# IN RE ELIJAH C.*
## (SC 19695)

Rogers, C. J., and Palmer, Eveleigh, McDonald, Espinosa and Vertefeuille, Js.**

*Syllabus*

The respondent mother appealed from the judgment of the Appellate Court, which dismissed her appeal from the trial court's judgment terminating her parental rights with respect to her minor child, E. The trial court found by clear and convincing evidence, as required by statute (§ 17a-112 [j] [1]), that the Department of Children and Families had made reasonable efforts to reunify the respondent and E, and that the respondent was unable to benefit from those efforts. In dismissing the respondent's appeal as moot, the Appellate Court concluded that the respondent had inadequately briefed her claim that the trial court's finding that she was unable to benefit from the department's reunification efforts was clearly erroneous, and, because the trial court's judgment could be sustained on the basis of either that finding or the court's finding that the department had made reasonable reunification efforts, the Appellate Court could afford the respondent no practical relief on appeal. On the granting of certification, the respondent appealed to this court, claiming, inter alia, that the Appellate Court improperly determined that her appeal was moot and that the trial court incorrectly determined that she had been unable to benefit from the department's reunification efforts. *Held*:

1. This court could not conclude that the respondent's challenge to the trial court's finding that she was unable to benefit from the department's reunification services was inadequately briefed in the Appellate Court, and, therefore, that court improperly dismissed the respondent's appeal as moot; although the respondent's argument regarding that finding was not comprehensive, cited no authority apart from the applicable statutes and rules of practice, failed to address certain evidence that strongly supported that finding, and was relegated to the section of her brief contesting the finding regarding whether the department's reunification efforts were reasonable, her claim was reasonably discernable from the record and sufficiently clear to permit the Appellate Court to address it on the merits, in light of the relative simplicity and interdependence

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

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

of the respondent's briefed claims regarding the trial court's finding regarding the reasonableness of the department's reunification efforts, the impact that the department's alleged reduction of its reunification services had on the success of the respondent's reunification efforts, and the department's failure to provide the reunification services that the trial court previously had determined were reasonable and appropriate in view of the respondent's cognitive deficits.

2. The respondent could not prevail on her claim that the trial court incorrectly determined that she had been unable to benefit from the department's reunification efforts because, several months before the termination hearing, the department reduced the number of the respondent's weekly visits with E and replaced the agency tasked with supervising one of those weekly visits with an agency whose employees were not trained to work with persons with cognitive disabilities, such as the respondent, and because the department could have done more to identify services that might have assisted her in her reunification efforts: the evidence supported the trial court's finding that that the respondent was unable to benefit from the department's reunification efforts, the trial court having properly relied on the expert opinion testimony of two evaluating psychologists that the respondent's cognitive deficits and psychological conditions were so severe that she could not be left alone with children and that the only way reunification could be achieved was through a program involving around-the-clock supervision of both the respondent and E, which was not available in this state; moreover, this court declined to address the respondent's claim that the department should have looked out of state to find a program that could provide around-the-clock supervision, she having failed to raise that claim in the trial court, and, in any event, the respondent cited no authority to support her claim that reasonable reunification efforts required the department to provide her with in-state or out-of-state around-the-clock supervision.

The role that the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the provisions of which cannot be relied on as a defense in a child neglect or termination of parental rights proceeding, plays in child welfare proceedings, discussed.

Argued January 17—officially released August 9, 2017***

*Procedural History*

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights as to their minor child, brought to the Superior Court in the judicial district of Windham, Child Protection Session

*** August 9, 2017, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

at Willimantic, and tried to the court, *Hon. Francis J. Foley III*, judge trial referee, who, exercising the powers of the Superior Court, rendered judgment terminating the respondents' parental rights, from which the respondent mother appealed to the Appellate Court, *DiPentima*, *C. J.*, and *Beach* and *Flynn*, *Js.*, which dismissed the appeal for lack of subject matter jurisdiction, and the respondent mother, on the granting of certification, appealed to this court. *Improper form of judgment; judgment directed.*

*James P. Sexton*, assigned counsel, with whom were *Michael S. Taylor*, assigned counsel, and, on the brief, *Emily Graner Sexton*, *Matthew C. Eagan* and *Marina L. Green*, assigned counsel, for the appellant (respondent mother).

*Michael Besso*, assistant attorney general, with whom, on the brief, were *George Jepsen*, attorney general, and *Benjamin Zivyon*, assistant attorney general, for the appellee (petitioner).

*Dan Barrett*, *Daniel J. Krisch*, and *Shira T. Wakschlag* filed a brief for the Arc of the United States et al. as amici curiae.

*Joshua Michtom*, assistant public defender, filed a brief for the Office of the Chief Public Defender as amicus curiae.

*Opinion*

PALMER J. In this certified appeal, the respondent, Marquita C., appeals from the judgment of Appellate Court, which dismissed her appeal from the judgment of the trial court terminating her parental rights as to her son, Elijah C.[1] See *In re Elijah C.*, 164 Conn. App.

[1] "The [trial] court also terminated the parental rights of Elijah's putative father, Paul Y., during the same proceedings. Paul Y., however, did not challenge the [trial] court's judgment"; *In re Elijah C.*, 164 Conn. App. 518, 519 n.1, 137 A.3d 944 (2016); and, consequently, he is not a party to this appeal.

518, 519, 137 A.3d 944 (2016). The respondent claims that the Appellate Court incorrectly concluded that she had failed to adequately brief one of the two independent grounds for reversing the judgment of the trial court and, consequently, that her appeal was moot. She further claims that the trial court incorrectly determined, first, that the Department of Children and Families (department) made reasonable efforts to reunify her with Elijah and, second, that she was unable to benefit from those efforts.[2] We agree with the respondent that the Appellate Court improperly dismissed her appeal as moot. We further conclude, however, that the evidence supports the trial court's determination that the respondent was unable to benefit from reunification efforts. Because our resolution of that issue constitutes an independent basis for affirming the trial court's judgment, we need not address the respondent's claim that the trial court incorrectly concluded that the department made reasonable efforts to reunify her with Elijah. We therefore vacate the judgment of the Appellate Court and remand the case to that court with direction to affirm the trial court's judgment.[3]

The opinion of the Appellate Court sets forth the following relevant facts and procedural history. "The [trial] court granted the petitioner, the Commissioner

[2] We granted the respondent's petition for certification to appeal, limited to the following questions: First, "[d]id the Appellate Court incorrectly determine that the respondent's appeal should be dismissed as moot due to a lack of adequate briefing of her claim that the trial court incorrectly determined that she was unable to benefit from services?" *In re Elijah C.*, 321 Conn. 917, 136 A.3d 1275 (2016). Second, "[i]f the answer to the first question is in the affirmative, did the trial court correctly determine that the petitioner had made reasonable efforts and that the respondent was unable to benefit from reunification efforts?" Id.

[3] After this appeal was filed, we granted the applications of the Arc of the United States, the American Civil Liberties Union, the American Civil Liberties Union Foundation of Connecticut, and the Office of the Chief Public Defender for permission to file amicus curiae briefs in support of the respondent's claims.

of Children and Families, an ex parte order of temporary custody of Elijah shortly after he was born.[4] The petitioner filed a neglect petition on February 21, 2014, on the basis of the doctrine of predictive neglect as a result of the respondent's diminished cognitive abilities.[5] The order granting temporary custody of Elijah was sustained four days later.

