include a term of imprisonment, all or a portion of which may be suspended entirely or after a period set by the court, followed by a period of probation with such conditions as the court may establish. No such revocation shall be ordered, except upon consideration of the whole record and unless such violation is established by the introduction of reliable and probative evidence and by a preponderance of the evidence."

[11] Similarly, "[p]arole is defined as [t]he conditional release of a prisoner from imprisonment before the full sentence has been served. . . . Parole does not destroy the judgment against the prisoner or remit his or her guilt. Neither does parole diminish a judicially imposed sentence or in any way affect it. A person on parole remains subject to the sentence of commitment for the period of time specified by the court. Parole alters only the method and degree of confinement during the period of commitment." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Fernandez* v. *Commissioner of Correction*, 139 Conn. App. 173, 180–81, 55 A.3d 588 (2012), cert. granted, 307 Conn. 947, 60 A. 3d 960 (2013) (appeal withdrawn May 28, 2013). "[P]arole is an established variation on imprisonment of convicted criminals. . . . The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abide by certain rules during the balance of the sentence. . . . In most cases, the [s]tate is willing to extend parole only because it is able to condition it upon compliance with certain requirements." (Internal quotation marks omitted.) *State* v. *Jacques*, 332 Conn. 271, 303–304, 210 A.3d 533 (2019).

[12] Thus, contrary to the habeas court's conclusion in this case, the petitioner's suspended sentence is not akin to a collateral consequence or a sentence enhancement. It is a sentence of a term of imprisonment. See General Statutes § 53a-28 (b).

[13] In contrast, unconditional discharge is when a defendant is "released with respect to the conviction for which the sentence is imposed without imprisonment, probation supervision or conditions." General Statutes § 53a-34 (b). Such a sentence "is for all purposes a final judgment of conviction." General Statutes § 53a-34 (b).

the sentence of commitment for the period of time specified by the court."[14] (Internal quotation marks omitted.) *Fernandez* v. *Commissioner of Correction*, 139 Conn. App. 173, 181, 55 A.3d 588 (2012), cert. granted, 307 Conn. 947, 60 A.3d 960 (2013) (appeal withdrawn May 28, 2013). The conditional release "alters only the method and degree of confinement during the period of commitment." (Internal quotation marks omitted.) Id. In other words, the liberty enjoyed by a petitioner on conditional discharge is, unlike the liberty enjoyed by members of the public generally, conditional. See *State* v. *Smith*, supra, 207 Conn. 165.

This court has noted that "[t]he most salient difference between the alternative dispositions is that a defendant who is serving a period of conditional discharge is subject to no supervision; whereas a defendant who is serving a period of probation is subject to supervision by the Office of Adult Probation." *Coleman* v. *Commissioner of Correction*, supra, 231 Conn. App. 234 n.7. Although a defendant who is on conditional discharge is not subject to supervision by the Office of Adult Probation, we agree with the reasoning of the United States Court of Appeals for the Second Circuit in *United States* v. *Ramirez*, 421 F.3d 159, 164 (2d Cir. 2005), that, although conditional discharge "does not require 'active supervision,' it has a 'supervisory component' insofar as the sentencing court can revoke or modify the sentence if the defendant violates a condition."[15] This reasoning is consistent with the United

[14] "A split sentence is a term of imprisonment with the execution of such sentence of imprisonment suspended, either entirely or partially, followed by a period of probation or conditional discharge." *State* v. *Abramovich*, 229 Conn. App. 213, 218 n.6, 326 A.3d 593 (2024).

[15] A sentence of conditional discharge in New York is similar to conditional discharge in Connecticut. In New York, "[t]he court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge. . . ." N.Y. Penal Law § 65.05 (2) (McKinney 2009).

States Court of Appeals for the Sixth Circuit's holding in *Lawrence* v. *48th District Court*, 560 F.3d 475 (6th Cir. 2009), in which the court explained: "That the court imposed non-reporting probation is a distinction without a difference, as both give a court supervisory authority over a petitioner which allows it to revoke probation and incarcerate the petitioner should he violate the probation's terms."[16] Id., 480 n.5.

Moreover, not only is an individual who is serving a sentence of conditional discharge "exposed . . . to future adverse consequences on discretion of the supervising court"; *Nowakowski* v. *New York*, supra, 835 F.3d

[16] In *Meister* v. *New York State Attorney General*, Docket No. 06-CV-090A, 2007 WL 2874363 (W.D.N.Y. September 26, 2007), the United States District Court for the Western District of New York also addressed this issue. In that case, the court ultimately determined that it did not need to decide the question of whether the petitioner serving a sentence of conditional discharge was in custody because the habeas petition had been rendered moot by the expiration of the sentence. Id., *3. The court nevertheless noted: "The Second Circuit has explained that while [N.Y. Penal Law] § 65.05 does not require active supervision, it has a supervisory component insofar as the sentencing court can revoke or modify the sentence if the defendant violates a condition. *United States* v. *Ramirez*, [supra, 421 F.3d 164] (discussing [N.Y. Penal Law] § 65.05 in the context of determining whether § 4A1.1 (d) of the Federal Sentencing Guidelines includes a sentence of conditional discharge under N.Y. Penal Law § 65.05) (citing *United States* v. *Labella-Szuba*, 92 F.3d 136, 138 (2d Cir. 1996) ([a]lthough defendant's sentence did not include active supervision, her sentence did include a supervisory component in that the Herkimer Village Court retained the power to revoke her conditional discharge sentence; finding that a sentence of conditional discharge was a criminal justice sentence); *United States* v. *Miller*, 56 F.3d 719, 722 (6th Cir. 1995); *United States* v. *Lloyd*, 43 F.3d 1183, 1188 (8th Cir. 1994) (holding the nature of a sentence of conditional discharge to be the functional equivalent of unsupervised probation); *United States* v. *Caputo*, 978 F.2d 972, 977 (7th Cir. 1992) (stating that unsupervised probation equals conditional discharge))." (Internal quotation marks omitted.) *Meister* v. *New York State Attorney General*, supra, 2007 WL 2874363, *2. On that basis, the court expressed that, because "the Second Circuit has held that a sentence of conditional discharge is the functional equivalent of unsupervised probation, and that there was a possibility of imprisonment . . . the [c]ourt would be inclined to conclude that [the petitioner] has satisfied the in custody requirement because it appears that the state exercises continuing supervision over him and he therefore was subject to restraints not shared by the public generally . . . ." (Citation omitted; footnote omitted; internal quotation marks omitted.) Id., *3.

216; but when a condition of supervised release is violated, an individual on conditional discharge, like an individual on probation, is subject to incarceration without the procedural safeguards afforded to members of the public. "[A] [probation or conditional discharge] revocation proceeding . . . is not a criminal proceeding. . . . It therefore does not require all of the procedural components associated with an adversary criminal proceeding." (Internal quotation marks omitted.) *State* v. *Faraday*, supra, 268 Conn. 183. At a revocation proceeding, the state must prove each alleged violation of probation only by a preponderance of the evidence, rather than beyond a reasonable doubt; see, e.g., *State* v. *Esquilin*, 179 Conn. App. 461, 470–71, 179 A.3d 238 (2018); and the rules of evidence do not apply to such proceedings. See Conn. Code Evid. § 1-1 (d) (4). This court has explained that "[t]he evidentiary standard for probation violation proceedings is broad. . . . [T]he court may . . . consider the types of information properly considered at an original sentencing hearing because a revocation hearing is merely a reconvention of the original sentencing hearing. . . . The court may, therefore, consider hearsay information, evidence of crimes for which the defendant was indicted but neither tried nor convicted, evidence of crimes for which the defendant was acquitted, and evidence of indictments or informations that were dismissed." (Internal quotation marks omitted.) *State* v. *Randy G.*, 195 Conn. App. 467, 474–75, 225 A.3d 702, cert. denied, 335 Conn. 911, 229 A.3d 472 (2020). Thus, an individual on probation or conditional discharge is subject to incarceration without the procedural safeguards enjoyed by members of the public, and that exposure, in itself, constitutes a severe restraint on an individual's liberty. We therefore conclude that an individual on conditional discharge is in custody within the meaning of § 52-466 regardless of the conditions of discharge.

On the basis of the foregoing, we conclude that the petitioner was in custody within the meaning of § 52-466 and thus that the habeas court improperly determined that it lacked jurisdiction over the petitioner's petition for a writ of habeas corpus.

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

In this opinion the other judges concurred.

THE METROPOLITAN DISTRICT *v.* DAVID B. MOTT ET AL.
(AC 46665)

Elgo, Moll and Suarez, Js.

Syllabus

The defendants appealed from the trial court's judgment rendered on their counterclaim seeking a declaratory judgment and to quiet title with respect to the plaintiff's express easement encumbering their property. The defendants claimed, inter alia, that the court improperly rendered judgment for the plaintiff on their quiet title claim. *Held*:

This court lacked subject matter jurisdiction to review portions of the defendants' claim that the declarations issued by the trial court in adjudicating the counterclaim were improper, as the defendants failed to demonstrate that they were aggrieved by two of the declarations at issue, which mirrored or substantively tracked the language of the defendants' requested declarations.

The trial court's final declaration at issue was not improper, as the defendants misconstrued the scope of the court's declaration regarding the plaintiff's acquiescence to the defendants' encroachment in the easement area by their installation of a driveway and utilities.

The trial court did not improperly fail to address certain issues in adjudicating the counterclaim, as the court resolved one issue, there was no reason for the court to address a second issue, and the defendants abandoned their claim regarding a third issue by failing to brief it adequately.

The trial court improperly rendered judgment for the plaintiff on count two of the defendants' counterclaim seeking to quiet title, as, although the court deemed the lack of a dispute between the parties regarding ownership of the property, subject to the easement, to be dispositive, disputes arising as

to an express easement when title to the encumbered property is not in question may be resolved pursuant to statute (§ 47-31), and, therefore, the court should have rendered judgment for the defendants to the extent that the court granted the defendants' requested relief.

This court declined to review the defendants' claim that the trial court improperly admitted irrelevant evidence at trial, as the defendants failed to identify, with any specificity, the evidence that the court purportedly erred in admitting.

The trial court did not improperly admit evidence at trial generally, as the defendants failed to establish that the court committed error in hearing evidence in order to resolve the counterclaim.

This court declined to review the defendants' claim that the trial court improperly declined to award them attorney's fees and costs pursuant to the rule of practice (§ 1-25), as the defendants failed to adequately brief their claim.

The trial court properly determined that the defendants were not entitled to attorney's fees and costs pursuant to statute (§ 48-17b), as the defendants neither alleged an inverse condemnation claim in the counterclaim nor successfully prosecuted such a claim, and, accordingly, § 48-17b was inapplicable to this case.

Argued May 27—officially released September 30, 2025

Procedural History

Action to quiet title to certain real property owned by the named defendant et al. over which the plaintiff held an easement, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the named defendant et al. filed a counterclaim; thereafter, the plaintiff withdrew its claims against the defendant R & R Construction, Inc., et al.; subsequently, the plaintiff withdrew its action and the counterclaim was tried to the court, *Rosen, J.*; judgment in part for the named defendant et al. on the counterclaim, from which the named defendant et al. appealed to this court. *Reversed in part*; *judgment directed.*

Joseph M. Mott, pro hac vice, with whom, on the brief, was *Proloy K. Das*, for the appellants (named defendant et al.).

Elizabeth M. Cristofaro, for the appellee (plaintiff).

Opinion

MOLL, J. The defendants and counterclaim plaintiffs David B. Mott and Jacqueline L. Mott (defendants)[1] appeal from the judgment of the trial court rendered on their counterclaim seeking a declaratory judgment and to quiet title with respect to an express easement encumbering their property, which easement inures to the benefit of the plaintiff and counterclaim defendant, the Metropolitan District (plaintiff).[2] On appeal, the defendants' claims distill to whether the court (1) committed error in issuing relief, (2) improperly failed to address certain issues, (3) improperly rendered judgment on their quiet title claim in the plaintiff's favor, (4) abused its discretion in admitting evidence during trial, and (5) improperly declined to award them attorney's fees and costs. We reverse the judgment of the trial court only insofar as the court rendered judgment for the plaintiff on the entirety of the defendants' quiet title claim.

The following undisputed facts, as found by the trial court or as gleaned from the record, and procedural history are relevant to our resolution of this appeal. On May 29, 2015, the defendants purchased real property located at 594 Albany Turnpike in Canton (property), with the intent to build a house thereon. The property is subject to an easement granted in favor of the plaintiff

[1] The plaintiff's verified complaint named R&R Construction, Inc., James Trzcinski, and the town of Canton as additional defendants; however, the plaintiff subsequently withdrew its claims as to those parties. In the interest of simplicity, we refer to David B. Mott and Jacqueline L. Mott collectively as the defendants.

[2] "We note that the plaintiff has been identified alternatively as the Metropolitan District and the Metropolitan District Commission in our case law." *Metropolitan District* v. *Commission on Human Rights & Opportunities*, 180 Conn. App. 478, 480 n.1, 184 A.3d 287, cert. denied, 328 Conn. 937, 184 A.3d 267 (2018). We refer to the plaintiff as the Metropolitan District, the moniker used by the plaintiff in its verified complaint and on appeal.

in 1939, and the defendants were aware of the easement before they purchased the property. The easement area comprises a seventy-five foot wide section that runs across the property, as well as a twenty-five foot wide section that extends from the main section. Located four to six feet below the ground within the easement area is a forty-eight inch diameter water main pipeline (pipeline), accompanied by pipe collars located three to five feet below the ground, which the plaintiff installed and which supplies water to approximately 400,000 people in the greater Hartford area.

The easement provides in relevant part that the plaintiff is granted "an easement for a [right-of-way] for the construction and maintenance of [pipelines] for the carriage of water over [the easement area] . . . . The [plaintiff] shall have the right to install and maintain one or more [pipelines] through said [right-of-way] and shall have the right at all times to enter upon said [right-of-way] for the purpose of inspecting, operating and repairing said [pipelines]. . . ." The easement further provides in relevant part that "[t]he grantor agrees not to erect any permanent buildings or other structures within the limits of said [right-of-way] and to maintain the surface of the ground at approximately the same grade not exceeding 12 inches up or down from the present surface over all parts of said [right-of-way]. The grantor shall have the right to use the surface of said [right-of-way] for any purpose connected with usual agricultural operations but not for orchard or timber raising or for any similar purpose which would interfere with the work of installing, maintaining or repairing said [pipelines]. The grantor shall have the right to build a road over said [right-of-way], provided the center line of said road shall be coincident with the center line of said [right-of-way] and built in such a manner as not to prevent or interfere with the layout of future [pipelines], and provided the [plaintiff] shall have free use of said

road for the purpose of constructing, maintaining, operating and repairing said [pipelines] without responsibility for the maintenance or upkeep of said road. Nothing herein shall prevent the use of said [right-of-way] by the [plaintiff] herein for such [pipeline] uses as it may require nor shall the [plaintiff] be responsible for any damage which may be done to any road built by the grantor as a result of its use by the [plaintiff] or its agents. . . .''

In May, 2015, the defendants contacted the plaintiff to inquire about its permit process in connection with their intent to install a driveway over and underground utilities within the easement area. In response, the plaintiff provided the defendants with information regarding what it called its ''encroachment permit process,'' which the court found to be a ''voluntary encroachment process.'' Attached to the plaintiff's correspondence was a ''sample encroachment agreement,'' with the plaintiff advising the defendants that ''[a]n encroachment agreement will be needed if any development occurs within the limits of the right-of-way . . . .''[3] Among other provisions, the sample encroachment agreement delineated insurance requirements and set forth six ''specific conditions'' that the defendants would need to satisfy.

On February 11, 2016, the defendants sent a letter to the plaintiff ''to request permission to permanently encroach upon the [plaintiff's] . . . right-of-way on [the] property as shown on [an] enclosed site plan.'' The defendants' correspondence also confirmed their understanding that six restrictions applied to their proposed construction project.[4]

[3] During trial, David B. Mott testified that he had received the plaintiff's correspondence and the sample encroachment agreement, copies of which were admitted in full into the record.

[4] The six restrictions identified by the defendants substantively tracked the six ''specific conditions'' detailed in the sample encroachment agreement.

On March 7, 2016, upon the recommendation of the plaintiff's Water Bureau (water bureau), the plaintiff passed a resolution[5] (March 7, 2016 resolution) authorizing the execution of an agreement, subject to approval by the plaintiff's district counsel, granting the defendants permission to proceed with their construction project and "to permanently encroach upon the [plaintiff's] [r]ight-of-[w]ay," provided that the plaintiff would not be held liable for any costs or damages in relation to the proposed construction project or any future construction, maintenance, or repair stemming from the encroachment. On April 18, 2016, the plaintiff sent the defendants a proposed encroachment agreement (encroachment agreement), which included the six restrictions previously acknowledged by the defendants and insurance requirements, among other terms. The defendants declined to execute the proposed encroachment agreement.[6]

Between September, 2016, and January, 2017, unbeknownst to the plaintiff, the defendants proceeded with their construction project. In January, 2017, after having discovered the defendants' construction activities, the plaintiff filed an application seeking an ex parte temporary restraining order and a temporary injunction, accompanied by an order to show cause and a verified complaint. In its one count verified complaint, the plaintiff asserted that it was "bring[ing] this action [to quiet title] pursuant to General Statutes § 47-31[7] seeking to

[5] The resolution was passed by the plaintiff's District Board. In the interest of simplicity, we treat the plaintiff and its District Board as one and the same.

[6] In an email sent by the defendants to the plaintiff on July 13, 2016, which email was admitted in full into the record, the defendants objected to the proposed encroachment agreement, stating that they could not "agree to amending the easement and placing additional burdens on [their] land title."

[7] General Statutes § 47-31 (a) provides: "An action may be brought by any person claiming title to, or any interest in, real or personal property, or both, against any person who may claim to own the property, or any part of it, or to have any estate in it, either in fee, for years, for life or in reversion or remainder, or to have any interest in the property, or any lien or encumbrance on it, adverse to the plaintiff, or against any person in

enforce its long-standing . . . easement rights, protect its [pipeline], and otherwise settle the status of title with respect to the [property] owned by the [defendants] and impacted by the plaintiff's . . . easement." (Footnote added.) As relief, the plaintiff requested, inter alia, that the court (1) enjoin the defendants from proceeding with their construction project and (2) order the defendants to execute the encroachment agreement with the plaintiff before proceeding with any additional construction activities in, on, or near the easement area. On February 14, 2017, the defendants filed an objection to the plaintiff's application.

On February 16, 2017, the parties executed a settlement agreement (interim settlement agreement) resolving the plaintiff's application for a temporary injunction, which agreement the trial court, *Berger*, *J.*, approved that same day. The interim settlement agreement provided in relevant part that (1) the plaintiff would withdraw its application for a temporary injunction without prejudice, (2) the defendants were permitted to resume their construction activities, provided that, inter alia, they adhered to the conditions specified in the March 7, 2016 resolution, except for certain insurance requirements as detailed in the interim settlement agreement, and (3) "[n]o [e]ncroachment [a]greement will be signed or required at this time and no recording will be made [on] the [Canton] land records regarding any of the improvements/utilities located in the right-of-way, but the [p]laintiff reserves its right to seek that relief in the future. . . ." There is no dispute that the defendants completed the installation of the driveway and the utilities in March, 2017.

whom the land records disclose any interest, lien, claim or title conflicting with the plaintiff's claim, title or interest, for the purpose of determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the property. Such action may be brought whether or not the plaintiff is entitled to the immediate or exclusive possession of the property."

On April 3, 2017, upon the recommendation of the water bureau, the plaintiff passed a resolution authorizing the execution of an encroachment agreement consistent with the terms of the March 7, 2016 resolution, with the added requirement mandating the recording of the executed encroachment agreement on the Canton land records.

The interim settlement agreement did not resolve the plaintiff's quiet title claim. On June 29, 2017, the defendants filed an answer and special defenses, as well as a four count counterclaim. Counts one and two of the counterclaim sought, respectively, a declaratory judgment and to quiet title pursuant to § 47-31.[8] The defendants requested what we construe to be identical relief in both counts one and two, namely, declarations that (1) "the easement has not been altered or modified in any manner and remains in full force and effect"; (2) "the [defendants] had the right to install, and have the right to maintain, the utilities and driveway that they have installed without interference from the [plaintiff]";[9] and (3) "the [plaintiff] does not have a right to compel the [defendants] to sign an encroachment agreement that requires the modification or amendment of the easement, the provision of insurance in perpetuity, or that any such encroachment agreement be recorded on the Canton land records[10] . . . ."[11] (Foot-

[8] Counts three and four of the counterclaim sounded in abuse of civil process and a violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq., both of which the defendants withdrew before trial.

[9] This request for relief differed slightly in counts one and two of the counterclaim, as the requested declaration in count two omitted the phrase "without interference from the [plaintiff]."

[10] This request for relief differed slightly in counts one and two of the counterclaim, as the requested declaration in count two read: "That the [plaintiff] does not have a right to compel the [defendants] to sign an encroachment agreement that requires the modification or amendment of *the terms of* the easement, the provision of insurance in perpetuity, or that any such encroachment agreement be recorded on the Canton land records . . . ." (Emphasis added.)

[11] In counts one and two of the counterclaim, the defendants requested as relief several additional declarations, which were abandoned at trial. In

note added.) The plaintiff subsequently filed an answer and special defenses[12] to the counterclaim, which pleading it later amended.[13]

a footnote in its memorandum of decision, the court, *Rosen*, *J.*, stated that, "[a]t the commencement of trial, the defendants advised the court that they were proceeding on the following prayers for relief only:" (1) with respect to count one, the three declarations that we detail in the body of this opinion; and (2) with respect to count two, the following four declarations: (1) "[t]hat the easement has not been altered or modified in any manner and remains in full force and effect"; (2) that the plaintiff has no right to enter onto the property without "reasonable advance notice and in a manner and pattern commensurate with similarly situated property owners, except in the event of an emergency"; (3) "[t]hat the [plaintiff] does not have a right to compel the [defendants] to sign an encroachment agreement that requires the modification or amendment of the terms of the easement, the provision of insurance in perpetuity, or that any such encroachment agreement be recorded on the Canton land records"; and (4) that the plaintiff had to negotiate with the defendants in good faith to purchase additional property rights for just compensation if it wanted to modify the easement. The record, however, does not support the court's recitation of the defendants' requested relief vis-à-vis count two.

During trial, the court stated that it wanted to "go through the prayers for relief in each of [the] two counts [of the counterclaim] and confirm which matters are still live and which matters have already been resolved." With respect to count one, the court confirmed that the defendants were requesting only the three declarations attendant to that count that we have detailed. As to the relief requested in count two, the court asked the parties' respective counsel whether the requested declarations "mirror[ed]" those in count one; both counsel responded in the affirmative. The court then stated: "All right. So, it's going to be the same determination as to those [requests for relief], as to the [requests for relief] in count one." The trial transcripts do not reflect that the defendants informed the court that, with respect to count two, they were seeking declarations concerning the plaintiff's entry onto the property with reasonable advance notice or the plaintiff's purchase of additional property rights; in fact, during trial, the defendants' counsel expressly notified the court that the defendants were not pursuing identical requested declarations in count one concerning those issues. Thus, we construe the record to demonstrate that the defendants represented to the court during trial that they were seeking identical relief in both counts one and two, namely, the three declarations that we have identified.

[12] The plaintiff asserted three special defenses: (1) untimeliness pursuant to Practice Book § 17-4 and General Statutes § 52-212a; (2) governmental immunity; and (3) unclean hands. The plaintiff withdrew the second and third special defenses before trial, and the court later determined that the plaintiff had abandoned its first special defense by failing to brief that defense in its posttrial brief.

[13] On April 14, 2022, pursuant to Practice Book § 10-60 (a) (3), the plaintiff filed a request for leave to file an amended answer, to which the defendants did not file an objection within fifteen days. See Practice Book § 10-60 (a) (3) ("[i]f no party files an objection to the request [for leave] within fifteen

On April 24, 2020, pursuant to Practice Book § 13-19,[14] the defendants filed a demand for disclosure of defense. On May 4, 2020, the plaintiff filed a disclosure of defense, raising two defenses: (1) the defendants acquired title to the property subject to the easement granted in favor of the plaintiff, and (2) the express terms of the easement restrict the defendants to conducting certain activities on the surface of the easement area and prevent them from conducting any activities beneath the surface of the easement area, such that "the rights of the [plaintiff] with respect to the subsurface of the easement area are exclusive, and any attempt by the [defendants] to conduct or cause to conduct any activity in such subsurface is prohibited and constitutes an encroachment under the easement." That same day, upon the recommendation of the water bureau, the plaintiff passed a resolution rescinding its prior conditional approval of the defendants' construction project.

On September 23, 2021, the plaintiff withdrew the verified complaint. The next day, the plaintiff filed a motion to dismiss the counterclaim[15] as moot, asserting, inter alia, that (1) the defendants' installation of the

days from the date it is filed, the amendment shall be deemed to have been filed by consent of the adverse party").

[14] Practice Book § 13-19 provides in relevant part: "In any action to foreclose or to discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. . . ."

[15] The withdrawal of the verified complaint did not affect the viability of the counterclaim. See Practice Book § 10-55 ("[t]he withdrawal of an action after a counterclaim, whether for legal or equitable relief, has been filed therein shall not impair the right of the defendant to prosecute such counterclaim as fully as if said action had not been withdrawn, provided that the defendant shall, if required by the judicial authority, give bond to pay costs as in civil actions").

driveway over and utilities within the easement area had been completed, (2) the plaintiff had withdrawn the verified complaint and rescinded its conditional approval of the defendants' encroachment on the easement, such that the attendant demand that the defendants execute an encroachment agreement to be recorded on the Canton land records had been extinguished, and (3) "effecting the terms of the [interim] settlement agreement has provided the [defendants with] all the relief that they are seeking through the counterclaim." On October 22, 2021, the defendants filed an objection, and on November 4, 2021, the plaintiff filed a reply brief. On January 20, 2022, the court, *Sicilian, J.*, denied the plaintiff's motion to dismiss the counterclaim.

The matter was tried to the court, *Rosen, J.*, on May 3 and December 9, 2022. The court heard testimony from David B. Mott and two of the plaintiff's employees, and the court admitted several exhibits in full into the record. The parties subsequently filed posttrial briefs.

On June 16, 2023, the court issued a memorandum of decision adjudicating the counterclaim.[16] With regard

[16] Preliminarily, the court addressed an assertion raised by the plaintiff in its posttrial brief that the court lacked subject matter jurisdiction to entertain the counterclaim for lack of ripeness because (1) the relief that the defendants sought was unrelated to the allegations in the counterclaim and (2) the defendants failed to adduce any evidence demonstrating that they were harmed by the plaintiff's conduct, such that their claims were "contingent on the outcome of a dispute that has not yet transpired, and indeed may never transpire, and any injury (which is not even alleged) would be hypothetical . . . ." The court rejected the plaintiff's ripeness claim, relying on "[t]he same analysis" employed by Judge Sicilian in denying the plaintiff's motion to dismiss the counterclaim. Specifically, the court iterated Judge Sicilian's determinations that, (1) pursuant to the interim settlement agreement, the plaintiff expressly reserved the right to seek to compel the defendants to execute an encroachment agreement in the future, (2) the plaintiff's resolutions established that it continued to maintain that the defendants had encroached on the easement and were required to execute an encroachment agreement, which was to be recorded on the Canton land records, and (3) nothing precluded the plaintiff from again raising in court the positions reflected in its resolutions. Neither party has briefed the issue of ripeness on appeal, and we discern no need to address it further.

to the declarations that the defendants requested as relief,[17] the court first addressed the defendants' request for a declaration that "the easement has not been altered or modified in any manner and remains in full force and effect . . . ." The court determined that "[t]here was no evidence adduced at trial that the easement was altered or modified in any respect since it was recorded on the Canton land records in 1939, and the plaintiff agrees 'that the [easement] . . . has not been altered or modified and remains in full force and effect.' " Accordingly, the court declared "that the easement has not been altered or modified in any manner and remains in full force and effect."

Next, the court considered the defendants' request for a declaration that "the [defendants] had the right to install, and have the right to maintain, the utilities and driveway that they have installed without interference from the [plaintiff] . . . ." After citing language in the easement providing, inter alia, that the plaintiff had the right to install and to maintain one or more pipelines within the easement area, as well as the right to enter the easement area to inspect, to operate, and to repair any such pipelines, the court declared "that under the easement, the defendants had the right to install a driveway and underground utilities in the easement area on [the] property pursuant to a conditional approval granted by the plaintiff. The court expressly decline[d] to grant the defendants' request that the court declare '[t]hat the [defendants] had the right to install, and have the right to maintain, the utilities and driveway that they have installed without interference from [the plaintiff].' . . . The defendants must, of course, comply fully with their obligations under the easement and at law." (Citation omitted.)

[17] The court cited the declarations requested as relief in count one of the counterclaim; however, as we have determined, the defendants sought identical declarations as relief in count two. See footnote 11 of this opinion.

Thereafter, the court turned to the defendants' request for a declaration that "the [plaintiff] does not have a right to compel the [defendants] to sign an encroachment agreement that requires the modification or amendment of the easement, the provision of insurance in perpetuity, or that any such encroachment agreement be recorded on the Canton land records . . . ." After summarizing the plaintiff's authority as a political subdivision of the state,[18] the court determined that "[t]he plaintiff does not allege or argue that it has the power to compel the defendants to sign the encroachment agreement, only that it believes that it is appropriate for the defendants to do so." Accordingly, the court declared "that the plaintiff does not have a right to compel the defendants to sign an encroachment agreement that requires the modification or amendment of the easement, the provision of insurance in perpetuity, or the recording of any such encroachment agreement on the Canton land records. As the plaintiff aptly note[d] [in its posttrial brief], '[n]ow that the [defendants] have installed their improvements and built their home on the property, the parties must work to accommodate each other [going forward].' . . . If they do not, each party may seek appropriate remedies under the easement and at law as and when circumstances in the future may require." (Citation omitted; footnotes omitted.)

Next, the court briefly addressed, and rejected, arguments by the defendants that the plaintiff was barred from contesting their requests for declaratory relief (1) pursuant to the unclean hands doctrine and (2) because

[18] The plaintiff "is a political subdivision of the state, specially chartered by the Connecticut General Assembly for the purpose of water supply, waste management and regional planning. See 20 Spec. Acts 1204, No. 511 (1929); see also *Rocky Hill Convalescent Hospital, Inc.* v. *Metropolitan District*, 160 Conn. 446, 450–51, 280 A.2d 344 (1971)." (Footnote omitted.) *Martel* v. *Metropolitan District Commission*, 275 Conn. 38, 41, 881 A.2d 194 (2005).

the plaintiff waived such right by withdrawing the verified complaint. With respect to the unclean hands doctrine, the court determined that (1) the basis of the defendants' invocation of the doctrine was the plaintiff's alleged (a) passage of " 'illegal' " resolutions and (b) breach of the interim settlement agreement, and (2) the doctrine was inapplicable because the plaintiff was not seeking any relief following the withdrawal of the verified complaint. As for the waiver issue, the court determined that the plaintiff's withdrawal of the verified complaint did not constitute a waiver of its right to contest the allegations in the counterclaim, the material allegations of which the plaintiff had denied.

The court proceeded to adjudicate count two of the counterclaim seeking to quiet title. The court determined that "there is no dispute over title to the property. The parties agree that the defendants hold record title to the property, subject to the plaintiff's easement. Accordingly, judgment shall enter in favor of the plaintiff and against the defendants on count two of the counterclaim."

Finally, the court addressed requests by the defendants to award them attorney's fees and costs pursuant to several statutes, as well as Practice Book § 1-25. The court determined that the defendants were not entitled to attorney's fees and costs under any of the claimed provisions. This appeal followed. Additional facts and procedural history will be set forth as necessary.

Preliminarily, we note that resolving some of the defendants' claims requires us to interpret the court's decision and/or the counterclaim. "[T]he construction of a judgment is a question of law for the court. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as

gathered from all parts of the judgment. . . . The judgment should admit of a consistent construction as a whole. . . . To determine the meaning of a judgment, we must ascertain the intent of the court from the language used and, if necessary, the surrounding circumstances." (Internal quotation marks omitted.) *Chartier* v. *Valliere*, 234 Conn. App. 1, 11, A.3d (2025). "It is well established that 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. . . . Furthermore, we long have eschewed the notion that pleadings should be read in a hypertechnical manner. Rather, [t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically. . . . [T]he complaint [or counterclaim] must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory [on] which it proceeded, and do substantial justice between the parties. . . . Our reading of pleadings in a manner that advances substantial justice means that a pleading must be construed reasonably, to contain all that it fairly means, but carries with it the related proposition that it must not be contorted in such a way so as to strain the bounds of rational comprehension." (Emphasis omitted; internal quotation marks omitted.) *Hepburn* v. *Brill*, 348 Conn. 827, 848, 312 A.3d 1 (2024).

I

We first consider the defendants' claim that the declarations issued by the trial court in adjudicating the counterclaim were improper. We conclude that (1) we lack subject matter jurisdiction to review portions of the defendants' claim for lack of aggrievement and (2) the remaining portion of the defendants' claim fails on the merits.

A

The defendants contend that the court committed error in declaring that (1) "the easement has not been altered or modified in any manner and remains in full force and effect" and (2) "the plaintiff does not have a right to compel the defendants to sign an encroachment agreement that requires the modification or amendment of the easement, the provision of insurance in perpetuity, or the recording of any such encroachment agreement on the Canton land records." With respect to the former declaration, the defendants maintain that the court, inter alia, "never discussed the language of the easement or any other evidence or circumstance it may have relied upon to support its conclusion that the easement had not been altered or modified." (Footnote omitted.) As to the latter declaration, the defendants posit that the court predicated the declaration solely on the plaintiff's withdrawal of the verified complaint, which was not a sufficient ground supporting the declaration. The plaintiff argues, inter alia, that the defendants expressly requested that the court issue these two declarations, which we construe to be a claim that the defendants were not aggrieved by them. We conclude that the defendants cannot demonstrate that they were aggrieved by these two declarations, such that we lack subject matter jurisdiction to entertain the defendants' contentions.

"[P]roof of aggrievement is . . . an essential prerequisite to the court's jurisdiction of the subject matter of the appeal. . . . Ordinarily, a party that prevails in the trial court is not aggrieved. . . . Moreover, [a] party cannot be aggrieved by a decision that grants the very relief sought. . . . Such a party cannot establish that a specific personal and legal interest has been specially and injuriously affected by the decision." (Citations omitted; internal quotation marks omitted.) *Seymour* v. *Seymour*, 262 Conn. 107, 110–11, 809 A.2d 1114 (2002).

Moreover, "a litigant has no right to appeal a judgment in his or her favor merely for the purpose of having the judgment based on a different legal ground than that relied upon by the trial court, or to settle an abstract question of law." (Internal quotation marks omitted.) *Jones* v. *Redding*, 296 Conn. 352, 366, 995 A.2d 51 (2010).

In the counterclaim, the defendants expressly requested as relief that the court issue declarations that (1) "the easement has not been altered or modified in any manner and remains in full force and effect" and (2) "the [plaintiff] does not have a right to compel the [defendants] to sign an encroachment agreement that requires the modification or amendment of the easement, the provision of insurance in perpetuity, or that any such encroachment agreement be recorded on the Canton land records . . . ." The two declarations in question that the court issued either mirrored or substantively tracked the language of the defendants' requested declarations. Accordingly, we conclude that there is no basis for the defendants to claim that they were aggrieved by the two declarations in question, such that we lack subject matter jurisdiction to consider the defendants' assertions challenging them. See, e.g., *Scalora* v. *Scalora*, 189 Conn. App. 703, 712–13 n.5, 209 A.3d 1 (2019) (concluding that this court could not review portion of defendant's claim when trial court resolved matter in defendant's favor, such that defendant could not claim aggrievement and lacked standing in relation to that portion of claim); *State* v. *Sanders*, 86 Conn. App. 757, 764, 862 A.2d 857 (2005) (concluding that this court could not review, for lack of aggrievement, defendant's claim when trial court resolved matter in defendant's favor).

B

The defendants also assert that the court improperly declared that, "under the easement, the defendants had

the right to install a driveway and underground utilities in the easement area on their property pursuant to a conditional approval granted by the plaintiff." The defendants contend that the plaintiff had no "approval authority" cabining their right to install a driveway and utilities in the easement area.[19] In short, the defendants misconstrue the court's decision in this regard. The court determined that (1) the plaintiff enjoyed certain benefits pursuant to the easement, including the right to enter the easement area to inspect, to operate, and to repair the pipeline, (2) the plaintiff utilized a "voluntary encroachment process" to assess whether proposed construction within the easement area posed a threat to the pipeline, and (3) pursuant to this process, the plaintiff conditionally approved the defendants' construction project within the easement area. We do not interpret the court's decision to reflect a determination that the plaintiff was imbued with binding, enforceable "approval authority" regulating the defendants' activity within the easement area; rather, we construe the decision as determining that the plaintiff, after following its "voluntary encroachment process," had acquiesced to the defendants' encroachment[20] in the easement area

[19] Relying on the principle that "a declaratory judgment action must rest on some cause of action that would be cognizable in a nondeclaratory suit"; *Wilson* v. *Kelley*, 224 Conn. 110, 116, 617 A.2d 433 (1992); the defendants further contend that all of the court's declarations "lacked an essential nexus to a viable claim or cause of action" because the plaintiff withdrew the verified complaint and the court "dismissed" count two of the counterclaim seeking to quiet title. This contention is unpersuasive. The court did not dismiss count two; rather, it rendered judgment in the plaintiff's favor on that count. As we explain in part III of this opinion, insofar as the court granted the defendants the relief that they requested vis-à-vis count two, the court should have rendered judgment in the defendants' favor thereon.