"The court, *Dyer*, *J.*, held a neglect trial on September 15, 2014. On October 2, 2014, the court adjudicated Elijah as neglected and ordered his care, custody, and guardianship [be] committed to the petitioner. Additionally, the court ordered the department (1) to contact [the Department of Mental Health and Addiction Services (DMHAS) and the Department of Developmental Services (DDS)] to inquire about additional services for the respondent, (2) to ascertain from those agencies whether a group home existed where the respondent could potentially be reunified with Elijah and receive various forms of instruction, (3) to request the behavioral health center that was providing the respondent with psychotropic medications to conduct a medication management review, and (4) to file a written report with the court addressing various issues.

"On November 4, 2014, the petitioner filed a motion for review of the permanency plan seeking to terminate the parental rights of the respondent. Judge Dyer held a trial on January 22, 2015, and, six days later, the court issued its memorandum of decision. After considering the evidence presented, the court concluded that it was in the best interest of Elijah . . . '[to afford the respondent] . . . a limited period of additional time to pursue reunification efforts,' namely, to continue with the services provided by the department. . . . The time

[4] Elijah was born on February 15, 2014.

[5] "A finding of neglect is not necessarily predicated on actual harm . . . but can exist when there is a potential risk of neglect." (Internal quotation marks omitted.) *In re Elijah C.*, supra, 164 Conn. App. 520 n.2.

period, the court believed, 'should not exceed six or seven months.' [Accordingly], the court rejected the department's permanency plan of termination of parental rights.

"On February 24, 2015, the petitioner filed a petition pursuant to General Statutes § 17a-112[6] to terminate the parental rights of the respondent and Paul Y. . . . On September 8 and 10, 2015, the court, *Hon. Francis J. Foley III*, judge trial referee, held a hearing on the . . . petition.[7] On September 18, 2015, the court issued a comprehensive memorandum of decision. The court found by clear and convincing evidence that '[the department had] made reasonable efforts to reunify [Eliljah] with [the respondent] . . . [and that the respondent was] unable to benefit from reunification services.' Consequently, the court terminated the parental rights of the respondent. . . .

"The court's memorandum of decision from the termination hearing sets forth the following facts . . . . Shortly after Elijah was born, the hospital personnel were concerned because the respondent 'appeared to

[6] General Statutes § 17a-112 provides in relevant part: "(a) In respect to any child in the custody of the Commissioner of Children and Families in accordance with section 46b-129 . . . the commissioner . . . may petition the court for the termination of parental rights with reference to such child. . . .

* * *

"(j) The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a–111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts . . . ."

[7] "Prior to the commencement of the hearing on the termination petition, the respondent filed a motion to transfer guardianship to Gwendolyn C., the respondent's adoptive mother. The court denied this motion, and that ruling was not challenged on appeal." *In re Elijah C.*, supra, 164 Conn. App. 521 n.3.

have cognitive limitations and serious mental health problems (schizophrenia) and . . . was reported to have poor judgment and no insight into parenting.' Thus, the hospital contacted the department, [which] sent a social worker to observe the respondent and Elijah. The social worker concluded that the respondent could not care for Elijah because of the severity of her limitations.

"The respondent's lengthy and exceptionally sad involvement in the child welfare system provides . . . context to the present appeal. The respondent was born prematurely, addicted to cocaine and alcohol, and suffered serious medical conditions. In April, 1989, the respondent was placed in foster care with Gwendolyn C. and [Gwendolyn's] . . . husband. In 1993, Gwendolyn and her . . . husband adopted the respondent and another girl unrelated to the respondent. In 1994, the respondent's adoptive parents divorced. Between 1997 and 1999, Gwendolyn adopted three more children.

"The respondent's childhood with Gwendolyn was difficult. Under her care, the respondent and the other children were 'cruel[ly] discipline[d] . . . [by her] making them run up and down stairs, standing them on one leg with their arms outstretched holding a book in each arm, [and] beating [them] with a stick and with a belt.' In July, 2001, just prior to the respondent's thirteenth birthday, Gwendolyn abandoned three of her adoptive children, including the respondent, at the department's Meriden office. Gwendolyn explained that she could no longer care for [them]. All three children were underweight, which lent credence to claims that Gwendolyn routinely withheld food from [them].

"After being abandoned by Gwendolyn, the respondent remained in the custody of the petitioner as a committed child for approximately six years. The respondent qualified for postmajority services through

[DDS] and [DMHAS]. The department developed a postmajority plan in which both agencies were to provide the respondent with 'life skills, vocational training, and supportive housing.' The postmajority plan, however, never came to fruition because, prior to her nineteenth birthday, the respondent returned to Gwendolyn's care. The respondent resided with Gwendolyn for the next several years before cohabitating with Paul Y. After the respondent and Paul Y.'s relationship ended, she returned to Gwendolyn's home. Approximately four months later, Elijah was born.

"The court's memorandum of decision also detailed the department's efforts to reunite Elijah with the respondent. It noted that the department offered the respondent case management services, three in-home visits per week with a parenting skills component, the opportunity to attend Elijah's medical visits by providing transportation, and services from two agencies [namely, Nurturing Seeds and Family Network] to provide supervised visitation and training in basic childcare skills. Concerned that the respondent was 'being overwhelmed with too many services,' the department sought and was granted permission for the respondent to undergo psychological evaluations.

"The respondent underwent two psychological evaluations that informed the court's decision. The first evaluation, conducted by Madeleine Leveille, a licensed psychologist, was completed in August, 2014, prior to the neglect trial. In addition to providing the court with the respondent's background, Leveille's evaluation [contained] key observations and opinions. For example, when discussing her mental illness, the respondent told Leveille that she regularly saw a 'shadow,' which Leveille characterized as a visual hallucination. Leveille concluded that the respondent had a 'limited conceptual understanding, [was] highly dependent socially on others, and [had] odd and occasionally paranoid and cyni-

cal thought processes.' Moreover, the respondent's 'thinking processes show[ed] clear evidence of her [i]ntellectual [d]isability, [s]chizophrenia and a mood disorder.' Leveille was unequivocal that '[h]aving an [i]ntellectual [d]isability does not mean that one cannot parent a child. In [the respondent's] case, however, her intellectual disability, coupled with her psychiatric conditions, particularly her personality disorder, render[ed] her incapable of parenting a child independently.'

"Approximately two months before the termination trial, in July, 2015, the respondent underwent a second evaluation. This evaluation was funded by the department in an effort to assess the respondent on an 'individualized basis.' The 'Cognitive/Adaptive Functioning Evaluation' was conducted by Stephanie Stein Leite, a licensed psychologist. Leite concluded that the respondent had an [intelligence] quotient that placed her in the '[e]xtremely [l]ow range,' i.e., at the 'bottom [one] percentile of the [population] . . . .' Leite's evaluation also concluded that the respondent's personal and social skills, adaptive behavior, [and] ability to perform daily living skills . . . were in the [1] percent range, i.e., '[99 percent] of the population [have] better adaptive functioning skills than . . . [the respondent].' Leite's assessment indicated that the respondent's 'eating, dressing, and hygiene skills [were] commensurate with [those of] a six year old . . . [that] [s]he complete[d] household chores at the level of an eleven year old, and use[d] time, money, and communication tools at the level of a [thirteen] year old.' In short, Leite's evaluation demonstrated that the respondent, pursuant to General Statutes § 1-1g,[8] was intellectually disabled. On the basis

[8] General Statutes § 1-1g provides: "(a) Except as otherwise provided by statute, 'intellectual disability' means a significant limitation in intellectual functioning existing concurrently with deficits in adaptive behavior that originated during the developmental period before eighteen years of age.