[20] The defendants take issue with a statement in the court's decision that they "had encroached on the easement" by engaging in construction activities within the easement area prior to the filing of the present action. The defendants maintain that the court misapplied the term "encroached" because "a claim that the defendants 'encroached' is inconsistent with the defendants' fee title to the property." Our case law belies this position. See, e.g., *Lyme Land Conservation Trust, Inc.* v. *Platner*, 325 Conn. 737, 743, 159 A.3d 666 (2017) (setting forth finding that property owner's relocation of driveway "encroached" on conservation easement encumbering property);

by their installation of the driveway and the utilities, provided certain conditions were satisfied. Thus, the defendants' claim is unavailing.

II

The defendants next claim that the trial court improperly failed to address three issues in adjudicating the counterclaim. The defendants maintain that the court did not determine whether (1) the relief requested by the plaintiff in the withdrawn verified complaint, seeking orders that the defendants execute the encroachment agreement and that the executed encroachment agreement be recorded on the Canton land records, was improper as a matter of law, (2) the plaintiff " 'own[ed]' " or had " 'exclusive use and possession of the subsurface' " of the easement, and (3) the resolutions adopted by the plaintiff concerning the easement were illegal. For the reasons that follow, this claim is untenable.

With respect to the first issue—whether the plaintiff improperly requested as relief in the withdrawn verified complaint orders that the defendants execute the encroachment agreement and that the executed encroachment agreement be recorded on the Canton land records—the court issued a declaration that the plaintiff had no right to compel the defendants to sign the encroachment agreement or to demand the recording of any such agreement on the land records. See part I A of this opinion. In light of this declaration,

Kelly v. *Ivler*, 187 Conn. 31, 34–35, 48, 450 A.2d 817 (1982) (setting forth finding that property owners' fence "slight[ly] encroach[ed]" on easement located along boundary of property); *Connecticut Light & Power Co.* v. *Holson Co.*, 185 Conn. 436, 437–38, 440 A.2d 935 (1981) (noting that action involved request for injunctive relief to require property owner to remove portion of building "encroach[ing]" on easement encumbering property). Moreover, the court expressly found that the defendants held record title to the property, such that we do not construe the court's use of the term "encroached" to be inconsistent with its finding that the defendants owned the property.

and assuming that this issue was properly before the court notwithstanding the plaintiff's withdrawal of the verified complaint, we conclude that there was no reason for the court to address the propriety of the plaintiff's requested relief.

As to the second issue—whether the plaintiff " 'own[ed]' " or had " 'exclusive use and possession of the subsurface' " of the easement area—the court expressly found that the defendants held record title to the property, subject to the easement. "It is well settled that [a]n easement . . . 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 . . . . 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. . . . [T]he owner of an easement has all rights incident or necessary to its proper enjoyment, [although] nothing more." (Citation omitted; internal quotation marks omitted.) *Hamer* v. *Byrne*, 231 Conn. App. 53, 68, 333 A.3d 158, cert. denied, 351 Conn. 930, 334 A.3d 482 (2025), and cert. denied, 351 Conn. 930, 334 A.3d 483 (2025). In short, we interpret the court's decision to reflect a determination that the plaintiff (1) neither owned nor had exclusive use and possession of the easement area, including the subsurface of the easement area, but (2) had rights pursuant to the easement, such as access to the easement area, including the subsurface thereof, with which rights the defendants were prohibited from interfering. Thus, we conclude that, contrary to the defendants' position, the court resolved the second issue.

Turning to the third issue—whether the resolutions adopted by the plaintiff were illegal—the court mentioned this issue in two different sections of its decision. First, the court acknowledged that the defendants raised this issue as part of their unclean hands argument; however, the court did not address the issue further on the basis of its conclusion that the doctrine was inapplicable because the plaintiff was not seeking any relief following the withdrawal of the verified complaint. The defendants do not address on appeal the court's resolution of their unclean hands argument, beyond making an isolated assertion in their principal appellate brief that the court improperly "overruled the equitable defenses of unclean hands and waiver . . . ." Thus, we conclude that the defendants have abandoned any claim challenging this aspect of the court's decision by failing to brief it adequately. See *Robb* v. *Connecticut Board of Veterinary Medicine*, 204 Conn. App. 595, 611, 254 A.3d 915 ("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 the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." (Internal quotation marks omitted.)), cert. denied, 338 Conn. 911, 259 A.3d 654 (2021).

Second, the court observed that the defendants were seeking attorney's fees and costs pursuant to General Statutes § 48-17b in part because the plaintiff had "adopted 'invalid and improper' resolutions"; however, the court did not discuss the issue further because it determined that § 48-17b was inapplicable. As we

conclude in part V B of this opinion, the court correctly determined that § 48-17b was inapplicable, and, therefore, the defendants were not entitled to attorney's fees and costs pursuant to that statute. Thus, there was no reason for the court to address whether the plaintiff's resolutions were illegal in the context of the defendants' § 48-17b claim.[21]

In sum, we reject the defendants' claim that the court improperly failed to address the three issues in question.

III

The defendants next claim that the trial court improperly rendered judgment in the plaintiff's favor on count two of the counterclaim seeking to quiet title pursuant to § 47-31. The defendants assert that the court improperly (1) determined that § 47-31 was not applicable to disputes concerning easements and (2) disposed of count two solely on the basis of its determination that the parties did not dispute that the defendants owned the property, subject to the easement. The plaintiff argues that the court properly resolved count two in its favor on the basis of its determination that there was no dispute as to title. For the reasons that follow, we conclude that the judgment rendered in favor of the plaintiff on count two must be reversed in part.

Insofar as resolving the defendants' claim requires us to interpret § 47-31, we exercise plenary review. See *Civic Mind, LLC* v. *Hartford*, 229 Conn. App. 615, 637,

[21] Insofar as the defendants contend on appeal that they raised an issue regarding the legality of the plaintiff's resolutions outside of the context of their unclean hands argument and § 48-17b claim, we note that they did not request as relief in the counterclaim a declaration invalidating any resolution issued by the plaintiff. See *Chicago Title Ins. Co.* v. *Bristol Heights Associates, LLC*, 142 Conn. App. 390, 418, 70 A.3d 74 (defendant's right to recovery was limited by allegations in counterclaim), cert. denied, 309 Conn. 909, 68 A.3d 662 (2013).

328 A.3d 225 (2024) (questions of statutory interpretation are subject to plenary review), cert. denied, 351 Conn. 919, 333 A.3d 103 (2025). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . 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. . . . It is a basic tenet of statutory construction that [w]e construe a statute as a whole and read its subsections concurrently in order to reach a reasonable overall interpretation." (Internal quotation marks omitted.) Id., 637–38.

Section 47-31 provides in relevant part: "(a) An action may be brought by any person claiming title to, or any interest in, real or personal property, or both, against any person who may claim to own the property, or any part of it, or to have any estate in it, either in fee, for years, for life or in reversion or remainder, or to have any interest in the property, or any lien or encumbrance on it, adverse to the plaintiff, or against any person in whom the land records disclose any interest, lien, claim or title conflicting with the plaintiff's claim, title or interest, for the purpose of determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the property. . . .

"(f) The court shall hear the several claims and determine the rights of the parties, whether derived from deeds, wills or other instruments or sources of title, and may determine the construction of the same, and render judgment determining the questions and disputes and quieting and settling the title to the property."

In rendering judgment for the plaintiff on count two of the counterclaim, the court deemed the lack of a dispute between the parties regarding ownership of the property, subject to the easement, to be dispositive. Our case law demonstrates, however, that disputes arising as to an express easement when title to the encumbered property is not in question—as is the case here—may be resolved pursuant to § 47-31. See, e.g., *Fitch* v. *Forsthoefel*, 194 Conn. App. 230, 233, 239, 220 A.3d 876 (2019) (affirming judgment for plaintiff, inter alia, on quiet title count seeking determination of rights of parties under express easement). This conclusion is supported further by the language of § 47-31, providing in relevant part that an action may be brought "for the purpose of determining [an] adverse estate, interest or claim [to that of the plaintiff], *and to clear up all doubts and disputes* and to quiet and settle the title to the property"; (emphasis added) General Statutes § 47-31 (a); and that "[t]he court shall hear the several claims and determine the rights of the parties . . . and render judgment *determining the questions and disputes* and quieting and settling the title to the property." (Emphasis added.) General Statutes § 47-31 (f). In our view, resolving disputes surrounding an express easement that encumbers a property, the ownership of which is not in dispute, functions to quiet and to settle title to the property as contemplated by § 47-31.

In disposing of the defendants' quiet title claim, the trial court cited to *Simonds* v. *Shaw*, 44 Conn. App. 683, 691 A.2d 1102 (1997). In *Simonds*, the trial court concluded that the plaintiffs enjoyed an easement by prescription for a right-of-way over a portion of the defendants' property and issued injunctive relief prohibiting the defendants from obstructing the right-of-way. Id., 684–86. On appeal, the defendants asserted, inter alia, that the trial court improperly awarded the plaintiffs injunctive relief because the plaintiffs had an adequate remedy at law available by way of § 47-31. Id.,

686. This court rejected that claim, determining that (1) the plaintiffs had pursued a prescriptive easement claim pursuant to General Statutes § 47-37[22] and (2) "§ 47-31 creates an action to quiet title that is not relevant to a claim of an easement because actual ownership of the property is not at issue." Id., 686–87. In the years following *Simonds*, our courts have addressed easement disputes raised in the context of quiet title claims pursued under § 47-31. See, e.g., *Walters* v. *Servidio*, 227 Conn. App. 1, 7, 9, 320 A.3d 1008 (2024) (plaintiff sought to quiet title as to alleged express and implied easements); *Fitch* v. *Forsthoefel*, supra, 194 Conn. App. 233, 239 (plaintiff sought to quiet title as to scope of express easement); *First Union National Bank* v. *Eppoliti Realty Co.*, 99 Conn. App. 603, 604, 610, 915 A.2d 338 (2007) (plaintiff sought to quiet title by claiming easement of necessity). Moreover, our research has revealed no case that has cited *Simonds* for the proposition that § 47-31 is inapplicable to resolve claims regarding easements. See, e.g., *Travelers Property & Casualty Co.* v. *Christie*, 99 Conn. App. 747, 765 n.13, 916 A.2d 114 (2007) (concluding that reasoning of early twentieth century appellate case regarding prejudgment interest had not been adopted in subsequent cases when, although never overruled, appellate case had never been cited for that reasoning); *Burke* v. *Avitabile*, 32 Conn. App. 765, 772 n.9, 630 A.2d 624 (deeming prior appellate case "anomalous" insofar as appellate case ostensibly indicated that motion for summary judgment could be used to test legal sufficiency of complaint prior to judgment when appellate case was published more than twenty years earlier and had never been cited for that proposition), cert. denied, 228 Conn. 908, 634 A.2d 297 (1993), and cert. denied, 228 Conn. 908,

[22] General Statutes § 47-37 provides: "No person may acquire a right-of-way or any other easement from, in, upon or over the land of another, by the adverse use or enjoyment thereof, unless the use has been continued uninterrupted for fifteen years."

634 A.2d 297 (1993). Accordingly, we conclude that *Simonds*' isolated statement regarding § 47-31, which was not supported by any analysis or citation to legal authority; see *Simonds* v. *Shaw*, supra, 686–87; cannot be relied on to limit the scope of quiet title claims brought pursuant to § 47-31.

Having concluded that the court committed error in adjudicating count two of the counterclaim, we now turn to the appropriate remedy. As we have explained, the defendants sought identical relief in counts one and two, namely, that (1) "the easement has not been altered or modified in any manner and remains in full force and effect"; (2) "the [defendants] had the right to install, and have the right to maintain, the utilities and driveway that they have installed without interference from the [plaintiff]"; and (3) "the [plaintiff] does not have a right to compel the [defendants] to sign an encroachment agreement that requires the modification or amendment of the easement, the provision of insurance in perpetuity, or that any such encroachment agreement be recorded on the Canton land records . . . ." The court afforded the defendants the relief that they sought in part, issuing declarations mirroring or substantively tracking the first and third requested declarations but declining to issue the second requested declaration, such that, in essence, the court partially quieted title in the defendants' favor. Therefore, we conclude that the court should have rendered judgment in the defendants' favor on count two insofar as the court granted the defendants' requested relief. See, e.g., *Freidheim* v. *McLaughlin*, 217 Conn. App. 767, 776–77, 803, 290 A.3d 801 (2023) (concluding that trial court improperly rendered summary judgment in defendants' favor on portion of count of plaintiff's complaint seeking to quiet title as to view easement and remanding case with direction to render summary judgment in plaintiff's favor as to that portion of quiet title count). Insofar as the court

did not afford the defendants the relief that they requested vis-à-vis count two, we further conclude that the court properly rendered judgment in the plaintiff's favor on that count.

IV

We next turn to the defendants' claim that the trial court improperly admitted irrelevant evidence during trial. For the following reasons, this claim either (1) is unreviewable or (2) fails on the merits.

The following additional procedural history is relevant to our consideration of this claim. In a pretrial brief that they filed, the defendants argued that "[a]ll of [their] claims for relief are legal questions and there are no facts or arguments the [plaintiff] can interpose to defeat the requested relief." Additionally, prior to trial, the defendants filed three motions in limine seeking to preclude the plaintiff from introducing "extrinsic evidence" at trial.[23] On the first day of trial, prior to the start of evidence, the defendants' counsel alerted the court to the pending motions in limine. The court responded: "Yeah, the court is not going to be ruling on any motions in limine. If there are objections that come up during the trial, I'll take them on the fly."[24]

Thereafter, the defendants' counsel requested an opportunity to present an opening statement to explain to the court "that there is no fact issue to be decided by the court, other than the possibility of sanctions,

[23] The defendants filed a fourth motion in limine vis-à-vis an expert witness retained by the plaintiff. During trial, without expressly adjudicating this motion in limine, the court precluded the expert witness' testimony.

[24] The defendants contend on appeal that the court "never ruled on," "refused to consider," or "ignored" their motions in limine. The record reflects that the court decided to address the defendants' evidentiary objections during trial in lieu of adjudicating their motions in limine, which belies the defendants' characterization of the court's handling of the motions. Moreover, the defendants do not identify any evidentiary objections that they raised, and that the court overruled, during the evidentiary portion of the trial.

because the remaining questions that [the defendants have] identified are all legal questions . . . .'' The court denied that request and proceeded to review with the parties' counsel their agreement as to the admission of certain exhibits. Afterward, the court asked the defendants' counsel to present the defendants' first witness, whereupon the defendants' counsel iterated ''that this is a legal issue. There is no fact issue. . . . [I]f [the court] disagree[s] with that analysis, [the defendants] can [introduce] the witness . . . on the one issue that would matter. . . . I maintain . . . the entire case at this point [consists of] legal issues. There are no fact issues.'' The court responded: ''All right. Well, I'm not going to tell you how to try your case, so you can decide what you want to put before the court . . . .''[25] The court then rejected another request by the defendants' counsel to provide additional argument, noting that the defendants had filed a pretrial brief and the court was ''familiar with the argument.'' The defendants' counsel proceeded with the defendants' case-in-chief. In their posttrial brief, the defendants maintained that the issues posed by the counterclaim comprised ''only legal questions without any disputed facts for the court to resolve . . . .''

The defendants assert on appeal that, during trial, the court admitted irrelevant evidence because ''[t]here were no fact issues to be decided in the case; there were only legal questions for the . . . court to rule upon. . . . There were no factual disputes the . . . court was called upon to decide.'' The defendants further contend that ''[f]act evidence would only have been relevant and admissible for unreasonable or material interference with easement rights or a scope of easement rights claim,'' but no such claims were at issue

[25] The court also inquired as to whether a motion for summary judgment had been filed, and the defendants' counsel confirmed that the defendants had filed a motion for summary judgment, which had been denied by the court, *Sheridan, J.*, in 2019.

before the court. Insofar as the defendants' claim pertains only to certain evidence, our review of such a claim is frustrated by the defendants' failure to identify, with any specificity, the evidence that the court purportedly erred in admitting. Without this requisite information, we cannot afford the defendants review of their evidentiary claim. See *Aspiazu* v. *Orgera*, 205 Conn. 623, 636–37 n.5, 535 A.2d 338 (1987) ("[w]hen raising evidentiary issues on appeal, all briefs should identify clearly what evidence was excluded or admitted, where the trial counsel objected and preserved his rights and why there was error"); see also *Weaver* v. *Sena*, 199 Conn. App. 852, 866, 238 A.3d 103 (2020) ("[i]t is not the role of this court to scour the record in search of support for a party's claim on appeal"); *State* v. *Tocco*, 120 Conn. App. 768, 786–87, 993 A.2d 989 ("this court is not an advocate for any party; it would be beyond the proper role of this court in resolving the issues raised on appeal to sift through the voluminous record before us and speculate as to the specific evidence at issue in the present claim"), cert. denied, 297 Conn. 917, 996 A.2d 279 (2010).

Alternatively, insofar as the defendants maintain that the court should not have received *any* evidence at trial, that contention is untenable. The court was charged with adjudicating counts one and two of the counterclaim seeking a declaratory judgment and to quiet title. The defendants have failed to establish that the court committed error in hearing evidence in order to resolve the counterclaim.[26]

[26] Moreover, assuming that the defendants had demonstrated that the court abused its discretion in admitting evidence; see *Martin* v. *Olson*, 226 Conn. App. 392, 405, 318 A.3d 1067 (abuse of discretion standard of review applies to evidentiary rulings), cert. denied, 350 Conn. 902, 322 A.3d 1059 (2024); their principal appellate brief is bereft of any substantive legal analysis explaining how they were harmed by such error. See id. ("[B]efore a party is entitled to a new trial because of an erroneous evidentiary ruling, he or she has the burden of demonstrating that the error was harmful. . . . The harmless error standard in a civil case is whether the improper ruling would likely affect the result." (Internal quotation marks omitted.)).

V

The defendants' last claim is that the trial court improperly declined to award them attorney's fees and costs pursuant to (1) Practice Book § 1-25 and (2) § 48-17b.[27] We address each subclaim in turn.

"Ordinarily, we review the trial court's decision to award attorney's fees for abuse of discretion. . . . This standard applies to the amount of fees awarded . . . and also to the trial court's determination of the factual predicate justifying the award. . . . When, however, a damages award is challenged on the basis of a question of law, our review is plenary." (Internal quotation marks omitted.) *Indoor Billboard Northwest, Inc.* v. *M2 Systems Corp.*, 202 Conn. App. 139, 197, 245 A.3d 426 (2021).

A

The defendants contend that the court improperly declined to award them attorney's fees and costs pursuant to Practice Book § 1-25. For the reasons that follow, we decline to review this claim.

Practice Book § 1-25 provides in relevant part: "(a) No party or attorney shall bring or defend an action, or assert or oppose a claim or contention, unless there is a basis in law and fact for doing so that is not frivolous. . . .

"(b) Except as otherwise provided in these rules, the judicial authority, solely on its own motion and after a hearing, may impose sanctions for actions that include, but are not limited to, the following:

[27] In their posttrial brief, the defendants further argued that they were entitled to attorney's fees and costs pursuant to (1) General Statutes § 52-240 and (2) General Statutes § 52-245. The court also declined to award attorney's fees and costs to the defendants pursuant to these statutes. The defendants do not challenge the court's decision in that regard.

"(1) Filing of pleadings, motions, objections, requests or other documents that violate subsection (a) above . . . .

"(c) The judicial authority may impose sanctions including, but not limited to, fines pursuant to General Statutes § 51-84; orders requiring the offending party to pay costs and expenses, including attorney's fees; and orders restricting the filing of papers with the court.

"(d) Offenders subject to such sanctions may include counsel, self-represented parties, and parties represented by counsel."

In rejecting the defendants' request for attorney's fees and costs pursuant to Practice Book § 1-25, the court construed the defendants' request to be predicated solely on the ground that the plaintiff's disclosure of defense was frivolous. The court interpreted the plaintiff's disclosure of defense to raise two defenses: "(1) the defendants were on notice at the time of [their] purchase [of the property] as to the terms [of] the easement; and (2) the express terms of the easement controlled the rights and obligations of the parties within the easement." The court then determined that the plaintiff's disclosure of defense was not frivolous because (1) the defendants were aware of the easement before they purchased the property and (2) the easement's express terms controlled the parties' rights and obligations.

The defendants contend on appeal that they were entitled to attorney's fees and costs pursuant to Practice Book § 1-25, propounding various reasons to support their argument that the plaintiff engaged in conduct that was frivolous and lacked good faith. The defendants, however, do not discuss the court's reasoning in rejecting their claim under § 1-25, that is, that the plaintiff's disclosure of defense was not frivolous. Under these circumstances, where the defendants have not

addressed the dispositive basis for the court's rejection of their § 1-25 claim, we decline to review the defendants' claim as inadequately briefed. See *Sicignano* v. *Pearce*, 228 Conn. App. 664, 692, 325 A.3d 1127 (2024) (declining to review plaintiff's claim as inadequately briefed when plaintiff failed to address dispositive bases of court's decision), cert. denied, 351 Conn. 908, 330 A.3d 881 (2025).

B

The defendants also assert that the court improperly determined that they were not entitled to attorney's fees and costs pursuant to § 48-17b. We disagree.

Section 48-17b provides in relevant part: "The state court rendering a judgment for the plaintiff in an inverse condemnation proceeding brought against the state by the owner of real property . . . shall determine and award or allow to such plaintiff, as a part of such judgment . . . such sum as will in the opinion of the court . . . reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding."

In their posttrial brief, the defendants argued that, pursuant to § 48-17b, they were entitled to attorney's fees and costs because the plaintiff had engaged in "actions [that] constitute[d] an attempted and deliberate act of inverse condemnation though admittedly not a sufficient deprivation of the [defendants'] property interests to permit [an inverse condemnation] claim." In its posttrial brief, the plaintiff argued that § 48-17b was inapplicable because the defendants had neither pleaded nor proven an inverse condemnation claim.

In rejecting the defendants' claim for attorney's fees pursuant to § 48-17b, the court concluded that the statute was inapplicable because the defendants (1) conceded in their posttrial brief that they did not assert

an inverse condemnation claim, (2) did not receive a judgment in an inverse condemnation proceeding in their favor, and (3) did not provide any evidence demonstrating that the use of their property had been restricted in any manner, "let alone that the plaintiff's actions somehow '[had] so financially burdened the [defendants] as to constitute a practical confiscation.' *AEL Realty Holdings, Inc.* v. *Board of Representatives*, 82 Conn. App. 613, 621, 847 A.2d 998 (2004)."

The defendants maintain on appeal that the plaintiff engaged in conduct that constituted an improper regulatory taking under the color of law, thereby entitling them to attorney's fees and costs under § 48-17b.[28] As the court correctly determined, however, the defendants neither alleged an inverse condemnation claim in the counterclaim nor successfully prosecuted such a claim. Accordingly, the court properly concluded that § 48-17b was inapplicable to this case.[29] See *Cumberland Farms, Inc.* v. *Groton*, 262 Conn. 45, 81 n.35, 808 A.2d 1107 (2002) ("under . . . § 48-17b, *a property*

[28] The defendants do not refer expressly to § 48-17b in their appellate briefs; however, on the basis of their discussion of regulatory takings, we construe this subclaim to be challenging the court's rejection of their request for attorney's fees and costs pursuant to § 48-17b.

[29] In light of our conclusion that § 48-17b is inapplicable because the defendants failed to plead an inverse condemnation claim and did not successfully prosecute such a claim, we need not address the court's third reason for rejecting the defendants' § 48-17b claim, namely, that the defendants failed to demonstrate that the use of their property had been restricted in any manner. See *AEL Realty Holdings, Inc.* v. *Board of Representatives*, supra, 82 Conn. App. 621 ("For inverse condemnation to occur, property does not have to be appropriated by governmental action to the extent that no value remains. It is sufficient if use of property is severely restricted and its profitability greatly reduced as a result of the action of the government. . . . The relevant inquiry here is whether the governmental regulation of the property has so financially burdened the landowner as to constitute a practical confiscation. The financial burden imposed on a landowner by a regulation is measured by the extent to which the regulation interferes with the property owner's reasonable investment-backed expectations of use of the property. . . . A regulation does not constitute a compensable taking if it does not infringe on such reasonable investment-backed expectations." (Citation omitted; internal quotation marks omitted.)).

owner who successfully prosecutes an inverse condemnation claim may receive, in addition to compensation for the taking, reimbursement for certain costs and expenses" (emphasis added)).

The judgment is reversed in part with respect to count two of the defendants' counterclaim only and the case is remanded with direction to render judgment on that count consistent with this opinion; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* MARVIN OWENS (AC 46997)

Cradle, C. J., and Suarez and DiPentima, Js.

Syllabus

The defendant, who had been on probation in connection with his convictions, in two separate dockets, of violation of probation and interfering with an officer, appealed from the trial court's judgments revoking his probation and imposing a sentence of incarceration. He claimed, inter alia, that the court improperly denied his motion to dismiss, which alleged violations of his right to a speedy trial and of the 120 day guideline contained in the revocation of probation statute (§ 53a-32). *Held*:

The trial court's denial of the defendant's motion to dismiss was not clearly erroneous, as § 53a-32 (c) does not extend the right to a speedy trial to probation revocation proceedings, and the court found that the commencement of the hearing was tolled in light of the defendant's voluminous motion practice and the numerous files pending before the court.

The trial court did not abuse its discretion in waiting to rule on the defendant's request to represent himself, as the court reasonably waited to canvass the defendant for a period of approximately six weeks while a competency evaluation of the defendant was pending in another jurisdiction, and the delay in the court's canvass did not prejudice the defendant, who then represented himself at all critical stages of the proceedings.

The trial court's finding that the defendant violated his probation was supported by sufficient evidence, including testimony by the victim, which the court found to be highly credible.

The defendant could not prevail on his claim that his due process rights were violated as a result of prosecutorial impropriety, specifically, that the

prosecutor failed to correct certain statements by the victim during her testimony, which the defendant alleged were false or misleading, as this court's review of the victim's testimony revealed that the defendant had not demonstrated that the state presented any material, false or substantially misleading testimony that the prosecutor failed to correct, the defendant's claims relied on documents that were not in evidence at the probation revocation hearing, and there was no reasonable likelihood that any allegedly false testimony could have affected the trial court's judgment.

Argued June 3—officially released September 30, 2025

Procedural History

Information, in each of two cases, charging the defendant with violation of probation, brought to the Superior Court in the judicial district of Fairfield, where the court, *Hernandez, J.*, denied the defendant's motion to dismiss; thereafter, the case was tried to the court, *Hernandez, J.*; judgment in each case revoking probation, from which the defendant appealed to this court. *Affirmed.*

Marvin Owens, self-represented, the appellant (defendant).

Meryl R. Gersz, assistant state's attorney, with whom, on the brief, were *Joseph T. Corradino*, state's attorney, and *Maura Coyne*, senior assistant state's attorney, for the appellee (state).

Opinion

SUAREZ, J. The self-represented defendant, Marvin Owens, appeals from the judgments of the trial court finding him in violation of the conditions of his probations and revoking his probations pursuant to General Statutes § 53a-32.[1] The defendant claims that (1) the

[1] General Statutes § 53a-32 provides in relevant part: "(a) At any time during the period of probation or conditional discharge, the court or any judge thereof may issue a warrant for the arrest of a defendant for violation of any of the conditions of probation or conditional discharge, or may issue a notice to appear to answer to a charge of such violation, which notice shall be personally served upon the defendant. . . . Any such warrant shall authorize all officers named therein to return the defendant to the custody of the court or to any suitable detention facility designated by the court. . . .

"(c) . . . Unless good cause is shown, a charge of violation of any of the conditions of probation or conditional discharge shall be disposed of or

court improperly denied his motion to dismiss, which alleged violations of his right to a speedy trial and of the 120 day guideline contained in § 53a-32, (2) the court violated his constitutional right to self-representation, (3) the court found that he violated the conditions of his probations on the basis of insufficient evidence, and (4) the state violated his due process rights by failing to correct false or misleading testimony.[2] We affirm the judgments of the court.

The following facts and procedural history are relevant to our resolution of this appeal. On September 7, 2021, the defendant was convicted of violation of probation in violation of § 53a-32 and sentenced to forty-four months of incarceration, execution suspended, and four years of probation. That same day, the defendant was convicted, under a separate docket, of interfering with an officer in violation of General

scheduled for a hearing not later than one hundred twenty days after the defendant is arraigned on such charge . . . .''

[2] We have reframed the defendant's claims, in some instance condensing closely related claims, to more accurately reflect the arguments in the defendant's brief. See, e.g., *Doe* v. *Quinnipiac University*, 218 Conn. App. 170, 173 n.4, 291 A.3d 153 (2023).

The defendant also asserts that the court (1) violated his equal protection rights, (2) exhibited judicial bias and failed to recuse itself, (3) improperly denied his motion to dismiss for lack of jurisdiction, and (4) improperly failed to provide a written statement setting forth its reasons for revoking his probation. The defendant's brief, which is confusing, repetitive, and disorganized, contains no meaningful analysis of these claims and, accordingly, we decline to review them as they are inadequately briefed. ''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 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.'' (Internal quotation marks omitted.) *Y. H.* v. *J. B.*, 224 Conn. App. 793, 795–96 n.2, 313 A.3d 1245 (2024).

Statutes § 53a-167a, and sentenced to one year of incarceration, execution suspended, and three years of probation. The sentences were to run consecutively. As a condition of his probations, the defendant was ordered to "not violate any criminal law of the United States, this state or any other state or territory." He also was prohibited from committing violence toward, threatening or harassing the victim, B.[3]

Subsequently, the defendant was charged under both dockets with violation of probation on the basis of his arrest on charges that stemmed from an incident on January 10, 2022, in which the defendant allegedly assaulted B.[4] On May 2 and 12, 2023, the court held a hearing on the violation of probation charges. On the first day of the hearing, the defendant moved to dismiss the violation of probation charges on the ground that the hearing was being held more than 120 days after his arraignment without good cause. Additionally, the defendant filed a written motion for a speedy trial and a motion to dismiss that also raised his speedy trial

[3] Several protective orders naming B as the protected person previously had been issued against the defendant, certified copies of which were admitted into evidence. In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

[4] The defendant was subsequently convicted, following a jury trial, of assault in the first degree in violation of General Statutes § 53a-59 (a) (1), violation of a protective order, and unlawful restraint in the first degree in violation of General Statutes § 53a-95 in relation to the January 10, 2022 incident. See *State* v. *Owens*, Superior Court, judicial district of Fairfield, Docket No. CR-22-0344779-T. The defendant appealed the judgment of conviction, and that appeal is pending before this court. See *State* v. *Owens*, Connecticut Appellate Court, Docket No. 47893 (appeal filed August 8, 2024). Because the defendant's appeal from that judgment remains pending, "no portion of his challenge to the court's finding in the present case that he violated his probation is moot." *State* v. *Sykes*, 232 Conn. App. 753, 762 n.4, 337 A.3d 1174 (2025), petition for cert. filed (Conn. June 16, 2025) (No. 240400).

claim. The court denied the defendant's motion to dismiss, noting that the defendant had several pending files, and that he had appeared before the court "numerous times with respect to various motions that [he had] filed, plea discussions that were had, plea offers . . . giving you time to consider those plea offers. All of that time tolls the running of these clocks, speedy trial and the 120 days."

At the hearing, the state presented the testimony of B. B testified that, on January 10, 2022, she went with the defendant to his home in Bridgeport. She and the defendant started arguing and things started "escalating." B then "took [the defendant's] phone to call 211, because he always breaks [her] cell phone . . . [and] they told [her] to get a ride to the Bridgeport train station and that they were gonna send me an Uber and place me in a hotel." The defendant agreed to drive her to the Bridgeport train station. B testified that the defendant pulled over and got out of the car, after which time she heard glass breaking. She testified that the defendant got into the car and began striking her with a broken glass bottle and punching her. She stated that the defendant restrained her arm as they proceeded toward the highway, and, after she grabbed the steering wheel, the defendant threw her out of the vehicle. Photographs depicting B's injuries were admitted into evidence.

The state also presented testimony from Justin Quick, the defendant's probation officer, who testified concerning the conditions of the defendant's probation. Quick testified that he prepared the violation of probation warrants in the present case on the basis of the defendant's arrest on new charges pending in four dockets. A copy of the arrest warrant application for the violation of probation charges was also admitted into evidence, which referenced the defendant's arrest on January 13, 2022, on charges of, inter alia, assault in the

first degree. Documents were introduced into evidence establishing the conditions of the defendant's probation, including that he not violate any criminal law of this state, the United States or any other state or territory, and that he refrain from violence, threats or harassment toward B. The state also offered the testimony of Gregory Sperling, the supervisor of the Office of Adult Probation in Milford, who testified that he had reviewed the written conditions of probation with the defendant personally on October 12, 2021, at which time the defendant signed those written conditions. The defendant did not present any witnesses.

On September 12, 2023, the court orally ruled that the defendant violated his probation. The court based its decision, inter alia, on B's testimony relating to the January 10, 2022 incident in which he assaulted her. The court found that B's testimony was "highly credible." The court concluded that "[i]t's clear to the court that [the defendant] is a danger to the community and confinement is appropriate for the violations of probation." Accordingly, the court revoked the defendant's probation in both cases and sentenced him to forty-four months of incarceration. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the court improperly denied his motion to dismiss, which alleged that the court violated (1) his right to a speedy trial under the sixth amendment to the United States constitution and (2) the 120 day guideline contained in § 53a-32. We are not persuaded.

We set forth the well settled standard of review and the following legal principles. "[O]ur review of the trial court's ultimate legal conclusion and resulting [denial] of [a] motion to dismiss will be de novo. . . . Factual

findings underlying the court's decision, however, will not be disturbed unless they are clearly erroneous. . . . The determination of whether a defendant has been denied his right to a speedy trial is a finding of fact, which will be reversed on appeal only if it is clearly erroneous. . . . The trial court's conclusions must stand unless they are legally and logically inconsistent with the facts." (Citation omitted; internal quotation marks omitted.) *State* v. *Griffin*, 220 Conn. App. 225, 230, 297 A.3d 1056 (2023).

"The sixth amendment guarantee of a speedy trial is a fundamental right applicable to the states through the fourteenth amendment to the United States constitution. . . . This right also is guaranteed by the constitution of Connecticut, article first, § 8."[5] (Internal quotation marks omitted.) Id., 234 n.3. "[I]t is well established [however] that a probation revocation proceeding is not a criminal proceeding but is instead more akin to a civil proceeding." (Internal quotation marks omitted.) *State* v. *Dudley*, 332 Conn. 639, 648, 212 A.3d 1268 (2019). The United States Supreme Court "has never held . . . that a prisoner subject to a [probation violation] detainer has a constitutional right to a speedy [probation revocation] hearing." *Carchman* v. *Nash*, 473 U.S. 716, 731 n.10, 105 S. Ct. 3401, 87 L. Ed. 2d 516 (1985).

Section 53a-32 (c) provides in relevant part: "Upon notification by the probation officer of the arrest of the defendant or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charges. . . . Unless good cause

[5] The sixth amendment provides in relevant part that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." U.S. Const., amend. VI. Because the defendant has not set forth a separate analysis of his claim under the Connecticut constitution, we address his claim only under the sixth amendment to the federal constitution. See, e.g., *State* v. *Griffin*, supra, 220 Conn. App. 234 n.3.

is shown, a charge of violation of any of the conditions of probation or conditional discharge shall be disposed of or scheduled for a hearing not later than one hundred twenty days after the defendant is arraigned on such charge . . . .'' Section 53a-32 (c) provides a guideline for the scheduling of a probation revocation hearing. It does not, however, extend the right to a speedy trial to probation revocation proceedings. See *State* v. *Kelley*, 164 Conn. App. 232, 240–41, 137 A.3d 822 (2016) (legislative history of § 53a-32 (c) demonstrated that 120 day provision was intended to serve as goal, not directive), aff'd, 326 Conn. 731, 167 A.3d 961 (2017); see also *State* v. *Smith*, 178 Conn. App. 715, 724, 177 A.3d 593 (2017), cert. denied, 328 Conn. 906, 177 A.3d 564 (2018).[6]

The defendant argues that the court violated his speedy trial rights by holding the probation revocation hearing more than 120 days after his arraignment. The foregoing case law, however, clearly establishes that the right to a speedy trial does not extend to probation revocation proceedings and that the 120 day provision contained in § 53a-32 (c) is a guideline for the scheduling of a probation revocation hearing, not a directive. Moreover, the court found that the commencement of the hearing was tolled in light of the defendant's voluminous motion practice and the numerous files pending before the court. We cannot conclude that this finding was clearly erroneous. See, e.g., *Antrum* v. *State*, 185 Conn. 118, 122, 440 A.2d 839 (1981) (trial court's tolling period was reasonable because termination of tolling

[6] In *Kelley*, this court referenced the following legislative history in support of the conclusion that § 53a-32 (c) does not create a right to a speedy trial in probation revocation proceedings: ''Representative Michael P. Lawlor . . . distinguished the 120 day limitation from 'the speedy trial mechanism,' noting that 'the speedy trial is a right. . . . [T]his [120 day limitation] is not the same thing, this is basically a guideline, [a] goal being articulated by the [l]egislature imposed on the judge really to bring a case to hearing.' '' (Citation omitted.) *State* v. *Kelley*, supra, 164 Conn. App. 240.

period "was entirely within the control of the defendant"). Accordingly, we reject the defendant's first claim.

II

The defendant next claims that the trial court violated his right to self-representation as guaranteed by the sixth amendment to the United States constitution.[7] Specifically, the defendant argues that the court caused structural error by impermissibly delaying its canvass of him with respect to his request to represent himself. We conclude that the court did not violate the defendant's right to self-representation.

The following additional facts and procedural history are relevant to our discussion of this claim. The court ordered that a public defender be appointed to represent the defendant at his arraignment on January 14, 2022. Although the defendant indicated that he did not want a public defender, he did not request to proceed as a self-represented party on that date.[8] A public defender entered an appearance on the defendant's behalf on March 30, 2022. On April 4, 2022, the defendant stated to the court: "I waive my right to counsel, so she's withdrawn." The court informed the defendant that it

[7] This right applies to the states through the due process clause of the fourteenth amendment to the federal constitution. See, e.g., *Pointer* v. *Texas*, 380 U.S. 400, 406, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965).