"(b) As used in subsection (a) of this section, 'significant limitation in intellectual functioning' means an intelligence quotient more than two stan-

of these results, Leite opined that the respondent was 'unlikely to be able to independently care for herself, which means she [would] not [be] able to care for [Elijah]. Because many of [the respondent's poor adaptive skills were] rooted in her lower intellectual functioning, though she is educable, the deficits are not, overall, likely to be responsive to remediation.' Leite concluded that the respondent could only care for Elijah if the respondent was under someone's care." (Footnotes altered.) *In re Elijah C.*, supra, 164 Conn. App. 520–25.

Although well aware of the respondent's love for Elijah and the fact that her parenting deficiencies are due to extremely unfortunate circumstances not of her own making, the trial court concluded in relevant part that, "[r]egrettably, [the respondent's] condition is such" that "[s]he is not able to care for a child by herself and would require twenty-four hour assistance by a surrogate parent or a group home with the capacity to monitor [her] day and night" for her "to achieve any form of reunification. There are no known, available support programs that offer that level of care." And "[t]here is no doubt that [the respondent] and even [Gwendolyn] love Elijah. 'The sad fact is there is a difference between parental love and parental competence.' *In re Christina*, 90 Conn. App. 565, 575 [877 A.2d 941] (2005) [aff'd, 280 Conn. 474, 908 A.2d 1073 (2006)]. There is abundant evidence that [the respondent] is only marginally able to care for herself."

On appeal to the Appellate Court, the respondent claimed that the trial court incorrectly determined that

dard deviations below the mean as measured by tests of general intellectual functioning that are individualized, standardized and clinically and culturally appropriate to the individual; and 'adaptive behavior' means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group as measured by tests that are individualized, standardized and clinically and culturally appropriate to the individual."

the department had made reasonable efforts to reunite her with Elijah when, within two weeks of the trial court's January 28, 2015 order directing the department to continue the services it was then providing to the respondent, the department "removed one of the services that was most crucial to her progress . . . ." *In re Elijah C.*, Conn. Appellate Court Briefs & Appendices, February Term, 2016, Respondent's Brief p. 8. More specifically, the respondent argued that the department had reduced the number of weekly supervised visits from three to two and had changed the agency responsible for supervising one of the visits from Nurturing Seeds, whose employees were trained to work with people with cognitive disabilities, to Family Network, whose employees were not.[9] See id., pp. 7–8. In the respondent's view, those actions by the department deprived the trial court of the information necessary to determine whether she, in fact, was unable to benefit from reunification services. Thus, the respondent claimed that, "[b]ecause [Judge Dyer], on January 28, 2015, defined reasonable efforts [to reunite the respondent and Elijah] for the petitioner, and because the department acted in opposition to that order, [Judge Foley's] subsequent holding that . . . clear and convincing evidence showed that the petitioner made reasonable efforts and that the respondent was unable to benefit from [them] is clearly erroneous." Id., p. 11.

The petitioner maintained, inter alia, that the respondent's appeal must be dismissed as moot because, as we explained in *In re Jorden R.*, 293 Conn. 539, 552–53, 979 A.2d 469 (2009), either one of the trial court's findings—that the department made reasonable reunification efforts or that the respondent was unable to benefit from them—was sufficient to sustain the trial court's judgment, but, in her brief to the Appellate Court, the

[9] The record reflects that two of the respondent's three weekly visits with Elijah were also supervised by department staff.

respondent had challenged only one of those findings. See *In re Elijah C.*, supra, 164 Conn. App. 525. Consequently, the petitioner argued, the respondent could not obtain any practical relief on appeal because the Appellate Court was bound to affirm the trial court's judgment on the basis of that court's unchallenged finding that the respondent was unable to benefit from reasonable reunification efforts. See id.; see also *In re Jorden R.*, supra, 555–57. The Appellate Court agreed with the petitioner, concluding that the respondent had inadequately briefed her claim challenging the trial court's finding that the respondent was unable to benefit from reunification efforts. *In re Elijah C.*, supra, 526. The Appellate Court stated that, "[a]lthough the respondent's main brief does use language suggesting a challenge to the court's second finding, the argument was far from complete, lacking legal authority and analysis. As a result, the respondent ha[d] failed to adequately brief any challenge [to] the court's second finding that she was unable to benefit from the reunification efforts." Id., 529. The court further explained that, to the extent that the respondent's brief could be read as challenging the trial court's second finding, the argument consisted of a mere seven sentences and was improperly located in the section of the respondent's brief addressing her claim that the trial court incorrectly determined that the department made reasonable reunification efforts. See id., 529 and n.6. This certified appeal followed. Additional facts and procedural history will be set forth as necessary.

On appeal, the respondent claims that the Appellate Court incorrectly determined that her appeal was moot. She further claims that the department's reunification efforts failed to comport with the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336, 104 Stat. 327, codified as amended at 42 U.S.C. § 12101 et seq.

(2012)[10] and, therefore, that the trial court's finding that those efforts were reasonable for purposes of § 17a-112 (j) (1) is clearly erroneous. Finally, the respondent argues that the trial court incorrectly determined that she was unable to benefit from reunification efforts. We agree with the respondent that the Appellate Court incorrectly determined that her appeal was moot. We agree with the petitioner, however, that the record supports the trial court's finding by clear and convincing evidence that the respondent was unable to benefit from reunification efforts, which serves as an independent basis for sustaining the judgment of the trial court. In light of our determination, we need not decide whether the trial court correctly determined that the department's reunification efforts were reasonable.

I

We first address the respondent's claim that the Appellate Court incorrectly determined that her appeal was moot. "Mootness raises the issue of a court's subject matter jurisdiction and is therefore appropriately considered even when not raised by one of the parties. . . . Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [a] court's subject matter jurisdiction . . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. Justicia-

[10] Title II, § 202, of the ADA provides in relevant part that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 337, codified at 42 U.S.C. § 12132 (2012). Title V, § 504, of the Rehabilitation Act of 1973 provides in relevant part that a qualified disabled person shall not "solely, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794 (a) (2012).

bility requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant. . . . [I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *In re Jorden R.*, supra, 293 Conn. 555–56.

In concluding that the appeal was moot, the Appellate Court relied on *In re Jorden R.*; see *In re Elijah C.*, supra, 164 Conn. App. 526–28; in which this court determined that, "[a]s part of a termination of parental rights proceeding, § 17a-112 (j) (1)[11] requires the department to prove by clear and convincing evidence that it has made reasonable efforts to locate the parent and to reunify the child with the parent, unless the court finds . . . that the parent is unable or unwilling to benefit from reunification efforts . . . .