[8] We reject the defendant's claim that the court violated his due process rights by failing to make an on-the-record inquiry regarding his representation pursuant to Practice Book § 37-3. In addition to being inadequately briefed; see footnote 2 of this opinion; the record reveals that, when the defendant stated that he did not want a public defender to represent him, the court replied that, "if you decide that you're going to hire someone else, you can let me know."

To the extent that the defendant also asserts that the court made an inadequate investigation of his indigency, we disagree. The public defender stated to the court at the defendant's arraignment that "[the defendant] did not want to speak to us . . . I do believe he's eligible, so I'll ask for full appointment." The court reasonably granted the public defender's request on the basis of those representations.

could not yet rule on the defendant's request to represent himself because defense counsel had not filed a motion to withdraw her appearance and the defendant had not yet been canvassed. The court also stated that it would mark off certain motions filed by the defendant without prejudice and that, "if it turns out that you're going to represent yourself pro se, I'll hear all your motions . . . ."

On August 10, 2022, the court stated on the record that a competency evaluation pursuant to General Statutes § 54-46d had been filed in the judicial district of Ansonia-Milford, and that the evaluation was still pending. The court stated at that time that "[w]e can't have any meaningful discussion on the cases until that is completed." On the next scheduled court date, September 23, 2022, defense counsel represented to the court that the defendant was found competent by the court in Milford and that the defendant still wanted to represent himself in the present case. The court canvassed the defendant and granted the defendant's request to represent himself, finding that the defendant's waiver was knowing and voluntary.[9] The court also appointed standby counsel to assist the defendant. See Practice Book § 44-4. The defendant represented himself at all times thereafter, including at the probation revocation hearing.

We first set forth the relevant legal principles governing our review of this claim. "Given the trial court's superior position to observe the defendant and to control the proceedings before it, we review a trial court's decision with respect to a defendant's request to represent himself for an abuse of discretion. . . .

"Both the federal constitution and our state constitution afford a criminal defendant the right to [forgo] the

[9] The defendant has not challenged the adequacy of the court's canvass in this appeal.

assistance of counsel and to choose instead to represent himself or herself at trial. . . . *Godinez* v. *Moran*, 509 U.S. 389, 396, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993) (defendant must be found competent to waive right to assistance of counsel).

"Once a defendant invokes his right to self-representation, a trial court must canvass that defendant to determine if the defendant's invocation of that right and the corollary waiver of the right to counsel were both voluntary and intelligent. . . . A court must indulge in every reasonable presumption against the waiver or forfeiture of fundamental constitutional rights, and must not presume acquiescence in the loss of fundamental rights. . . . Forcing a lawyer on an unwilling defendant is contrary to the basic right to defend oneself. . . . As such, the improper denial of the right to self-representation is a structural error, requiring a new trial. . . . Thus, a trial court can deny a defendant's timely request to represent himself (1) when a defendant is not competent to represent himself, (2) when a defendant has not knowingly and intelligently waived his right to the assistance of counsel, (3) when the request is made for dilatory or manipulative purposes, or (4) because the defendant's behavior is disruptive or obstructive." (Citations omitted; footnotes omitted; internal quotation marks omitted.) *State* v. *Petteway*, 351 Conn. 682, 691–93, 332 A.3d 196 (2025).

In the present case, we conclude that the court did not abuse its discretion by waiting to rule on the defendant's request to represent himself until September 23, 2022. On August 10, 2022, the court was made aware that a competency evaluation of the defendant was pending in another jurisdiction.[10] The court reasonably waited to canvass the defendant for a period of approximately

[10] The record before us does not reveal the exact dates that the competency evaluation was requested and completed.

six weeks while the evaluation was pending. C.f., e.g., *United States* v. *Barnes*, 693 F.3d 261, 274 (2d Cir. 2012) (noting, in concluding that defendant abandoned request to represent himself, that trial court had declined to rule on defendant's request until pending competency evaluation was completed), cert. denied, 568 U.S. 1113, 133 S. Ct. 917, 184 L. Ed. 2d 704 (2013).

The court's brief delay in ruling on the defendant's motion was in furtherance of its obligations under Practice Book § 44-3, which provides in relevant part that "[a] waiver will be accepted only after the judicial authority makes a thorough inquiry and is satisfied that the defendant . . . (1) [h]as been clearly advised of the right to the assistance of counsel, including the right to the assignment of counsel when so entitled; (2) [p]ossesses the intelligence and capacity to appreciate the consequences of the decision to represent oneself; (3) [c]omprehends the nature of the charges and proceedings, the range of permissible punishments, and any additional facts essential to a broad understanding of the case; and (4) [h]as been made aware of the dangers and disadvantages of self-representation."

Although the court did not immediately consider the defendant's request to represent himself, the delay in doing so did not prejudice him. After the court canvassed the defendant, he represented himself at all critical stages of the proceedings. Indeed, the defendant has not pointed to any part of the proceedings that was impacted from March 30 until September 23, 2022. Cf., e.g., *State* v. *Joseph A.*, 336 Conn. 247, 266–67, 245 A.3d 785 (2020) (notwithstanding defendant's claim that he was improperly canvassed, defendant did not point to "any aspect of the trial proceeding that was impacted by the defendant's self-representation during the initial plea negotiation with the state"); *State* v. *Cushard*, 328 Conn. 558, 583–85, 181 A.3d 74 (2018) (concluding that,

even if absence of counsel resulted from constitutionally inadequate waiver, any error was harmless because hearings that occurred during time that defendant was self-represented did not contribute to verdict). Therefore, we reject the defendant's second claim.

III

The defendant's third claim is that there was insufficient evidence that he violated his probation.[11] We disagree.

The following principles are relevant to our review of the defendant's claim. "The law governing the standard of proof for a violation of probation is well settled. . . . [A]ll that is required in a probation violation proceeding is enough to satisfy the court within its sound judicial discretion that the probationer has not met the terms of his probation. . . . [E]vidence is not insufficient [merely] because it is conflicting or inconsistent. [The fact finder] is free to juxtapose conflicting versions of events and determine which is more credible. . . . It is the [fact finder's] exclusive province to weigh the conflicting evidence and to determine the credibility of witnesses. . . . The [fact finder] can . . . decide what—all, none, or some—of a witness' testimony to accept or reject. . . . A challenge to the sufficiency of the evidence is based on the court's factual findings. The proper standard of review is whether the court's findings were clearly erroneous based on the evidence. . . . A court's finding of fact is clearly erroneous and its conclusions drawn from that finding lack sufficient evidence when there is no evidence in the record to

[11] Although it appears that the defendant's statement of issues, which is not a model of clarity, does not distinctly raise this claim, we address it because both parties have fully briefed the issue. See, e.g., *Whisper Wind Development Corp.* v. *Planning & Zoning Commission*, 32 Conn. App. 515, 523–24, 630 A.2d 108 (1993) (addressing issue not raised in statement of issues when claim was fully briefed), aff'd, 229 Conn. 176, 640 A.2d 100 (1994).

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. . . . [A] trial court may not find a violation of probation unless it finds that the predicate facts underlying the violation have been established by a preponderance of the evidence at the hearing—that is, the evidence must induce a reasonable belief that it is more probable than not that the defendant has violated a condition of his or her probation. . . . In making its factual determination, the trial court is entitled to draw reasonable and logical inferences from the evidence. . . . This court has observed that to support a judgment of revocation of probation, [o]ur law does not require the state to prove that all conditions alleged were violated; it is sufficient to prove that one was violated." (Citations omitted; internal quotation marks omitted.) *State* v. *Sykes*, 232 Conn. App. 753, 769–70, 337 A.3d 1174 (2025), petition for cert. filed (Conn. June 16, 2025) (No. 240400).

In the present case, there was sufficient evidence in the record to support the court's finding that the defendant violated his probation. The court heard B's testimony recounting the January 10, 2022 incident, including that the defendant struck B with a broken glass bottle, punched her, restrained her, and threw her out of a moving vehicle. The court also had before it photographs depicting B's injuries. The court found B's testimony to be "highly credible . . . ." The defendant argues that the court's factual findings were based on B's "perjured" testimony.[12] The defendant essentially

[12] In the section of his brief discussing his sufficiency claim, the defendant asserts that the court failed to provide a written statement of its decision and that the transcript of the proceedings did not put forth the basis of its ruling. To the extent that the defendant intends to raise a separate claim regarding the clarity of the court's ruling, we conclude that this claim is inadequately briefed. See footnote 2 of this opinion. To the extent that the defendant intends to argue that the court improperly failed to provide a written statement in support of his sufficiency claim, we disagree. As long

asks us to overturn the court's credibility determinations, which we decline to disturb on appeal. See, e.g., *State* v. *Campbell*, 61 Conn. App. 99, 102, 762 A.2d 12 (2000) ("[a]s a reviewing court, we may not retry the case or pass on the credibility of witnesses"), cert. denied, 255 Conn. 934, 767 A.2d 105 (2001). From the evidence presented, the court reasonably could have concluded that the state established, by a preponderance of the evidence, that the defendant violated the conditions of his probation by violating a law of this state on January 10, 2022, and by committing violence toward B. The defendant's third claim therefore fails.

IV

The defendant's final claim is that his due process rights were violated as a result of prosecutorial impropriety.[13] Specifically, the defendant argues that the prosecutor failed to correct certain statements made by B during her testimony, which he alleges were false and/or misleading. We are not persuaded.

We first set forth relevant legal principles. "Whether a prosecutor knowingly presented false or misleading testimony presents a mixed question of law and fact, with the [trial] court's factual findings subject to review for clear error and the legal conclusions that the court drew from those facts subject to de novo review." *Greene* v. *Commissioner of Correction*, 330 Conn. 1,

as "the ultimate findings of the court, that there was a violation of a condition of probation and that probation should have been revoked, were reasonable . . . the court need not have made specific subsidiary findings of fact." (Internal quotation marks omitted.) *State* v. *Lachowicz*, 79 Conn. App. 199, 209, 829 A.2d 874, cert. denied, 266 Conn. 921, 835 A.2d 61 (2003). Moreover, in the present case, it is clear that the court based its finding that the defendant violated his probation on the credibility of the witnesses, specifically, B.

[13] This claim was preserved for appeal by the defendant's argument before the trial court that the state improperly presented "perjured testimony [on] May 2, which was extensive," and that, in failing to correct this testimony, the state engaged in prosecutorial misconduct.

14, 190 A.3d 851 (2018), cert. denied, 586 U.S. 1167, 139 S. Ct. 1219, 203 L. Ed. 2d 238 (2019). As a general proposition, "[d]ue process is . . . offended if the state, although not soliciting false evidence, allows it to go uncorrected when it appears. . . . This constitutional safeguard prohibits not only the solicitation of false evidence, which is objectively untruthful, but the solicitation of evidence that substantially mischaracterizes facts and, thus, has a tendency to mislead the finder of fact. . . . .

"The rules governing our evaluation of a prosecutor's failure to correct false or misleading testimony are derived from those first set forth by the United States Supreme Court in *Brady* v. *Maryland*, [373 U.S. 83, 86–87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)] . . . [in which] the court held that the suppression by the prosecution of evidence favorable to an accused upon request violates due process [when] the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the [prosecutor]. . . . The United States Supreme Court also has recognized that [t]he [fact finder's] estimate of the truthfulness and reliability of a . . . witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. . . . Accordingly, the *Brady* rule applies not just to exculpatory evidence, but also to impeachment evidence . . . which, broadly defined, is evidence having the potential to alter the [fact finder's] assessment of the credibility of a significant prosecution witness." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Ayuso* v. *Commissioner of Correction*, 215 Conn. App. 322, 340–42, 282 A.3d 983, cert. denied, 345 Conn. 967, 285 A.3d 736 (2022). "The phrase substantially misleading describes testimony that, although made in good faith, is untrue in a manner that

should be obvious to the state. . . . False testimony, by contrast, occurs when the prosecutor knows that a state witness has committed perjury." (Citation omitted; internal quotation marks omitted.) *State* v. *Johnson*, 345 Conn. 174, 205, 283 A.3d 477 (2022).

First, our review of B's testimony at the probation revocation hearing reveals that the petitioner has not demonstrated that the state presented any material, false, or substantially misleading testimony that the prosecutor failed to correct.[14] B's testimony is the only testimony that the defendant claims was false and/or misleading, and the court found that B's testimony was "highly credible." As stated previously, it is not the role of this court to "second-guess the credibility determinations made by the trial court." (Internal quotation marks omitted.) *Young* v. *Commissioner of Correction*, 219 Conn. App. 171, 187, 294 A.3d 29, cert. denied, 347 Conn. 905, 297 A.3d 567 (2023).

B testified at the probation revocation hearing that, after the defendant exited his vehicle, she heard glass shatter. The defendant attempts to establish that this testimony was false, relying on an incident report and warrant application in which B allegedly indicated that she heard glass shatter at the defendant's house, before she and the defendant entered his vehicle. Neither of those documents was in evidence and, therefore, we do not consider them. See footnote 14 of this opinion.

[14] We agree with the state's observation that, in support of his claim, the defendant has submitted voluminous documents that were not admitted as evidence at the probation revocation hearing. We decline to consider any evidence that was not before the court at the probation revocation hearing. See, e.g., *Dushay* v. *Southern Connecticut Hockey League, LLC*, 234 Conn. App. 609, 612 n.3, A.3d (2025). "A reviewing court cannot go beyond the proper record before it in the determination of issues presented on appeal. . . . It is axiomatic that this court does not take evidence and does not make factual determinations." (Citation omitted; internal quotation marks omitted.) *State* v. *Dyous*, 153 Conn. App. 266, 278 n.10, 100 A.3d 1004 (2014), appeal dismissed, 320 Conn. 176, 128 A.3d 505 (2016).

Even if that evidence were properly before the court, mere inconsistencies in a witness' testimony do not equate to false testimony or perjury. See, e.g., *State* v. *Gradzik*, 193 Conn. 35, 42 n.10, 475 A.2d 269 (1984) ("Not every inconsistency constitutes a falsehood. Claiming perjury, with nothing more, is inappropriate."); see also *United States* v. *Josephberg*, 562 F.3d 478, 494 (2d Cir.) ("[d]ifferences in recollection do not constitute perjury . . . and when testimonial inconsistencies are revealed on cross-examination, the [fact finder] [i]s entitled to weigh the evidence and decide the credibility issues for itself" (citation omitted; internal quotation marks omitted)), cert. denied, 558 U.S. 965, 130 S. Ct. 397, 175 L. Ed. 2d 302 (2009).

The defendant also challenges several statements made by B on cross-examination. The defendant extensively questioned B regarding certain prior incidents that did not pertain to the January 10, 2022 incident. Although the defendant asserts that B's responses to his questions were false, the only evidence he has presented to refute her testimony are documents that were not in evidence. For example, the defendant asked B about a prior incident in July, 2021, and inquired as to whether B had "made a report that [the defendant] was to shoot your male companion in the head." B denied knowledge of this incident. B also denied ever "plac[ing] a claim . . . [that was] found to be untrue." The defendant asserts that B testified falsely with respect to a prior accusation she made that the defendant had sexually assaulted her and with respect to a prior incident involving B that occurred at the Superior Court in the judicial district of Ansonia-Milford. He also claims that B offered perjured testimony by denying that she had ever tried to harm herself. Finally, he argues that B testified falsely by denying that she had spoken with the defendant's son in February, 2022. The defendant's arguments amount to mere conclusory assertions that

B's statements were false. The majority of B's allegedly false statements were elicited on cross-examination by the defendant and involved issues that were not relevant to the event that led to the filing of the violation of probation charges. We, therefore, are not convinced by the defendant's assertions that B's testimony pertaining to the incident that led to the allegation that he violated the conditions of his probations was false or substantially misleading. See, e.g., *Young* v. *Commissioner of Correction*, supra, 219 Conn. App. 195–96.

Second, we agree with the state that, even if we were to conclude that the portions of B's testimony that the defendant has challenged were false or substantially misleading, the defendant is unable to demonstrate that the prosecutor's failure to correct the statements was fundamentally unfair because "there is no reasonable likelihood that the false testimony could have affected the judgment of the [finder of fact]." *Ayuso* v. *Commissioner of Correction*, supra, 215 Conn. App. 345. As stated previously, most of the challenged statements were not relevant to any material issue in the case, and, instead, concerned prior, unrelated incidents between B and the defendant.[15] The only challenge that the defendant makes to B's testimony relating to the January 10, 2022, incident is her statement regarding the timing of when she heard glass shatter. The defendant challenges this testimony with documents that were not properly before the court. Moreover, any mere inconsistencies in B's memory regarding the incident were wholly within the province of the trial court, as the finder of fact, to weigh. As stated previously, the court's finding that B's testimony was "highly credible" is not one we disturb on appeal. "As the sole finder of fact in the

[15] Indeed, the court noted during the defendant's cross-examination that "none of this is actually relevant to anything that [the prosecutor] went into on direct. Ordinarily, I would sustain objections to your questions, sir. But, I'm gonna give you a little bit of leeway, inasmuch as you're not an attorney."

probation revocation proceeding . . . the court was entitled to arrive at its own conclusion regarding the witnesses' credibility and what weight to afford their testimony." (Internal quotation marks omitted.) *State* v. *Blake*, 108 Conn. App. 336, 343, 947 A.2d 998, aff'd, 289 Conn. 586, 958 A.2d 1236 (2008). Even if B was mistaken about the timing of when she heard glass shattering, we cannot conclude that such a mistake would have affected the court's judgment with respect to her testimony regarding the incident as a whole. In light of the foregoing, we conclude that the defendant has not demonstrated that his due process rights were violated by the prosecutor's purported failure to correct B's testimony.

The judgments are affirmed.

In this opinion the other judges concurred.

JONATHAN I. VILLAO *v.* GRISELL V. PAZ
(AC 48574)

Alvord, Moll and Wilson, Js.

Syllabus

The defendant, whose marriage to the plaintiff had previously been dissolved, appealed, challenging the financial orders in the trial court's judgment of dissolution. While the appeal was pending, the trial court denied the plaintiff's postjudgment motion for contempt, in which the plaintiff claimed, inter alia, that the defendant had failed to pay attorney's fees that had been awarded to him in the dissolution judgment, but ordered the defendant to pay those fees. The defendant filed a motion for review of the trial court's order determining that the automatic appellate stay pursuant to the rule of practice (§ 61-11 (a)) did not apply to the award of attorney's fees. *Held*:

This court granted the motion for review and granted the relief requested, vacating the trial court's order, as the award of attorney's fees was automatically stayed under Practice Book § 61-11 (a) because the award did not fall within the orders exempted from the automatic appellate stay in § 61-11 (c), namely, periodic alimony, support, custody or visitation in family matters.

Considered July 23—officially released September 30, 2025

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Cirello*, *J.*; judgment dissolving the marriage and granting certain other relief, from which the defendant appealed to this court; thereafter, the court, *D'Agostino*, *J.*, denied the plaintiff's motion for contempt and issued an order that the award of attorney's fees to the plaintiff was exempt from the appellate stay, and the defendant filed a motion for review of that order with this court. *Motion for review granted*; *relief granted.*

Anthony L. Cenatiempo, in support of the motion.

Jonathan I. Villao, self-represented, in opposition to the motion.

Opinion

ALVORD, J. In this marital dissolution action, the defendant, Grisell V. Paz, appeals following the judgment dissolving her marriage to the plaintiff, Jonathan I. Villao. On May 30, 2025, the defendant filed a motion for review of the order of the trial court determining that its attorney's fees award was in the nature of support and thus exempted from the automatic appellate stay pursuant to Practice Book § 61-11 (c). On July 23, 2025, this court granted the motion for review and granted the relief requested, vacating the trial court's order. This court also indicated that an opinion would follow. This opinion sets forth the reasoning for our decision.

The following procedural history is relevant to our review. On March 3, 2025, the court, *Cirello*, *J.*, dissolved the marriage between the parties. The court awarded the parties joint legal and physical custody of their two minor children and set forth a parenting plan. The court found that the plaintiff recently had been

terminated from his employment of twenty years at an auto parts store due to theft and was working as an Uber driver, that the defendant recently had stopped working in her chiropractic and weight loss clinic due to a cancer diagnosis, and that both parties had exhibited a lack of candor and transparency with respect to their finances. The court ordered the defendant to pay the plaintiff $119 weekly in child support. The court also ordered the defendant to pay the plaintiff $750 monthly in alimony while she is receiving disability benefits, and a different amount when disability payments cease. The court also made orders distributing the parties' assets. Finally, the court found that "the defendant's actions, including the slow trickle of disclosure or nondisclosure of relevant information, caused the plaintiff's counsel to hire private investigators, file motions for contempt and motions to compel, and spend more time litigating the case than necessary." The court ordered the defendant to pay $25,000 of the plaintiff's attorney's fees. On March 20, 2025, the defendant filed an appeal challenging the financial orders in the dissolution judgment.

On March 31, 2025, the plaintiff filed a motion for contempt, in which he alleged that the defendant had failed to make child support payments in accordance with the dissolution judgment. On April 4, 2025, the plaintiff amended his motion for contempt to allege that the defendant also had not made alimony payments or paid the attorney's fees ordered. In his motion, the plaintiff argued that, pursuant to Practice Book § 61-11 (c), attorney's fees orders are not automatically stayed during the pendency of an appeal. On May 1, 2025, the court, *D'Agostino*, *J.*, issued an order in which it declined to find the defendant in contempt because the dissolution judgment did not contain a precise date on which alimony and child support should be paid but ordered that alimony payments be made monthly and child support weekly on dates certain and that the child

support arrearage of $223 was to be paid by May 2, 2025. The court allowed the parties to file supplemental memoranda on the issue of whether the attorney's fees award was stayed and, therefore, whether the defendant was in contempt. Both parties filed memoranda.

On May 21, 2025, the court issued a memorandum of decision on the motion for contempt with respect to the award of attorney's fees. It determined that there was no appellate stay of the award of attorney's fees entered in the dissolution judgment and required the defendant to pay that award on or before May 28, 2025. On May 23, 2025, the defendant filed a motion seeking an emergency stay from this court. See Practice Book § 61-14 (b). This court stayed the defendant's obligation to pay the attorney's fees pending the resolution of her motion for review, which she filed on May 30, 2025. On June 9, 2025, the plaintiff filed an opposition to the defendant's motion for review.

We begin our discussion with the standard of review and relevant legal principles. "The interpretation and application of provisions of the rules of practice involves a question of law over which our review is plenary." *Bouffard* v. *Lewis*, 203 Conn. App. 116, 120, 247 A.3d 667 (2021); see also *U.S. Bank Trust, N.A.* v. *O'Brien*, 231 Conn. App. 779, 785–86, 334 A.3d 558 (2025) ("[a] trial court's determination of whether an appellate stay was in effect raises a question of law over which we exercise plenary review").

Practice Book § 61-11 governs stays of execution in noncriminal cases. Section 61-11 (a) provides in relevant part: "Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired. If an appeal is filed . . . such proceedings shall be stayed until the

final determination of the cause. . . .'' ''In family matters, however, orders of periodic alimony and orders of child support are specifically exempt from the automatic stay provisions of . . . § 61-11.'' *Bouffard* v. *Lewis*, supra, 203 Conn. App. 120. Specifically, § 61-11 (c) provides in relevant part: ''Unless otherwise ordered, no automatic stay shall apply . . . to orders of periodic alimony, support, custody or visitation in family matters . . . .''

Our appellate courts have explained the purpose of exempting certain orders in family matters from the automatic appellate stay. ''Where the need for child support is established and ordered by the court, it is of the utmost importance for the welfare of the child that such payments be made in a timely fashion. It is also in the interest of society that the child be supported by those obligated to support the child and that the child not be required to seek public assistance to satisfy those needs unless otherwise necessary.'' (Internal quotation marks omitted.) *Wald* v. *Cortland-Wald*, 226 Conn. App. 752, 772, 319 A.3d 769 (2024); see also *Mulholland* v. *Mulholland*, 229 Conn. 643, 652, 643 A.2d 246 (1994) (discussing policy preference against compelling financially disadvantaged spouse to require public assistance during appeal); *Yontef* v. *Yontef*, 185 Conn. 275, 291, 440 A.2d 899 (1981) (automatically staying custody or visitation orders pending appeal ''is not only unseemly but is inconsistent with the concern, repeatedly enunciated in the statutes and the cases, for the best interests of the children'').

In *Birkhold* v. *Birkhold*, 343 Conn. 786, 276 A.3d 414 (2022), our Supreme Court was presented with the question of whether the automatic appellate stay applied to an order of attorney's fees. In that case, the trial court had determined that ''the automatic appellate stay did not apply to its order of attorney's fees and that, even if it did, the court would terminate the stay . . . .''

Id., 794 n.4. On the plaintiff's motion for review, our Supreme Court granted review but denied the requested relief, determining that it did not "have to decide whether the automatic stay exception for orders of support, prescribed by Practice Book § 61-11 (c), applies to this particular order, as fashioned by the trial court, because the trial court commendably found, in the alternative, that the . . . factors [set forth in *Griffin Hospital* v. *Commission on Hospitals & Health Care*, 196 Conn. 451, 456, 493 A.2d 229 (1985)] weighed in favor of terminating the appellate stay. . . . Even if the automatic stay did apply under these circumstances, we cannot conclude that the trial court abused its discretion in terminating any automatic stay pursuant to *Griffin Hospital*." (Citation omitted.) *Birkhold* v. *Birkhold*, supra, 794 n.4.

This court previously has construed the exception to the automatic appellate stay contained within Practice Book § 61-11 (c) narrowly. For example, in *Lowe* v. *Lowe*, 58 Conn. App. 805, 816, 755 A.2d 338 (2000), this court determined that a lump sum alimony order did not fall within § 61-11 (c), which refers to orders of "periodic alimony," and, therefore, lump sum alimony orders automatically are stayed on appeal. "[T]rial courts in this state continue to have the power to conduct proceedings and to act on motions filed during the pendency of an appeal provided they take no action to enforce or carry out a judgment while an appellate stay is in effect. . . . [In other words] [t]he automatic stay prohibits only those actions that would execute, effectuate, or give legal effect to all or part of a judgment challenged on appeal. . . . The automatic appellate stay merely denies [the successful litigant] the immediate fruits of his or her victory . . . in order to protect the full and unhampered exercise of the right to appellate review." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Lavy* v. *Lavy*, 190 Conn. App. 186, 212, 210 A.3d 98 (2019).

With these principles in mind, we conclude that the $25,000 attorney's fees award in the present case does not fall within "periodic alimony, support, custody or visitation" exempted from the automatic appellate stay in Practice Book § 61-11 (c). The award was issued as part of the overall financial mosaic in the dissolution judgment. The trial court made findings that the defendant's litigation conduct had caused the plaintiff to expend more attorney's fees than was necessary. Like a property distribution or similar "lump sum" award in a dissolution matter, we conclude that the attorney's fees award is automatically stayed unless and until the trial court terminates that stay.

The motion for review is granted and the relief requested is granted in accordance with this court's July 23, 2025 order.

In this opinion the other judges concurred.

VICTOR ALICEA *v.* COMMISSIONER OF CORRECTION (AC 47929)

Cradle, C. J., and Alvord and Suarez, Js.

Syllabus

The respondent, the Commissioner of Correction, appealed, on the granting of certification, from the habeas court's judgment granting in part the petitioner's petition for a writ of habeas corpus. The respondent claimed that the court improperly determined that the petitioner's criminal trial counsel had rendered ineffective assistance in advising the petitioner not to testify in support of his claim of self-defense in light of the potential admissibility into evidence of certain of the petitioner's prior convictions. *Held*:

The habeas court improperly granted in part the habeas petition, as the petitioner failed to demonstrate that his counsel rendered deficient performance in advising him not to testify, that advice having been within the range of reasonable professional assistance based on counsel's concern that the petitioner's testimony might potentially open the door to the admission of his prior convictions or that the trial court could permit their use as impeachment evidence.

The habeas court improperly determined that the petitioner was prejudiced as a result of his counsel's advice, as the petitioner failed to show, in light of the strength of the state's case, that a reasonable probability existed that the trial's outcome would have been different had his counsel advised him that the admissibility of the prior convictions would have been limited had the petitioner testified, and the petitioner's testimony would have been, to some extent, cumulative of the record already established at the trial.

Argued April 22—officially released September 30, 2025

Procedural History

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

Timothy F. Costello, supervisory assistant state's attorney, with whom, on the brief, were *Anne F. Mahoney*, state's attorney, *Erin Stack*, assistant state's attorney, and *Jennifer M. Fields*, deputy assistant state's attorney, for the appellant (respondent).

Naomi T. Fetterman, assigned counsel, with whom, on the brief, was *James E. Mortimer*, assigned counsel, for the appellee (petitioner).

Opinion

ALVORD, J. The respondent, the Commissioner of Correction, appeals from the judgment of the habeas court granting in part the petition for a writ of habeas corpus filed by the petitioner, Victor Alicea. On appeal, the respondent claims that the court incorrectly determined that the petitioner's criminal trial counsel had rendered ineffective assistance with respect to purported misadvice regarding the admissibility into evidence of the petitioner's prior convictions were he to testify in support of his claim of self-defense. We agree

and, accordingly, reverse in part the judgment of the habeas court.

On the basis of the evidence presented at the petitioner's criminal trial, the jury reasonably could have found the following facts, as set forth by this court in the petitioner's direct appeal from his conviction. See *State* v. *Alicea*, 191 Conn. App. 421, 215 A.3d 184 (2019), aff'd, 339 Conn. 385, 260 A.3d 1176 (2021). "The [petitioner] and the victim, Tyrone Holmes, worked at Burger King in the Dayville section of Killingly (restaurant). Holmes generally worked third shift as a porter, doing maintenance and cleaning at the restaurant. On July 9, 2015, the [petitioner], who also worked as a porter at the restaurant, was covering Holmes' third shift. After midnight, Holmes, accompanied by his friend, Robert Falu, arrived at the closed restaurant to drop off some supplies and to speak with the [petitioner], whom, he had heard, had been talking about him. Falu waited in or around Holmes' vehicle while Holmes let himself into the back entrance using his key. Holmes then asked the [petitioner] to step outside. The [petitioner] and Holmes went outside, had a brief discussion, and the [petitioner] denied having talked negatively about Holmes. Everything appeared fine to Holmes. Holmes returned to his vehicle, retrieved some supplies, and went back into the restaurant.

"Upon returning to the restaurant, Holmes heard the [petitioner] on his cell phone telling whoever was listening to get to the restaurant because the [petitioner] had a problem. Holmes told the [petitioner] that they did not have a problem, and the [petitioner] walked away while Holmes was trying to talk to him. Holmes followed the [petitioner], who went near the fryers, and the [petitioner] repeatedly told Holmes that he was trying to save Holmes' life. Holmes, who was holding a set of car keys in his hands, tossing them from one hand to the other, became angry and the two began

arguing. The [petitioner] then pulled Holmes' head toward him and cut his throat with a razor blade. Initially, Holmes thought the [petitioner] had punched him, and he assumed a fighter's stance. He then saw that he was bleeding, however, and he ran from the restaurant. Some of the altercation was caught on the restaurant's video. Once outside, Holmes threw his car keys to Falu and told him to start the car. The [petitioner], who had followed Holmes outside, chased him around the car twice, and said, 'see what happens when you mess with me.' Holmes got into the driver's seat of the car and drove away with Falu. After Holmes arrived home, Holmes' wife called 911, and she tried to stop the bleeding from Holmes' neck by applying pressure with a towel. The [petitioner] also called 911 from the restaurant.

"Holmes was taken by ambulance to Day Kimball Hospital in Putnam, where he was examined by Joel Bogner, an emergency medicine physician, who determined that Holmes had sustained a neck laceration that was approximately seven inches long and that the care he needed was 'beyond the capabilities of Day Kimball Hospital . . . .' Holmes was given morphine sulfate for pain and then was transferred to Hartford Hospital, via ambulance, where he underwent surgery for the laceration to his neck, which included the repair of a lacerated neck muscle and his left external jugular vein." Id., 424–26.

The petitioner was arrested and charged with assault in the first degree in violation of General Statutes § 53a-59 (a) (1), and assault in the first degree in violation of § 53a-59 (a) (3). Id., 426. During his criminal trial, the petitioner was represented by Attorney Matthew S. Davis. "The jury found the [petitioner] guilty of both charges, and, after accepting the verdict, the court [*Seeley*, *J.*] rendered judgment of conviction on both counts. The [petitioner] also pleaded nolo contendere

to being a persistent dangerous felony offender. The court merged the conviction of the two assault charges and sentenced the [petitioner] to a mandatory minimum term of ten years of incarceration, followed by twelve years of special parole on the count of intentional assault as a persistent dangerous felony offender." (Footnote omitted.) Id.

After his conviction was affirmed on direct appeal,[1] the petitioner filed a petition for a writ of habeas corpus. Relevant to the present appeal, the operative petition alleges that Davis rendered ineffective assistance, inter alia, by "fail[ing] to adequately discuss the legal elements of self-defense, in light of the evidence presented during the petitioner's criminal trial, with the petitioner prior to the petitioner electing to not testify . . . ."[2] See footnote 7 of this opinion. The respondent filed a return, leaving the petitioner to his proof.

The habeas court, *Bhatt*, *J.*, conducted a trial on July 9, 2024. The petitioner presented his own testimony, as well as that of Davis and Eric Malarkey, the restaurant manager.

Malarkey testified that there had been some issues with the victim's employment, including showing up

[1] The petitioner appealed from the judgment of conviction, claiming that "(1) the jury's verdicts of guilty on both intentional and reckless assault were legally inconsistent, (2) the court erred in excluding his statement to the police, given approximately forty-five minutes after the incident at issue, and (3) the state failed to disprove his claim of self-defense." *State* v. *Alicea*, supra, 191 Conn. App. 424. This court affirmed the judgment of conviction. See id., 450. The petitioner thereafter petitioned for certification to appeal to our Supreme Court, and that court granted certification on the issue of whether this court correctly concluded that the jury's verdicts were not legally inconsistent. See *State* v. *Alicea*, 339 Conn. 385, 390, 260 A.3d 1176 (2021). Our Supreme Court affirmed the judgment of this court. See id., 402.

[2] The petitioner also had alleged that Davis rendered ineffective assistance in failing to present the testimony of Eric Malarkey, the restaurant manager, and failing to object to certain comments made by the prosecutor during closing argument. The habeas court denied both of these claims. The petitioner also had alleged other claims in his petition, which were withdrawn prior to trial.

late, but that he had been given a second chance and had returned to work without issue a few weeks before the incident. Malarkey told the petitioner that the victim had complained about the quality of the petitioner's work and having to pick up the petitioner's slack. Malarkey testified that it was against restaurant policy for employees who were not working to enter the restaurant after hours and that a provision of the employee handbook stating that policy typically would be reviewed with each new hire. Malarkey also testified that he was not aware of any issues regarding employees entering the back door during off hours.

Davis testified at the habeas trial that the defense theory was that the petitioner had acted in self-defense when he was confronted by the victim. Davis testified that he had several discussions with the petitioner regarding the nature of a self-defense claim and the risks and exposure of proceeding to trial. Davis testified that he sought to prove hostility between the victim and the petitioner as contributing to the petitioner's mindset and necessity to defend himself. Davis testified that he discussed with the petitioner the elements of a self-defense claim and that "we absolutely went over what the claim was, how we felt we could prove it." Davis further testified that he sought to establish the petitioner's subjective perception of imminent bodily harm by presenting evidence that the victim had come into the restaurant after hours. Davis testified that he did not perceive difficulty in establishing the subjective perception of imminent bodily harm without the petitioner's testimony because he could use the testimony of other witnesses, including the petitioner's wife. With respect to challenging the victim's testimony that the petitioner had chased him outside with the razor, Davis testified that he believed that it was not an issue because the restaurant's video, which had been entered into evidence, contravened the testimony of the victim on

that point. Davis testified that, "I guess, did we consider presenting additional evidence . . . I would have to say yes. We went with strategically what was the best claim we could make without subjecting [the petitioner] to repeated and abundan[t] cross-examination."

Davis testified that he had a discussion with the petitioner prior to trial regarding whether the petitioner should testify regarding the claim of self-defense and that, after the discussion, the petitioner was in agreement not to testify. Davis testified that it was his opinion that the petitioner "would not be the best witness" because of his "very severe criminal background, assaultive in nature." When asked whether he had a discussion with the petitioner about what evidence the state would be able to introduce concerning the petitioner's criminal history, Davis responded: "Yes. I know we had that conversation. Specifically, I don't know what was actually said, but we would have covered what we thought how we expected the state to maneuver if he in fact did testify." After acknowledging that the victim also had a "very long criminal background" and that he introduced evidence of the victim's criminal background as extensively as he thought he could, Davis explained that he perceived the petitioner's criminal background to be problematic for his self-defense claim because he had been convicted of prior assaults.

Although Davis initially testified that he believed the petitioner had been diagnosed with an impulse control disorder, he then had his recollection refreshed when the petitioner's counsel showed him the report of a psychological evaluation of the petitioner that had been conducted in May, 2016, which reflected diagnoses of post-traumatic stress disorder and bipolar disorder. When asked what concerns he had regarding cross-examination of the petitioner, Davis responded: "Given the evaluation of what I think his mental state was and how he would function as a witness, I saw the potential

for more damage to his story than anything else. So, it was certainly my advice that he consider not testifying and, in fact, he agreed and we did not testify." When asked whether he performed a dry run with the petitioner concerning his testimony, Davis responded: "A dry run, I'm going to say no. We spent [an] enormous amount of time preparing for it and going over what we could. So, our client understood what was going on and could assist us in his defense."