"Because the two clauses are separated by the word unless, [§ 17a-112 (j) (1)] plainly is written in the conjunctive. Accordingly, the department must prove either that it has made reasonable efforts to reunify or, alternatively, that the parent is unwilling or unable to benefit from reunification efforts. Section 17a-112 (j) clearly provides that the department is not required to prove both circumstances. Rather, either showing is sufficient to satisfy this statutory element." (Emphasis omitted;

[11] See footnote 6 of this opinion.

footnote added.) *In re Jorden R.*, supra, 293 Conn. 552–53.

Accordingly, we concluded in *In re Jorden R.* that when, as in the present case, the trial court finds that the department has proven both statutory elements—the department made reasonable reunification efforts and the respondent was unable to benefit from them—the respondent's failure to challenge both findings on appeal renders the appeal moot because either one constitutes an independent, alternative basis for affirming the trial court's judgment. Id., 557 (no practical relief can be afforded to parent who fails to challenge both findings because "trial court's ultimate determination that the requirements of § 17a-112 [j] [1] were satisfied remain unchallenged and intact").

The Appellate Court relied on these principles in concluding that the respondent's appeal was moot because she had failed to adequately brief her claim that the trial court's second finding was clearly erroneous. See *In re Elijah C.*, supra, 164 Conn. App. 526–29; see also *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003) (appellate courts "are not required to review issues that have been improperly presented . . . through an inadequate brief" [internal quotation marks omitted]). We review the Appellate Court's determination that a claim was inadequately briefed for an abuse of discretion. E.g., *State* v. *Buhl*, 321 Conn. 688, 724–25, 138 A.3d 868 (2016).

Notwithstanding this deferential standard of review, we are unable to conclude that the respondent's claim challenging the trial court's second finding was inadequately briefed. To be sure, the respondent's argument was neither comprehensive nor painstaking, cited no authority, apart from the applicable statutes and rules of practice, and was relegated to the section of her brief

contesting the trial court's finding that the department made reasonable efforts to reunite her with Elijah. Nonetheless, the extent of the briefing required to ensure that a claim will be reviewed by this court or the Appellate Court is highly dependent on the nature of the claim being asserted, such that the more nuanced and complex the claim, the more extensive the required analysis. See, e.g., id., 726 (citing cases and explaining that analytical complexity of claim generally dictates nature of briefing required). Ordinarily, "[c]laims are inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion. . . . Claims are also inadequately briefed when they . . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from the record . . . ." (Citation omitted; internal quotation marks omitted.) *Electrical Contractors, Inc.* v. *Dept. of Education*, 303 Conn. 402, 444 n.40, 35 A.3d 188 (2012). As a general matter, the dispositive question in determining whether a claim is adequately briefed is whether the claim is "reasonably discernible [from] the record . . . ." (Internal quotation marks omitted.) *McCook* v. *Whitebirch Construction, LLC*, 117 Conn. App. 320, 322 n.3, 978 A.2d 1150 (2009), cert. denied, 294 Conn. 932, 987 A.2d 1029 (2010). We agree with the respondent that her challenge to the trial court's second finding in the Appellate Court satisfied this standard, albeit minimally.

The respondent's claims in the Appellate Court, which she viewed as inextricably linked, were straightforward. The respondent argued, first, that the trial court's finding that the department made reasonable efforts to reunite her with Elijah was clearly erroneous because, inter alia, shortly after the trial court issued its January 28, 2015 order directing the department to continue the services it was then providing to the respondent, the department eliminated one of the ser-

vices that the respondent considered most crucial to the success of her reunification efforts. See *In re Elijah C.*, Conn. Appellate Court Briefs & Appendices, supra, Respondent's Brief p. 8. In a closely related vein, the respondent further argued that the trial court's finding that she could not benefit from reunification efforts was clearly erroneous in light of the department's failure to provide the reunification services that the trial court previously had determined were reasonable and appropriate in light of the respondent's cognitive deficits, and that the court had ordered be continued for a period not to exceed six or seven months so that it could better determine whether the respondent was able to benefit from them.[12] See id, pp. 9–10. Considering the relative simplicity and interdependence of these claims, we believe, contrary to the determination of the Appellate Court, that the respondent's second claim was sufficiently clear to permit that court to address it on the merits.[13]

We disagree with the petitioner that the respondent's second claim was inadequately briefed because the respondent's argument failed to take into account the evidence that supported the trial court's finding that she was unable to benefit from reunification services.

[12] For example, the respondent argued that, "because the department acted in opposition to [the court's earlier] order, the trial court's subsequent holding that the clear and convincing evidence showed that the petitioner made reasonable efforts and that the respondent was unable to benefit from [them] is clearly erroneous." *In re Elijah C.*, Conn. Appellate Court Briefs & Appendices, supra, Respondent's Brief p. 11. The respondent also argued that "[t]he trial court's eventual holding that the respondent was unable to benefit from services cannot stand if reasonable services were taken away from [her]." Id.

[13] Because the respondent reasonably viewed her first and second claims as inextricably linked, for purposes of the present case, it is not dispositive that the two claims were set forth in the same section of her brief. See *State* v. *Buhl*, supra, 321 Conn. 727 n.32 ("some claims may logically be combined under one heading"). We, however, strongly encourage litigants to raise each separate and independent claim under its own heading.

As we explain more fully hereinafter, the petitioner is correct that the respondent, in addressing her second claim, failed to address certain evidence that strongly supported the trial court's second finding. We have never held, however, that an appellant's failure to consider every countervailing argument renders a claim inadequately briefed. Of course, in the interests of effective advocacy, an appellant should address both the strengths and weaknesses of her case, but we cannot say that the failure to do so necessarily renders the claim inadequately briefed.

Nor are we persuaded by the petitioner's contention that the respondent's claim was inadequately briefed because she failed to address the holding of *In re Jorden R.*, which the petitioner maintains "rejected" the logic underlying the respondent's second claim, namely, "that, without the department first providing reasonable [services], a trial court's finding that [the respondent] was unable to benefit from [such services] must necessarily fail." We disagree with the petitioner's characterization of the respondent's claim in the Appellate Court. The respondent did not claim in that court that the department's failure to provide reunification services necessarily precludes a finding by the trial court that a parent is unable to benefit from such services. To the contrary, the respondent acknowledges that, in some cases, the department may be under no obligation to pursue a permanency plan of reunification. The respondent argued, rather, that, in light of the department's failure to provide the services that the trial court previously had determined were reasonable in light of the respondent's disabilities and necessary for a determination of whether reunification was feasible, that court's finding that she was unable to benefit from such services was not supported by the evidence.

Accordingly, although it is true that a finding that the department made reasonable reunification efforts is not

a necessary predicate to a finding that a parent is unable to benefit from such efforts, this does not mean that a trial court could never view those two issues as interrelated. Cf. *In re Gabriella A.*, 319 Conn. 775, 814, 127 A.3d 948 (2015) (*Robinson*, *J.*, dissenting) ("[T]he question of whether the petitioner made reasonable efforts to reunify the respondent with her child is inextricably linked to the question of whether the respondent can benefit from such efforts. Because the petitioner's efforts were unreasonable, we cannot determine whether the respondent could have benefited from reasonable efforts." [Emphasis omitted; footnote omitted.]). Nothing that we stated in *In re Jorden R.* suggests otherwise. Depending on the case, a trial court might well conclude that the department's reunification efforts were so lacking as to preclude both a finding that the department made reasonable reunification efforts *and* that a parent is unable to benefit from such efforts. Cf. *In re Fried*, 266 Mich. App. 535, 541, 702 N.W.2d 192 (2005) (reasonableness of reunification efforts affects sufficiency of evidence supporting grounds for termination). Although the respondent believed in good faith that this is such a case and tailored her arguments accordingly, as we explain hereinafter, we disagree with the merits of the respondent's view of that issue.

II

We turn, therefore, to the respondent's claim that the trial court incorrectly determined that she was unable to benefit from reunification efforts. As we have explained, the respondent views the success of this claim as dependent on the success of her claim that the trial court incorrectly determined that the department made reasonable efforts to reunite her with Elijah. Specifically, the respondent argues that the trial court incorrectly determined that she was unable to benefit from reunification services because, seven months

before the termination hearing, the department reduced the number of the respondent's weekly visits with Elijah from three to two and replaced the agency tasked with supervising one of the visits, Nurturing Seeds, with Family Network, whose employees, in contrast to the employees of Nurturing Seeds, were not trained to work with clients with cognitive disabilities. The respondent maintains that, because the evidence indicates that her parenting skills were improving under Nurturing Seeds, the only reasonable conclusion to be drawn is that her skills would have continued to improve but for the department's substitution of agencies. The respondent also faults the department for failing to do more to identify services that might have assisted her in her reunification efforts.

The petitioner counters that there is no evidence that the change from Nurturing Seeds to Family Network had any adverse effect on the respondent's reunification efforts. To the contrary, the petitioner maintains that the only evidence related to this issue indicates that the services provided by the two agencies were indistinguishable in terms of outcomes. The petitioner further argues that the respondent does not identify a single available reunification service that the department failed to offer her, and, therefore, her assertion that the department could have done more to assist her in her reunification efforts is entirely speculative. Finally, the petitioner contends that, even if the respondent is correct that the department's reunification efforts were somehow lacking, she nonetheless cannot prevail because the evidence overwhelmingly supports the trial court's determination that she was unable to benefit from reunification services, regardless of what services were provided or how long they were provided for. We agree with the petitioner.

The following principles guide our analysis of this claim. "Pursuant to § 17a-112 (j), the trial court must

make certain required findings after a hearing before it may terminate a party's parental rights. It is well established that, [u]nder § 17a-112, a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3) exist] by clear and convincing evidence. . . . In contrast to custody proceedings, in which the best interests of the child are always the paramount consideration and in fact usually dictate the outcome, in termination proceedings, the statutory criteria must be met before termination can be accomplished and adoption proceedings begun. . . . Section [17a-112 (j) (3)] carefully sets out . . . [the] situations that, in the judgment of the legislature, constitute countervailing interests sufficiently powerful to justify the termination of parental rights in the absence of consent. . . . If the trial court determines that a statutory ground for termination exists, then it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child." (Footnote omitted; internal quotation marks omitted.) *In re Oreoluwa O.*, 321 Conn. 523, 531–32, 139 A.3d 674 (2016). "Also, as part of the adjudicatory phase, the department is required to prove, by clear and convincing evidence, that it has made reasonable efforts . . . to reunify the child with the parent, unless the court finds . . . that the parent is unable or unwilling to benefit from reunification . . . ." (Internal quotation marks omitted.) Id., 532. "Because a respondent's fundamental right to parent his or her child is at stake, [t]he statutory criteria must be strictly complied with before termination can be accomplished and adoption proceedings begun." (Internal quotation marks omitted.) *In re Elvin G.*, 310 Conn. 485, 500–501, 78 A.3d 797 (2013).

On appeal, we evaluate the trial court's subordinate factual findings for clear error. E.g., *In re Gabriella A.*, supra, 319 Conn. 789. We review the trial court's ultimate determination that a parent is unable to benefit from reunification efforts, however, for evidentiary sufficiency; e.g., id., 790; "that is, we consider whether the trial court could have reasonably concluded, [on the basis of] the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court." (Internal quotation marks omitted.) Id., 789.

Although the trial court made numerous findings in deciding to terminate the respondent's parental rights, two in particular, either alone or in combination, support that court's determination that the respondent was unable to benefit from reunification services. First, as we previously discussed, the trial court credited the opinions of Leveille and Leite, the two psychologists who evaluated the respondent at different stages of the case, that the respondent's cognitive deficits and psychological conditions were so severe that the only way that reunification could be achieved would be if the respondent and Elijah lived in a setting in which they both received around-the-clock supervision. See, e.g., *In re Shane M.*, 318 Conn. 569, 590, 122 A.3d 1247 (2015) ("[c]ourts are entitled to give great weight to professionals in parental termination cases" [internal quotation marks omitted]); *In re Juvenile Appeal (Anonymous)*, 177 Conn. 648, 667, 420 A.2d 875 (1979) (in termination proceeding, "[p]sychological testimony from professionals is rightly accorded great weight"). It was for this reason that the trial court, following the neglect hearing, ordered the department to contact DMHAS and DDS to ascertain whether there were any

assisted living programs in Connecticut that provided the level of care that the respondent needed for a permanency plan of reunification to proceed. The department subsequently communicated with staff from both agencies, who informed the department that there were no such programs in the state.[14]

The trial court also relied on the fact that, three months before the termination hearing, the respondent was hospitalized for eight days following a period of "homicidal ideation toward her mother, mood swings, auditory hallucinations and visions of hitting others in the head with a hammer and enjoying it," a development that the court aptly described as a "significant safety concern" for Elijah. The court further observed that the respondent's hospital admission form indicated that she had been "aggressive toward her three year old nephew on the day prior to [her] admission," and that the respondent's adoptive mother, Gwendolyn, had testified "that [the respondent was] not allowed unsupervised contact with [any of Gwendolyn's] twelve grandchildren." The court concluded that, "[a]s this ha[d] only recently occurred, it [was] unlikely that [the respondent's] anger toward her mother and aggression toward [her] nephew [had] been addressed in therapy."

It bears emphasis, moreover, as it relates to the trial court's finding that the respondent was unable to benefit from reunification services, that, at the time of her

[14] In its January 28, 2015 memorandum of decision on the department's motion for review of the permanency plan, the trial court found in relevant part: "In compliance with final specific steps orders issued by this court at the time of the neglect judgment, [the department] contacted DDS and DMHAS about the existence of the type of supervised reunification facility described by the psychological evaluator. . . . The department was informed by representatives of those agencies that such a facility does not exist in this state. . . . [A department social worker also] testified credibly that she [was] unaware of any [department] funded residential program or facility in Connecticut where [the respondent] and Elijah could live together while the [respondent] received supervised parenting training and support."

June, 2015 hospitalization, the respondent had been receiving reunification services, including individual counseling and psychotropic medication management services, for fifteen months and yet was still experiencing hallucinations and had not progressed to a point at which she could be left alone with children. Subsequently, approximately two months before the termination hearing, Leite conducted a court ordered "Cognitive/Adaptive Functioning Evaluation" of the respondent. (Internal quotation marks omitted.) *In re Elijah C.*, supra, 164 Conn. App. 524. In her report, which the trial court credited, Leite stated that the respondent "continued to have visual and auditory hallucinations," which "likely impacts her ability to tolerate stressful situations, such as when a baby cries, and her ability to engage in creative problem solving, as both the psychoticism and the mental retardation make it difficult [for her] to extrapolate learned information to new situations." In light of these and other facts, the trial court reasonably concluded by clear and convincing evidence that the respondent, albeit through no fault of her own, was simply unable to benefit from reunification services to the extent required for her reunification with Elijah.