On cross-examination, the respondent's counsel asked Davis whether, because evidence of the victim's violent disposition had been introduced into evidence, the state would have been able to cross-examine the petitioner on his own criminal past had he testified. Davis responded: "[T]hat was certainly the fear, and the prosecution was particularly zealous in this matter because they were actually responsible, the same individuals, for prosecuting [the petitioner] on the prior assault cases that you are speaking of." Davis testified that he explained to the petitioner that his criminal convictions could come out at trial, he went over how that could impact the petitioner's self-defense claim, and the petitioner was canvassed by the court on his decision not to testify.

The petitioner testified at the habeas trial to the following. He knew the victim as a coworker, and he was surprised when the victim entered the back door of the restaurant on the night of the incident. The victim asked him to come outside to talk with him and, once outside, asked the petitioner whether he had been "talking stuff" about him. A second man, unknown to the petitioner, appeared. The petitioner had left a broom in the back doorway to hold the door open and kicked it away to make sure that no one entered the restaurant. The petitioner noticed that the victim's speech was slurred and that he seemed to be intoxicated. After telling the

victim to go home, the petitioner reentered the restaurant and looked for Malarkey's phone number. When he could not find it, he called his wife. The victim also reentered the restaurant using his key and yelled at the petitioner. The victim had his keys in his hands, and cocked his hand back, and the petitioner cut the victim. At that point, the petitioner feared that he would be "laid out on the floor" and that no one would find him until the morning. He thought that he could not run because the second person was waiting outside. Afterward, the petitioner was worried that he had killed the victim, and he wanted to save him. He left the razor on a table, followed the victim outside, and told the second person to drive the victim to the hospital. The petitioner then went back inside and called 911.

The petitioner testified that he had discussed with Davis the potential of testifying during the criminal trial but that "[Davis] said pretty much, he thinks it's wise that I don't testify because my past will come up, and I agreed." The petitioner testified that Davis did not talk with him about which convictions would be admissible into evidence. The following colloquy occurred between the petitioner's habeas counsel and the petitioner:

"Q. Well, if . . . Davis had advised you that there were limitations in terms of how far, generally, it can go back in cross-examination—

"A. Did not—

"Q. —of you—

"A. —even mention it.

"Q. Would that have impacted your decision to testify?

"A. Yeah. If it only stemmed—if it would only stem to that—yeah. I would have testified."

The petitioner testified that Davis did not have any discussions with him regarding how he would demonstrate the petitioner's subjective belief, in the absence of his testimony, that the victim was about to use deadly physical force upon him.

During closing argument, the habeas court inquired whether the parties would like the opportunity to brief the issue of the admissibility of "[a] defendant's prior assaultive convictions in a self-defense case." Both parties submitted posttrial briefs on July 22, 2024. In the petitioner's posttrial brief, he stated: "The petitioner does not dispute that . . . it is likely that the trial court would have admitted two prior convictions for attempted assault that occurred in 2004, whether as named offenses or unnamed felonies. On August 26, 2005, the petitioner was convicted and sentenced on one count of attempted assault in the second degree and one count of attempted assault in the first degree to concurrent terms of five years." The petitioner further stated that "[t]he sole additional conviction that would be conceivably admissible would be the defendant's 1999 conviction for larceny in the sixth degree. However, the trial court would have discretion in excluding evidence of such a conviction based upon remoteness alone."[3]

The respondent argued in his posttrial brief that, although "[i]t is unknown exactly what the trial court would have permitted in the underlying case," it was possible that the petitioner's prior convictions could have been introduced, especially the larceny conviction.

[3] The petitioner argued that the following convictions and violations of probation would not have been admitted into evidence: "(1) 1988 assault in the first degree; (2) 1992 probation violation; (3) 1987 assault in the first degree; (4) breach of the peace from 1990 arrest; (5) 1992 possession of narcotics; (6) 1994 assault on a peace officer; (7) 1998 disorderly conduct; (8) 1999 possession of narcotics; (9) 2012 breach of the peace; (10) 2013 failure to appear; (11) 2014 breach of the peace; and (12) several probation violations."

The respondent maintained that "convictions older than ten years are occasionally allowed," and, thus, the petitioner's two felony assault convictions from 2005 potentially could have been used for impeachment. The habeas court heard supplemental closing argument on July 31, 2024, during which the court admitted into evidence as a full exhibit a copy of the petitioner's criminal record without objection.

On August 5, 2024, the habeas court issued its memorandum of decision, in which it granted in part the petitioner's amended petition for a writ of habeas corpus. The court first considered the admissibility of the petitioner's prior convictions in order to determine whether Davis' advice that the petitioner should not testify based on his criminal history was accurate. The court first considered the admissibility of the convictions pursuant to § 4-4 of the Connecticut Code of Evidence,[4] which permits the introduction into evidence of a homicide or assault victim's violent criminal record "to prove that the victim was the aggressor, regardless of whether such character evidence had been communicated to the accused prior to the homicide [or assault]." (Internal quotation marks omitted.) *State* v. *Johnson*,

[4] Section 4-4 of the Connecticut Code of Evidence provides in relevant part: "(a) Evidence of a trait of character of a person is inadmissible for the purpose of proving that the person acted in conformity with the character trait on a particular occasion, except that the following is admissible:

* * *

"(2) . . . Evidence offered by an accused in a homicide or criminal assault case, after laying a foundation that the accused acted in self-defense, of the violent character of the victim to prove that the victim was the aggressor, or by the prosecution to rebut such evidence introduced by the accused. . . ."

Subsection (b) of § 4-4 delineates the methods by which the character of the victim may be proved: "In all cases in which evidence of a trait of character of a person is admissible to prove that the person acted in conformity with the character trait, proof may be made by testimony as to reputation or in the form of an opinion. In cases in which the accused in a homicide or criminal assault case may introduce evidence of the violent character of the victim, the victim's character may also be proved by evidence of the victim's conviction of a crime of violence."

351 Conn. 53, 73, 328 A.3d 143 (2025). The court stated that "there is no case in Connecticut permitting the introduction of a *defendant's* prior convictions for violence to prove that the victim was not the initial aggressor" and that any such request in this case to introduce evidence for this purpose would have been a matter of first impression. (Emphasis in original.) The court then stated that, even if the convictions would have been admissible, they remained subject to the trial court's gatekeeping function and weighing of their probative value compared to their prejudicial nature. Finally, the habeas court noted that "the issue of the initial aggressor was not before the jury. There was no instruction provided to the jury on initial aggressor." Accordingly, the court determined that any advice suggesting that the convictions would have been admissible for this purpose would have been incorrect.

The habeas court then turned to whether the petitioner's prior convictions would have been admissible pursuant to § 6-7 of the Connecticut Code of Evidence.[5] After considering the prejudice arising from the admission of the prior convictions of attempted assault in this prosecution, the probative value of an act of violence, and the remoteness of the convictions, the habeas

[5] Section 6-7 (a) of the Connecticut Code of Evidence provides: "For the purpose of impeaching the credibility of a witness, evidence that a witness has been convicted of a crime is admissible if the crime was punishable by imprisonment for more than one year. In determining whether to admit evidence of a conviction, the court shall consider:

"(1) the extent of the prejudice likely to arise;

"(2) the significance of the particular crime in indicating untruthfulness; and

"(3) the remoteness in time of the conviction."

Section 6-7 (c) of the Connecticut Code of Evidence provides: "If, for purposes of impeaching the credibility of a witness, evidence is introduced that the witness has been convicted of a crime, the court shall limit the evidence to the name of the crime and when and where the conviction was rendered, except that (1) the court may exclude evidence of the name of the crime and (2) if the witness denies the conviction, the court may permit evidence of the punishment imposed."

court concluded that "it is clear that the facts of the underlying attempted assault convictions would be inadmissible, and there is a significant question as to whether either of them would come in as named felonies at all. The two prior convictions at issue were in 2005 and 1999, placing them both more than ten years in the past. [The petitioner's] 2005 conviction was used to charge him as a persistent dangerous felony offender, a charge to which he submitted a written plea of no contest. Nevertheless, both [of] his prior convictions were for attempted assaults, crimes identical to those charged. However, the record further reveals that the state filed a notice of intent to introduce evidence of uncharged misconduct on October 6, 2016, less than a week before the start of the trial. In that notice, the state notified the defense that it intended to offer evidence of an assault [the petitioner] committed on or about December 20, 1987, and for which he was convicted on May 20, 1988, some eighteen to nineteen years prior to this trial. There is no mention of any other misconduct sought to be introduced. The defense did not file a motion in limine precluding this evidence, nor an objection. There was also no hearing on the matter." (Emphasis omitted.)

The habeas court concluded that "[b]ased on prevailing Connecticut cases . . . Davis' advice that [the petitioner] should not testify because his lengthy prior record would be admitted at trial and negatively impact his claim of self-defense is erroneous. Even assuming that [the trial court] had, in fact, denied the motion in limine filed by the defense several months prior to the actual trial,[6] given [its] rulings on the admissibility of

[6] The petitioner's criminal file contains a motion in limine, stamped as having been filed on July 1, 2016, with respect to the petitioner's prior criminal record. Therein, the petitioner represented that certain of his felony convictions were more than ten years old and lacked even minimal probative value so as to overcome their prejudicial effect. The petitioner further argued, inter alia, that certain of the convictions were for offenses similar or identical to that charged in the present case and, thus, would be highly

the victim's convictions and the binding case law, at most [the petitioner] would have been impeached by virtue of his 2005 conviction and at worst it would have been limited to the fact that he was convicted of attempted assault in 2005. This one conviction alone is insufficient to advise a client to not testify and would not have the devastating impact that . . . Davis believed." (Emphasis omitted; footnote added; footnote omitted.) The court then credited the petitioner's testimony that "had . . . Davis advised him that any impeachment using his prior convictions would have been limited to the fact of conviction of either a named or unnamed felony, without getting into the circumstances of the incidents, he would have chosen to testify at the criminal trial."

prejudicial. The motion did not have annexed to it an order. See Practice Book § 41-6. There is a file entry that appears to be dated July 1, 2016, stating: "Motion in limine re [petitioner's] recorded history." The next line on the docket sheet states: "Motion in limine—Denied /s/ Seeley." There is no transcript dated July 1, 2016.

During supplemental closing argument before the habeas court, the issue of the file notation was discussed. The petitioner's counsel stated that the petitioner's motion in limine "wasn't pursued by . . . Davis." The court then inquired about the notation in the file that the motion was denied, and neither counsel could explicate the purported denial of the motion.

In its memorandum of decision, the habeas court referenced the state's October 6, 2016 notice of intent to offer evidence of the petitioner's 1988 assault conviction. The court stated in a footnote: "The clerk's file also reveals a motion in limine filed by the defense dated July 1, 2016, titled, 'Motion in limine re: defendant's recorded history.' This appears to be a motion seeking to preclude the state from eliciting evidence from its witnesses of [the petitioner's] criminal history. The clerk's file indicates a notation that the motion was denied, but there is no date associated with that denial. The motion itself is devoid of any notation that it was ruled on, and it is not in any transcript. . . . Davis did not testify that he filed such a motion, it was heard by the court and then denied. The parties also agreed during supplemental closing argument that it was not clear what this referred to."

Additionally, in its memorandum of decision, the habeas court stated that the defense "did not file a motion in limine precluding this evidence . . . ." In a footnote in his reply brief, the respondent suggests that "[t]o the extent the habeas court found both that Davis did not file a motion in limine and that the file contains a motion in limine filed by him, that finding is clearly erroneous."

Having found that Davis had rendered deficient performance, the habeas court determined that there was a reasonable likelihood of a different outcome of the criminal trial based on the petitioner's testimony. The court emphasized that, although the restaurant's video captured the interactions between the petitioner and the victim, the only evidence of the critical information regarding what was said during the interaction came from the victim. The petitioner's wife testified regarding phone calls with the petitioner both before and after the incident, during which she testified that he sounded worried and nervous. She further testified that she could hear the victim in the background and that he sounded angry, loud, and threatening. The victim testified that he was not there to argue or fight with the petitioner, he was not the initial aggressor, and he was de-escalating the situation. The habeas court identified two issues before the jury—the petitioner's subjective belief that his life was in danger and whether that was objectively reasonable. The court found: "The jury needed more than the video to find that [the petitioner] acted in self-defense. At the critical moment of the assault, only a very small portion of the victim's head can be seen on screen. [The petitioner] is not on screen, and almost no part of the victim's body is visible. The jury cannot tell from the video what the two were saying to each other, how close they were, whether [the petitioner] was advancing or retreating and other facts pertinent to self-defense. [The petitioner's] testimony in support of self-defense was critical to explain what is not shown by the video.

"The only way to put [the petitioner's] subjective belief that the victim was about to use deadly physical force on hi[m] was his own testimony. He gave no statement that could be admitted in lieu of his testimony. His credible testimony to this court provided a plausible alternate version of events and credibly

explained his subjective fear that appears to be in harmony with the actions seen on the video. He testified that he was attempting to walk away from the victim while on the phone with his wife, expressing his fear to her. This was corroborated by her testimony. He testified before this court that the victim continued to pursue him and approach him in an aggressive manner and that he became afraid when the victim switched his keys to his dominant right hand and took a fighting stance.

"This is all information the jury needed to hear in order to properly and effectively evaluate his self-defense claim. While the jury would have been free to disregard his version of events, the court cannot say that the state's case was so overwhelming that there is no reasonable probability of a different outcome. This was a 'he said-he said' case where the jury would have had to decide whether [the petitioner's] actions were justified by evaluating his credibility." The court found that, but for Davis' misadvice regarding the scope of admissibility of the petitioner's prior convictions, the petitioner would have testified and that his testimony creates a reasonable likelihood of a different outcome. Accordingly, the court granted the petition in part. On August 9, 2024, the court granted the respondent's petition for certification to appeal. This appeal followed.

I

We first set forth guiding principles of law as well as our standard of review, which are well settled. "In *Strickland* v. *Washington*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)], 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. . . . To satisfy the performance prong of the *Strickland* test, 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. . . . 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. . . . [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. . . . [T]he 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. . . . The application of the habeas court's factual findings to the pertinent legal standard, however, presents a mixed question of law and fact, which is subject to plenary review." (Citation omitted; internal quotation marks omitted.*)* *Roberto A.* v. *Commissioner of Correction*, 229 Conn. App. 104, 111–12, 325 A.3d 1192, cert. denied, 350 Conn. 935, 327 A.3d 384 (2024).

We also must set forth the well settled substantive legal principles underlying a claim of self-defense. "The rules governing the respective burdens borne by the defendant and the state on the justification of self-defense are grounded in the fact that [u]nder our Penal Code, self-defense, as defined in [General Statutes] § 53a-19 (a) . . . is a defense, rather than an affirmative defense. See General Statutes § 53a-16. Whereas an *affirmative defense* requires the defendant to establish his claim by a preponderance of the evidence, a properly raised *defense* places the burden on the state to disprove the defendant's claim beyond a reasonable doubt. See General Statutes § 53a-12. Consequently, a

defendant has no burden of persuasion for a claim of self-defense; he has only a burden of production. That is, he merely is required to introduce sufficient evidence to warrant presenting his claim of self-defense to the jury. . . . Once the defendant has done so, it becomes the state's burden to disprove the defense beyond a reasonable doubt. General Statutes § 53a-12 (a) . . . ." (Emphasis in original; internal quotation marks omitted.) *State* v. *Revels*, 313 Conn. 762, 778–79, 99 A.3d 1130 (2014), cert. denied, 574 U.S. 1177, 135 S. Ct. 1451, 191 L. Ed. 2d 404 (2015).

"The substantive principles governing a defendant's claim of self-defense are well settled. Under § 53a-19 (a), a person may justifiably use deadly physical force in self-defense only if he reasonably believes both that (1) his attacker is using or about to use deadly physical force against him, or is inflicting or about to inflict great bodily harm, and (2) that deadly physical force is necessary to repel such attack. . . . We repeatedly have indicated that the test a jury must apply in analyzing the second requirement, i.e., that the defendant reasonably believed that deadly force, as opposed to some lesser degree of force, was necessary to repel the victim's alleged attack, is a subjective-objective one. The jury must view the situation from the perspective of the defendant. Section 53a-19 (a) requires, however, that the defendant's belief ultimately must be found to be reasonable." (Internal quotation marks omitted.) Id., 779.

Finally, the legal principles surrounding the right to testify are also implicated. "It is axiomatic that [i]t is the right of every criminal defendant to testify on his own behalf . . . and to make that decision after full consideration with trial counsel. . . . [A]lthough the due process clause of the [f]ifth [a]mendment may be understood to grant the accused the right to testify, the if and when of whether the accused will testify is

primarily a matter of trial strategy to be decided between the defendant and his attorney. . . . [T]he presentation of testimonial evidence is a matter of trial strategy. . . . The failure of defense counsel to call a potential defense witness does not constitute ineffective assistance unless there is some showing that the testimony would have been helpful in establishing the asserted defense. . . . [T]here is a strong presumption that the trial strategy employed by a criminal defendant's counsel is reasonable and is a result of the exercise of professional judgment . . . ." (Citations omitted; internal quotation marks omitted.) *Saez* v. *Commissioner of Correction*, 168 Conn. App. 241, 247–48, 145 A.3d 384, cert. denied, 323 Conn. 933, 150 A.3d 685 (2016).

II

The respondent claims on appeal that the habeas court improperly determined that Davis had rendered ineffective assistance with respect to purported misadvice regarding the admissibility of the petitioner's prior convictions if he were to testify in support of his claim of self-defense.[7] We agree that the habeas court improperly concluded that Davis' advice necessarily fell below

[7] The respondent also claims that the habeas court improperly decided a claim that the petitioner did not plead in his amended petition. Specifically, the respondent contends that the petitioner's allegation that Davis "fail[ed] to adequately discuss the legal elements of self-defense, in light of the evidence presented during the petitioner's criminal trial, with the petitioner prior to the petitioner electing to not testify," did not include within it the issue of whether Davis had misadvised the petitioner on the admissibility of his prior convictions. We are not persuaded.

"The petition is in the nature of a pleading . . . . [T]he interpretation of pleadings is always a question of law for the court . . . . Our review of the [habeas] court's interpretation of the pleadings therefore is plenary. . . . [T]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically. . . . [T]he [petition] must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded, and do substantial justice between the parties. . . . As long as the pleadings provide sufficient notice of the facts claimed and the issues to be tried and do not surprise or prejudice the opposing party, we will

the minimal constitutional standard required by the sixth amendment to the United States constitution. We also agree that the habeas court improperly concluded that the petitioner demonstrated a reasonable probability that, but for Davis' advice, the result of the proceeding would have been different.

A

First, the respondent contends that the habeas court improperly determined that Davis had rendered deficient performance. The respondent argues: "[T]o the extent that Davis may have advised the petitioner that his convictions could be admitted to impeach him, or that he risked opening the door to discussion of such convictions, such advice was correct." We conclude that the petitioner failed to demonstrate that Davis' advice regarding the petitioner's decision not to testify was constitutionally deficient.

The following additional legal principles are relevant. "Judicial scrutiny of counsel's performance must be

not conclude that the [petition] is insufficient to allow recovery." (Internal quotation marks omitted.) *Roberto A.* v. *Commissioner of Correction*, supra, 229 Conn. App. 109. Reading the relevant claim in the petition broadly and realistically, we conclude that the issue raised, whether Davis rendered ineffective assistance by failing to discuss with the petitioner the legal elements of self-defense in light of the evidence presented during the criminal trial, included within it the issue of whether Davis' advice regarding the admissibility of the petitioner's convictions was reasonable.