Notably, the respondent does not address the trial court's findings regarding the events preceding her June, 2015 hospitalization, much less explain why those findings do not support that court's determination that she was ultimately unable to benefit from reunification services. Moreover, the respondent's only response to the trial court's finding that there were no assisted living programs in this state that offered the level of care and supervision that she and Elijah would require for reunification efforts to proceed is to argue, for the first time on appeal, that the petitioner should have looked out of state to find such a program. We agree with the petitioner that the proper place for the respondent to have raised her claim concerning an out-of-state place-

ment was in the trial court, where the issue could have been litigated and a factual record developed as to whether reasonable reunification efforts required the department to search for an out-of-state placement. E.g., *Blumberg Associates Worldwide, Inc.* v. *Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 142, 84 A.3d 840 (2014) ("[i]t is well settled that [o]ur case law and rules of practice generally limit [an appellate] court's review to issues that are distinctly raised at trial" [internal quotation marks omitted]). In the absence of such a record, we can only speculate as to whether such a program existed, what it would have cost or whether the respondent even would have agreed to participate in it.[15]

We note, finally, that, even if the respondent's claim concerning an out-of-state placement had been preserved, the respondent cites no authority for the proposition that reasonable reunification efforts required the department to provide her with around-the-clock par-

[15] As the petitioner contends, the record indicates that the respondent had a history of rejecting the department's advice with respect to such matters. The trial court expressly stated in its memorandum of decision that, over the department's strong objections, the respondent decided to reside with Gwendolyn when she reached the age of majority, and, in doing so, she had abandoned the housing, educational and vocational services that the department had arranged for her. The respondent also continued to live with Gwendolyn throughout the neglect and termination proceedings, even though the trial court, early on in the proceedings, made it abundantly clear that reunification was not possible as long as the respondent resided in Gwendolyn's home.

Despite the trial court's ruling that Gwendolyn's home was not a suitable placement for Elijah, and knowing that there were no state programs that provided the level of care and supervision that she and Elijah required to achieve reunification, the respondent never once requested that the department investigate an out-of-state placement. The respondent instead asked the court to reconsider its prior decision to deny Gwendolyn's motion to be Elijah's legal guardian, a request that the court flatly denied, citing, as reasons, Gwendolyn's "catastrophic . . . failures" as a parent, the "diabolically cruel" punishment she inflicted on her own children, and the " 'toxic and controlling' " relationship that existed between her and the respondent at the time of the termination proceedings.

enting assistance—in state or out of state. To our knowledge, only one court has considered such a claim, and that court flatly rejected it. See *In re Terry*, 240 Mich. App. 14, 27–28, 610 N.W.2d 563 (2000) ("[The] [p]etitioner had no other services available that would address [the] respondent's deficiencies while allowing her to keep her children. The ADA does not require [the] petitioner to provide [the] respondent with full-time, live-in assistance with her children. See *Bartell* v. *Lohiser*, 12 F. Supp. 2d 640, 650 [E.D. Mich. 1998 (claim that ADA required state to provide in-home assistance to mentally disabled mother to care for her son was unsupported by law), aff'd, 215 F.3d 550 (6th Cir. 2000)]. [The] [r]espondent's contention that she needed even more assistance from [the] petitioner to properly care for her children merely provides additional support for the family court's decision to terminate her parental rights."); accord *In re Ozark*, Michigan Court of Appeals, Docket No. 256851 (December 16, 2004).

In light of our determination that the evidence supported the trial court's finding that the respondent was unable to benefit from reunification services, we need not address the respondent's claim that, by substituting agencies, the department's reunification efforts violated the ADA and, therefore, that the trial court incorrectly concluded that the department's efforts were reasonable under § 17a-112 (j) (1). We nevertheless take this opportunity to clarify the ADA's role in child welfare proceedings given the apparent misapprehension of the respondent and the amici curiae that the ADA is inapplicable to child welfare proceedings merely because it cannot be raised as a defense in such proceedings. The respondent argues, for example, that, under our current law, "the ADA does not apply to child protection cases and, therefore, [can offer] no insight into what reunification efforts are reasonable . . . ." This assertion is simply not accurate.

As we previously noted, Title II, § 202, of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2012). For purposes of the ADA, a " 'qualified individual with a disability' " is "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131 (2) (2012).

This court previously has explained that, "subsequent to the passage of the ADA in 1990, the [General Assembly] amended . . . related statutes to strengthen protections for the disabled in accordance with the ADA itself. See Public Acts 2001, No. 01-28, § 9 [P.A. 01-28] (adding subsection [c] to General Statutes § 46a-77, requiring that state agencies comply with ADA to the same extent that it provides rights and protections for persons with physical or mental disabilities beyond those provided for by the laws of this state). . . . Public Act 01-28 . . . specifically engraft[ed] the requirements of the ADA, including reasonable accommodation, on state agencies." (Footnote omitted; internal quotation marks omitted.) *Curry* v. *Allan S. Goodman, Inc.*, 286 Conn. 390, 411–12, 944 A.2d 925 (2008). General Statutes § 46a-71 (a) further provides that the "services of every state agency shall be performed without discrimination based upon race, color, religious creed, sex, gender identity or expression, marital status, age, national origin, ancestry, intellectual disability, mental disability, learning disability or physical disability, including, but not limited to, blindness." Accordingly,

it is the law of this state that child welfare proceedings are subject to the provisions of the ADA insofar as they involve the services, programs, or activities of any state agency.

This court has nonetheless explained, consistent with the view of the vast majority of courts that have addressed the issue,[16] that the ADA is not properly raised as a defense in a termination of parental rights or neglect proceeding because such an action is not a service, program, or activity of a state agency within the meaning of the ADA. See *In re Joseph W.*, 305 Conn.

[16] See, e.g., *People ex rel. T.B.*, 12 P.3d 1221, 1223 (Colo. App. 2000) ("the ADA cannot be raised as a defense to a termination of parental rights proceeding"); *In re Doe*, 100 Haw. 335, 340, 60 P.3d 285 (2002) ("a termination proceeding is not a 'service, program, or activity' within the definition of the ADA, and, consequently, the ADA does not apply to such proceedings"); *Adoption of Gregory*, 434 Mass. 117, 121, 747 N.E.2d 120 (2001) (proceedings to terminate parental rights are not " 'services, programs, or activities' " under ADA, and, thus, "the ADA is not a defense to such proceedings"); *In re Terry*, supra, 240 Mich. App. 24–25 ("[t]ermination of parental rights proceedings do not constitute 'services, programs or activities' [under the ADA, and, therefore] . . . a parent may not raise violations of the ADA as a defense to [such] proceedings"); *In re Kayla N.*, 900 A.2d 1202, 1208 (R.I. 2006) ("a termination-of-parental-rights proceeding does not constitute the sort of service, program, or activity that would be governed by the dictates of the ADA"), cert. denied sub nom. *Irving N.* v. *Rhode Island Dept. of Children, Youth, and Families*, 549 U.S. 1252, 127 S. Ct. 1372, 167 L. Ed. 2d 159 (2007); *In re B.S.*, 166 Vt. 345, 351–52, 693 A.2d 716 (1997) ("[T]he ADA does not directly apply to TPR proceedings. . . . TPR proceedings are not services, programs or activities within the meaning of [t]itle II of the ADA . . . ." [Citation omitted; internal quotation marks omitted.]); *In re Torrance P.*, 187 Wis. 2d 10, 16, 522 N.W.2d 243 (1994) (ADA claim "is not a basis to attack [a] TPR order").

To be sure, court proceedings may be services, programs, or activities within the meaning of the ADA in certain circumstances—for instance, insofar as they implicate the ADA's accessibility protections. Cases involving the ADA's application to such proceedings, however, invariably involve the need for reasonable accommodations, such as the removal of physical barriers to access. See, e.g., *Arneson* v. *Arneson*, 670 N.W.2d 904, 911 (S.D. 2003) ("[m]ost cases concerning the application of the ADA in court proceedings deal with reasonable courthouse accommodations"); *In re K.C.*, 362 P.3d 1248, 1251 (Utah 2015) (distinguishing between courthouse proceedings and termination of parental rights proceedings under ADA).

633, 650–51, 46 A.3d 59 (2012). The ADA is not properly raised as a defense in such proceedings also because, as the Michigan Court of Appeals explained in *In re Terry*, supra, 240 Mich. App. 14, "[t]he focus at the dispositional hearing must be on the parent's rights to the child and the best interests of the child . . . and the parties and the court should not allow themselves to be distracted by arguments regarding the parent's rights under the ADA." Id., 26–27 n.5; see also *Adoption of Gregory*, 434 Mass. 117, 121, 747 N.E.2d 120 (2001) ("Although the [Massachusetts] [D]epartment [of Social Services] is a public entity and therefore subject to the ADA . . . nothing in the ADA suggests that a violation of the [ADA] would interfere with the right of the state to terminate parental rights. To allow the provisions of the ADA to constitute a defense to termination proceedings would improperly elevate the rights of the parent above those of the child." [Citation omitted; internal quotation marks omitted.]).

This is not to say that the ADA plays no role in child welfare proceedings. To the contrary, as §§ 46a-71 (a) and 46a-77 (c) make eminently clear, "the department is required, pursuant to § 17a-112 (c) (1) [and the ADA], to take into consideration [a parent's] mental condition when determining what 'reasonable efforts' to make at reunification." *In re Antony B.*, 54 Conn. App. 463, 475, 735 A.2d 893 (1999). Accordingly, the fact that the ADA cannot be interposed as a defense in a termination proceeding "[does] not [mean] that the ADA does not apply to the reunification services and programs that the department must [provide] to meet the parents' specialized needs. . . . [Section] 17a-112 requires the department to make reasonable efforts at reunification. This includes taking the parent's mental condition into consideration. A failure to provide adequate services because of the parent's mental condition would violate not only § 17a-112, but [also] the ADA . . . ." (Citations

omitted.) Id., 473 n.9; see also *In re Devon B.*, 264 Conn. 572, 583, 825 A.2d 127 (2003) ("the petitioner statutorily is obligated to effectuate the respondent's reunification with her child, and, in order to accomplish that obligation, the petitioner [must] address the respondent's . . . needs in light of her mental disability"); *In re Eden F.*, 250 Conn. 674, 708 n.35, 741 A.2d 873 (1999) ("any . . . bias [against parents with mental illness] would be intolerable, and vigilance must be exercised to ensure that the parental rights of mentally ill persons are afforded the full protections provided under our stringent [child protection] statutory scheme").

Furthermore, as a practical matter, under our statutory scheme, the department's failure to make reasonable modifications to its services, programs or activities to accommodate a parent's disability would likely preclude a finding under § 17a-112 (j) (1) that the department's reunification efforts were reasonable under the circumstances. Cf. *Lucy J.* v. *State, Dept. of Health & Social Services, Office of Children's Services*, 244 P.3d 1099, 1116 (Alaska 2010) ("if [the Alaska Office of Children's Services] fails to take into account the parents' limitations or disabilities and [to] make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family" [internal quotation marks omitted]); *In re Hicks/Brown*, Mich. , 893 N.W.2d 637, 640 (2017) ("Absent reasonable modifications to the services or programs offered to a disabled parent, the [Michigan] Department [of Health and Human Services] has failed in its duty under the ADA to reasonably accommodate a disability. In turn, the [Michigan] Department [of Health and Human Services] has failed in its duty under the Probate Code to offer services designed to facilitate the child's return to his or her home . . . and has, therefore, failed in its duty to make reasonable efforts at reunification . . . ." [Citation omitted.]); *In re Hicks*, 315 Mich. App. 251,

269–70 n.5, 890 N.W.2d 696 (2016) ("[g]iven that the court must consider whether reasonable efforts were made to reunite the family, precluding specific reference to the ADA at the dispositional hearing is not likely to make any difference in terms of the outcome"), vacated in part on other grounds sub nom. *In re Hicks/Brown*, Mich. , 893 N.W.2d 637 (2017).

Our understanding of the interplay between the ADA and our child welfare statutes fully comports with the guidance recently issued by the United States Departments of Justice and Health and Human Services "to assist state and local child welfare agencies and courts to ensure that the welfare of children and families is protected in a manner that also protects the civil rights of parents . . . with disabilities." (Footnote omitted.) United States Dept. of Health and Human Services & United States Dept. of Justice, Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (August, 2015), available at https://www.ada.gov/doj_hhs_ta/child_welfare_ta.html (last visited August 3, 2017). That document provides in relevant part: "Individuals with disabilities must be provided opportunities to benefit from or participate in child welfare programs, services, and activities that are equal to those extended to individuals without disabilities. This principle can require the provision of aids, benefits, and services different from those provided to other parents . . . [when] necessary to ensure an equal opportunity to obtain the same result or gain the same benefit, such as family reunification.

"This does not mean lowering standards for individuals with disabilities; rather, in keeping with the requirements of individualized treatment, services must be adapted to meet the needs of a parent . . . who has a

disability to provide meaningful and equal access to the benefit. In some cases, it may mean ensuring physical or programmatic accessibility or providing auxiliary aids and services to ensure adequate communication and participation, unless doing so would result in a fundamental alteration to the nature of the program or undue financial and administrative burden. For example, a child welfare agency must provide an interpreter for a father who is deaf when necessary to ensure that he can participate in all aspects of the child welfare interaction. In other instances, this may mean making reasonable modification to policies, procedures, or practices, unless doing so would result in a fundamental alteration to the nature of the program. For example, if a child welfare agency provides classes on feeding and bathing children and a mother with an intellectual disability needs a different method of instruction to learn the techniques, the agency should provide the mother with the method of teaching that she needs." (Footnotes omitted.) Id.

We therefore continue to encourage trial courts to look to the ADA for guidance in fashioning appropriate services for parents with disabilities. Furthermore, there is nothing in the record before us to suggest that the trial court deviated in any way from ADA principles, which, as we have explained, are incorporated by reference into our state's own stringent antidiscrimination statutes, in adjudicating the neglect and termination petitions in the present case. To the contrary, the record reflects that the trial court was keenly aware of, and sensitive to, the respondent's intellectual deficits when it ordered specific steps to facilitate reunification. Although extremely unfortunate, in the end, those deficits, along with the respondent's psychological conditions, proved to be an insurmountable barrier to reunification.