Moreover, the habeas court asked the petitioner's counsel during closing argument whether his claim was that Davis "did not properly advise [the petitioner] and, had he done so, then [the petitioner] would have testified?" The petitioner's counsel responded in the affirmative, and the court again clarified: "[I]f I remember correctly, the testimony from [the petitioner] was, the only circumstance, I guess, under which he would have testified is, if . . . Davis had properly explained to him that only certain convictions would come in." The petitioner's counsel again responded in the affirmative. The respondent's counsel did not alert the court that he objected to that construction of the petitioner's claim. Thus, the habeas court was not placed on notice of the respondent's position. See *Robles* v. *Commissioner of Correction*, 169 Conn. App. 751, 763, 153 A.3d 29 (2016), cert. denied, 325 Conn. 901, 157 A.3d 1146 (2017).

highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." (Internal quotation marks omitted.) *Miller* v. *Commissioner of Correction*, 154 Conn. App. 78, 87–88, 105 A.3d 294 (2014), cert. denied, 315 Conn. 920, 107 A.3d 959 (2015).

The respondent maintains in his brief that this court must entertain the range of possible reasons that Davis advised the petitioner not to testify because "[t]he evidence presented at the habeas trial never established Davis' specific rationale for his advice. Davis could not recall how he advise[d] the petitioner, and . . . [t]he petitioner never testified as to which mechanism Davis believed any or all of the convictions would be admissible." In reviewing the respondent's claim, we are mindful of the well established proposition that "a reviewing court is required not simply to give [counsel] the benefit of the doubt . . . but to affirmatively entertain the range of possible reasons . . . counsel may have had for proceeding as [he or she] did." (Internal quotation marks omitted.) *Coltherst* v. *Commissioner of Correction*, 208 Conn. App. 470, 478, 264 A.3d 1080 (2021), cert. denied, 340 Conn. 920, 267 A.3d 857 (2022).

We consider the respondent's first proffered potential basis for Davis' advice that the petitioner's convictions could have been admitted into evidence, namely, that the petitioner, in his testimony, might open the door to admission of the prior convictions. "Although [e]vidence that a criminal defendant has been convicted of crimes on prior occasions generally is not admissible . . . [w]hen . . . a party opens the door to a subject that pertains directly to the credibility of the witness, he does so at his own risk. . . . In such cases, the rule is that a party who delves into a particular subject during the examination of a witness cannot object if the opposing party later questions the witness on the same subject. . . . Even though the rebuttal evidence would ordinarily be inadmissible on other grounds, the court may, in its discretion, allow it where the party initiating inquiry has made unfair use of the evidence. . . . The doctrine of opening the door cannot, of course, be subverted into a rule for injection of prejudice. . . . The trial court must carefully consider whether the circumstances of the case warrant further inquiry into the subject matter, and should permit it only to the extent necessary to remove any unfair prejudice which might otherwise have ensued from the original evidence. . . . [I]n making its determination, the trial court should balance the harm to the state in restricting the inquiry with the prejudice suffered by the defendant in allowing the rebuttal." (Internal quotation marks omitted.) *State* v. *Solomon*, 141 Conn. App. 270, 278–79, 60 A.3d 1039, cert. denied, 308 Conn. 939, 66 A.3d 881 (2013).

The respondent maintains that advice based on a concern that the petitioner inadvertently might respond to a question in a manner opening the door to his prior convictions was reasonable. See, e.g., *State* v. *Griggs*, 288 Conn. 116, 140, 951 A.2d 531 (2008) (where defendant testified that he had only " '[a] couple' " of domestic violence convictions and had never been engaged

in any kind of physical assault, trial court did not abuse its discretion in concluding that defendant opened door to evidence of his four domestic violence convictions involving assaultive or threatening behavior); *State* v. *Solomon*, supra, 141 Conn. App. 281 (where defendant, on direct examination, attempted to portray himself as peaceful, nonviolent man, after turning his life around following one time criminal conviction in 2003, trial court did not abuse its discretion when it allowed state to attempt to challenge inference during cross-examination with evidence of prior assault conviction and facts related thereto); *State* v. *Phillips*, 102 Conn. App. 716, 734, 927 A.2d 931 (where defendant testified to unfamiliarity with court procedures, court did not abuse its discretion in permitting state to ask about defendant's prior experiences in failing to appear for scheduled court date), cert. denied, 284 Conn. 923, 933 A.2d 727 (2007).

We agree with the respondent that advice based on a potential concern that the petitioner might open the door to admission of his prior convictions falls within the range of reasonable professional assistance. The habeas court noted that Davis had concerns about the petitioner being cross-examined, specifically, "given the evaluation and [the petitioner's] mental state, [Davis] saw the potential for more damage from testifying." As the court recognized, Davis testified that the petitioner had been evaluated and diagnosed with post-traumatic stress disorder and bipolar disorder.

The petitioner responds that, because Davis did not do a "dry run" of the petitioner's testimony, any concern about opening the door would have been speculative. We disagree. Although Davis acknowledged that he did not do a "dry run," he testified that "[w]e spent [an] enormous amount of time preparing for it and going over what we could. So, our client understood what

was going on and could assist us in his defense." Thus, we decline to dismiss the concern as speculative.

The respondent also maintains that Davis properly advised the petitioner that his prior convictions could be admitted into evidence to impeach him. "[B]y exercising his fifth amendment right to testify on his own behalf, it is axiomatic that a defendant opens the door to comment on his veracity. It is well established that once an accused takes the [witness] stand and testifies his credibility is subject to scrutiny and close examination. . . . A defendant cannot both take the [witness] stand and be immune from impeachment. . . . An accused who testifies subjects himself to the same rules and tests which could by law be applied to other witnesses." (Internal quotation marks omitted.) *State* v. *Ciccio*, 77 Conn. App. 368, 387, 823 A.2d 1233, cert. denied, 265 Conn. 905, 831 A.2d 251 (2003).

"It is well settled that evidence that a criminal defendant has been convicted of crimes on a prior occasion is not generally admissible. . . . There are, however, several well recognized exceptions to this rule, one of which is that [a] criminal defendant who has previously been convicted of a crime carrying a term of imprisonment of more than one year may be impeached by the state if his credibility is in issue. . . . In its discretion a trial court may properly admit evidence of prior convictions provided that the prejudicial effect of such evidence does not far outweigh its probative value. . . . [Our Supreme Court] has identified three factors which determine whether a prior conviction may be admitted: (1) the extent of the prejudice likely to arise; (2) the significance of the commission of the particular crime in indicating untruthfulness; and (3) its remoteness in time. . . . A trial court's decision denying a motion to exclude a witness' prior record, offered to attack his credibility, will be upset only if the court abused its

discretion. . . . Those three factors have been incorporated in [the Connecticut] [C]ode of [E]vidence. Conn. Code Evid. § 6-7 (a). . . .

"There is no doubt that if evidence of a felony conviction is otherwise admissible, the name of the crime is generally also admissible." (Internal quotation marks omitted.) *State* v. *Swilling*, 180 Conn. App. 624, 656–57, 184 A.3d 773, cert. denied, 328 Conn. 937, 184 A.3d 268 (2018). Section 6-7 (c) of the Connecticut Code of Evidence provides in relevant part: "If, for purposes of impeaching the credibility of a witness, evidence is introduced that the witness has been convicted of a crime, the court shall limit the evidence to the name of the crime and when and where the conviction was rendered, except that (1) the court may exclude evidence of the name of the crime . . . ." "As indicated in § 6-7, the court has discretion to admit the prior conviction as an unnamed felony. Factors to consider include whether the prior crime reflects directly on credibility and whether the prejudice inherent in the name of the crime outweighs the probative impeaching value. . . .

"[I]n evaluating the separate ingredients to be weighed in the balancing process, there is no way to quantify them in mathematical terms. . . . Therefore, [t]he trial court has wide discretion in this balancing determination and every reasonable presumption should be given in favor of the correctness of the court's ruling . . . . Reversal is required only where an abuse of discretion is manifest or where injustice appears to have been done. . . . The burden lies with the party objecting to the admission of evidence of prior convictions to demonstrate the prejudice that is likely to arise from its admission. . . . The test for determining whether evidence is unduly prejudicial is not whether it is damaging to the defendant but whether it will improperly arouse the emotions of the jury. . . .

"[P]rior convictions that are admissible for impeachment purposes may be segregated into two general categories. First are those crimes that by their very nature indicate dishonesty or tendency to make false statement. . . . Beyond the obvious violations such as perjury or false statement, we have recognized that crimes involving larcenous intent imply a general disposition toward dishonesty such that they also fall within this category. . . . Convictions of this sort obviously bear heavily on the credibility of one who has been convicted of them. The probative value of such convictions, therefore, may often outweigh any prejudice engendered by their admission.

"The second category involves convictions for crimes that do not reflect directly on the credibility of one who has been convicted of them. . . . The theory behind the admissibility of these convictions as evidence of credibility posits that conviction of a crime demonstrates a bad general character, a general readiness to do evil and that such a disposition alone supports an inference of a readiness to lie in the particular case. . . .

"Convictions of crimes that fall within this second category blemish the character of one so convicted. A juror might reasonably conclude that such a witness lacks to some degree the moral rectitude from which a [witness'] oath of honesty derives its credibility. Nevertheless, conviction of a crime not directly reflecting on credibility clearly lacks the direct probative value of a criminal conviction indicating dishonesty or a tendency to make false statement. Thus, the balance used to measure admissibility of prior convictions is weighted less heavily toward admitting the prior conviction when it involves a crime related only indirectly to credibility. . . . To avoid unwarranted prejudice to the witness, when a party seeks to introduce evidence of a felony that does not directly bear on veracity, a trial

court ordinarily should permit reference only to an unspecified crime carrying a penalty of greater than one year that occurred at a certain time and place. . . . That prudent course [of permitting evidence of unnamed felony convictions] allows the jury to draw an inference of dishonesty from the prior conviction without the extraordinary prejudice that may arise from naming the specific offense. . . . Ultimately, [t]he trial court, because of its intimate familiarity with the case, is in the best position to weigh the relative merits and dangers of any proffered evidence. . . . This principle applies with equal force to the admissibility of prior convictions." (Citations omitted; internal quotation marks omitted.) *State* v. *Swilling*, supra, 180 Conn. App. 657–59.

In the present case, the habeas court determined that the trial court, at most, would have permitted the introduction into evidence of a 2005 conviction for attempted assault and would not have allowed into evidence the facts underlying that attempted assault.[8]

[8] It is unclear why the habeas court determined that only one of the 2005 attempted assault convictions would have been admitted into evidence. The document entered into evidence before the habeas court indicates that there were two convictions for attempted assault, both of which indicate a disposition of guilty on August 26, 2005, and for which the petitioner was sentenced to concurrent five year terms of incarceration. The petitioner's criminal trial took place in October, 2016. In his posttrial brief to the habeas court, the petitioner identified the two convictions of attempted assault in 2005 and noted that he had been sentenced to a five year term of incarceration related to those convictions. Thus, the petitioner identified the two 2005 assault convictions as falling within the "relevant period . . . ." See *State* v. *Swilling*, supra, 180 Conn. App. 660 ("[t]he measuring point for a remoteness determination under § 6-7 of the Connecticut Code of Evidence is the date of conviction or the date of release from resulting confinement, whichever is later" (internal quotation marks omitted)). The petitioner argued that the trial court may have admitted the convictions as unnamed felonies to avoid undue prejudice. In the respondent's posttrial brief, he characterized the two assault convictions as "about eleven years old at the time of the trial . . . ."

During supplemental closing argument before the habeas court, the petitioner's counsel stated: "So, I believe the petitioner and [the respondent] agree there's really like three convictions that we're looking at here . . . as potentially admissible, and that would be obviously the two attempted assaults, one of which became the part B, referred to in the part B informa-

On appeal, the respondent argues that "[t]he trial court's exercise of discretion was never as guaranteed as the habeas court supposed."

The respondent identifies cases in which our appellate courts have determined that a trial court did not abuse its discretion in admitting evidence of prior convictions. See, e.g., *State* v. *Muhammad*, 91 Conn. App. 392, 400, 881 A.2d 468 (trial court did not abuse its discretion in admitting evidence of prior convictions of sexual assault and kidnapping that were approximately fifteen years old where defendant's release from confinement was within ten year benchmark), cert. denied, 276 Conn. 922, 888 A.2d 90 (2005). "[A] prior conviction which is more than ten years old may, under some circumstances, retain some probative value which is minimally sufficient to overcome any marginal prejudice, and may be admissible, therefore, without a wholly unreasonable exercise of a trial court's discretion." (Internal quotation marks omitted.) *State* v. *Ciccio*, supra, 77 Conn. App. 388–89. Although a prior conviction that is more than ten years old and not probative of veracity is less likely to be admitted into evidence; see *State* v. *Ortiz*, 343 Conn. 566, 588, 275 A.3d 578 (2022) ("unless a conviction ha[s] some special significance to untruthfulness, the fact that it [is] more than ten years old [will] most likely preclude its admission under our balancing test" (internal quotation marks omitted)); "[u]ltimately, [t]he trial court, because of its intimate familiarity with the case, is in the best position

tion, that occurred in 2000—convictions that occurred in 2005 for which he was sentenced to five years. *Obviously, he was released within the ten year window* for the purposes of—so, I mean, the question as to whether those would have come in as named offenses or unnamed felonies I think is a bit up in the air and unclear, given that the defense's then motion with respect to the prior convictions wasn't pursued by . . . Davis." (Emphasis added.)

In its memorandum of decision, the habeas court stated: "The two prior convictions at issue were in 2005 and 1999, placing them both more than ten years in the past." The respondent does not challenge this finding on appeal.

to weigh the relative merits and dangers of any proffered evidence. . . . This principle applies with equal force to the admissibility of prior convictions." (Internal quotation marks omitted.) *State* v. *Swilling*, supra, 180 Conn. App. 659.

The respondent contends that, "to the extent that the habeas court found that Davis should have divined how the court would have weighed the probative value of the petitioner's convictions against their potential for undue prejudice, he cannot be faulted for pursuing a more cautious route and anticipating that the court might have admitted the convictions had the petitioner testified." We agree with the respondent that, based on the potential for the admissibility of the petitioner's prior convictions, primarily in the event that the petitioner opened the door to them, or in the secondary scenario that the court permitted the convictions as impeachment evidence, the petitioner has failed to demonstrate that Davis' advice regarding the decision not to testify was constitutionally deficient.[9]

B

The respondent also argues that the habeas court erred in finding that the petitioner satisfied the prejudice prong of *Strickland*. "To prevail on a claim of

[9] The respondent additionally contends that "whether the state could obtain admission of the petitioner's convictions if he presented violent conduct by [the victim] was an open question that some courts and commentators have answered affirmatively. . . . Some courts have held that, where a defendant claims self-defense, his prior convictions may be admissible to inform whether he was the initial aggressor in the charged offense . . . or, where the prior offense was sufficiently similar to the charged offense, to show the defendant's 'bent of mind' in engaging in the charged conduct or to rebut the claim of self-defense. . . . The respondent acknowledges, however, that other courts have held that admission of prior convictions for these purposes may amount to improper propensity evidence." (Citations omitted; footnote omitted.) We need not address whether Davis' advice not to testify reasonably would be supported by a concern that the trial court, addressing an issue of first impression, would have admitted the petitioner's prior convictions to refute any suggestion that the victim was the initial aggressor.

ineffective assistance of counsel, a petitioner must show both deficient performance and prejudice; a failure to prove either deficient performance or prejudice is fatal to his or her claim." *Meletrich* v. *Commissioner of Correction*, 178 Conn. App. 266, 284, 174 A.3d 824 (2017), aff'd, 332 Conn. 615, 212 A.3d 678 (2019). Although we have determined that the habeas court erred in finding that the petitioner proved deficient performance, we also conclude that the habeas court erred in determining that the petitioner was prejudiced by Davis' advice.

"Our analysis of the prejudice prong requires us to determine the probable effect that counsel's alleged defective performance had under the circumstances of the case before the court. Thus, [t]o satisfy [this] prong, a claimant must demonstrate that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. . . . Instead, *Strickland* asks whether it is reasonably likely the result would have been different. . . . This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case. . . . The likelihood of a different result must be substantial, not just conceivable." (Internal quotation marks omitted.) Id., 285.

First, the respondent argues that the petitioner's testimony was cumulative of other evidence presented at the criminal trial. See, e.g., *Madagoski* v. *Commissioner of Correction*, 104 Conn. App. 768, 776, 936 A.2d 247

(2007) (prejudice was not established when trial counsel did not present witness testimony that would have been cumulative of other evidence at trial), cert. denied, 286 Conn. 905, 944 A.2d 979 (2008). We agree with the respondent that the petitioner's testimony would have been, to some extent, cumulative of the record already established at his trial. The jury had before it the audio recording of the 911 call that the petitioner had placed from the restaurant. During the call, the petitioner can be heard reporting that the victim came into the restaurant threatening the petitioner's life, that the petitioner tried to calm him down, that the victim went to attack the petitioner, and that the petitioner then attacked him first. The petitioner reported in the audio recording of the 911 call that he cut the victim with a razor that he uses at work to clean the fryers. The jury also heard the testimony of the petitioner's wife that she heard fear in the petitioner's voice when he called her after his conversation with the victim. She testified that he sounded "shaky" and "worried." Although the petitioner's wife stated that she could not make out what the victim was saying, she described the victim's voice as very loud, angry, and threatening. Last, the restaurant's surveillance video depicted the victim following the petitioner around the restaurant kitchen and appearing to yell at him.

Second, the decision to have the petitioner testify at trial must be considered in light of all the evidence that was before the jury because "[t]he strength of the state's case is a significant factor in determining whether an alleged error caused prejudice to the petitioner." (Internal quotation marks omitted.) *Dupigney* v. *Commissioner of Correction*, 183 Conn. App. 852, 862, 193 A.3d 1274, cert. denied, 330 Conn. 942, 195 A.3d 1135 (2018). The jury had before it the video of the encounter. Therein, after the victim returns to the restaurant, the petitioner is seen moving around the restaurant, at

times with his back to the victim. The victim can be seen shifting his keys from hand to hand. The petitioner then reaches out, grabs the victim by the neck or back of the head, pulls the victim's head closer to him, and cuts his neck with the razor blade. The victim runs out of the restaurant, bleeding from the neck, and the petitioner runs after him out the door.

On the basis of the foregoing, we conclude that the habeas court improperly determined that the petitioner demonstrated that he was prejudiced. To the contrary, the petitioner failed to sustain his burden of showing that a reasonable probability existed that the outcome of the criminal trial would have been different had Davis advised him that the admissibility of his criminal convictions would have been limited had the petitioner testified.

The judgment is reversed only with respect to the habeas court's determination that Matthew Davis provided ineffective assistance of counsel by misadvising the petitioner regarding the scope of admissibility of his prior convictions and the case is remanded to the habeas court with direction to render judgment denying the petition as to that claim; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.