The form of the judgment of the Appellate Court is improper, the judgment of the Appellate Court is vacated, and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion the other justices concurred.

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## STATE OF CONNECTICUT *v.* JUSTIN SKIPWITH (SC 19608)

Rogers, C. J., and Palmer, Eveleigh, McDonald, Espinosa, Robinson and D'Auria, Js.*

*Syllabus*

Pursuant to the victim's rights amendment set forth in the state constitution (Conn. Const., amend. XXIX [b]), in a criminal prosecution, the victim has the right to make a statement to the court objecting to or supporting any plea agreement prior to the court's acceptance of that plea, and to make a statement to the court at sentencing.

The plaintiff in error, whose daughter had died as a result of the defendant's criminal conduct, filed a writ of error in this court, claiming that the trial court had improperly dismissed her motion to vacate the defendant's sentence. The plaintiff in error had not been afforded an opportunity to object to the plea agreement between the defendant and the defendant in error, the state's attorney for the judicial district of Waterbury, or to make a statement at the defendant's sentencing. After learning that the defendant had been sentenced, the plaintiff in error filed her motion to vacate the defendant's sentence on the ground that her rights under the victim's rights amendment had been violated. The trial court concluded that the defendant's sentence was not illegal and dismissed the motion for lack of jurisdiction. After this court transferred the writ of error to the Appellate Court, that court dismissed the writ of error, concluding that the rule of practice (§ 43-22) providing that a court may correct an illegal sentence or a sentence imposed in an illegal manner did not authorize the trial court to vacate the defendant's sentence. The Appellate Court reasoned that the plaintiff in error provided no authority

* This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers, and Justices Palmer, Eveleigh, McDonald, Espinosa, Robinson and D'Auria. Although Justice Espinosa was not present when the case was argued before the court, she has read the briefs and appendices, and listened to a recording of oral argument prior to participating in this decision. The listing of justices reflects their seniority status on this court as of the date of oral argument.

supporting the proposition that the defendant's sentence was imposed in an illegal manner because it had violated of the victim's constitutional rights. On the granting of certification, the plaintiff in error appealed to this court, claiming that she was entitled to have the defendant's sentence vacated due to the fact that it was imposed in an illegal manner because she had not been afforded her rights under the victim's rights amendment. The defendant in error claimed, inter alia, that this court lacked jurisdiction over the writ of error because there was no express constitutional or statutory provision granting either this court or the Appellate Court jurisdiction over a writ of error seeking to enforce the victim's rights amendment. *Held* that this court had jurisdiction over the writ of error and had the authority to transfer it to the Appellate Court but upheld the Appellate Court's dismissal of the writ of error because it sought a form of relief that was barred by the victim's rights amendment: because a writ of error is a common-law remedy, the lack of any express constitutional or statutory authorization for a victim to file a writ of error from a ruling of the trial court implicating his or her rights under the victim's rights amendment did not affect this court's jurisdiction, as long as the victim fell within the class of persons entitled to file a writ of error and no constitutional or statutory provision deprived this court of jurisdiction; furthermore, the clauses in the victim's rights amendment providing that the legislature shall provide by law for its enforcement and that it shall not be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case did not deprive this court of jurisdiction, as the legislative history of the amendment indicated that the legislature contemplated that victims would be able to seek relief in the courts and that appellate courts would have a role in interpreting and implementing the amendment, and the bar on appellate relief did not deprive this court of jurisdiction but, rather, prohibited this court from granting any relief that would directly affect the judgment in a criminal case or otherwise abridge the substantive rights of a defendant; moreover, although the plaintiff in error had standing to file the writ of error to enforce her constitutional rights, because she sought a form of relief that was barred by the prohibition on appellate relief contained in the victim's rights amendment, specifically, an order requiring the trial court to vacate the defendant's sentence, this court upheld the Appellate Court's dismissal of the writ of error on this alternative ground.

(*One justice concurring separately*)

Argued April 5—officially released August 15, 2017

*Procedural History*

Writ of error from the decision of the Superior Court in the judicial district of Waterbury, *Fasano*, *Js.*, dismissing the plaintiff in error's petition for a writ of

error coram nobis and dismissing the plaintiff in error's motion to vacate the defendant's sentence, brought to this court, which transferred the matter to the Appellate Court, *Gruendel*, *Alvord* and *Mullins*, *Js.*; judgment dismissing the writ or error, from which the plaintiff in error, on the granting of certification, appealed to this court. *Affirmed.*

*Jeffrey D. Brownstein*, for the appellant (plaintiff in error Tabatha Cornell).

*Denise B. Smoker*, senior assistant state's attorney, with whom, on the brief, were *Maureen Platt*, state's attorney, and *Jason Germain*, senior assistant state's attorney, for the appellee (defendant in error state's attorney for the judicial district of Waterbury).

*Opinion*

ROGERS, C. J. The question that we must answer in this certified appeal is whether a crime victim who has been deprived of her state constitutional rights to object to a plea agreement between the state and the defendant and to make a statement at the sentencing hearing is entitled to have the defendant's sentence vacated so that she may attend a new sentencing hearing and give a statement. The defendant, Justin Skipwith, was charged with, inter alia, manslaughter in the second degree with a motor vehicle after the vehicle that he was driving struck and killed Brianna Washington, the daughter of the plaintiff in error, Tabatha Cornell. Although the plaintiff in error notified the defendant in error, the state's attorney for the judicial district of Waterbury (state), that she was invoking her rights as a victim of the crime pursuant to article first, § 8, of the Connecticut constitution, as amended by articles seventeen and

twenty-nine of the amendments,[1] she was not afforded an opportunity to object to the plea agreement between the defendant and the state or to make a statement at the defendant's sentencing hearing. Thereafter, the plaintiff in error filed a motion to vacate the sentence, which the trial court dismissed for lack of subject matter jurisdiction.[2] The plaintiff in error then filed a writ of error claiming that the trial court improperly dismissed her motion to vacate the defendant's sentence, naming the state as the defendant in error.[3] See *State*

[1] Article first, § 8, of the constitution of Connecticut, as amended by articles seventeen and twenty-nine of the amendments, provides in relevant part: "In all criminal prosecutions, a victim, as the general assembly may define by law, shall have the following rights: (1) The right to be treated with fairness and respect throughout the criminal justice process; (2) the right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged; (3) the right to be reasonably protected from the accused throughout the criminal justice process; (4) the right to notification of court proceedings; (5) the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony; (6) the right to communicate with the prosecution; (7) the right to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused; (8) the right to make a statement to the court at sentencing; (9) the right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law; and (10) the right to information about the arrest, conviction, sentence, imprisonment and release of the accused. The general assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case." Hereinafter, we refer to this provision as article first, § 8, as amended, or the victim's rights amendment.

[2] In addition, the plaintiff in error filed a petition for a writ of error coram nobis, which the trial court also dismissed. The Appellate Court concluded that the trial court properly dismissed that petition; see *State* v. *Skipwith*, 159 Conn. App. 502, 512, 123 A.3d 104 (2015); and that ruling is not at issue in this certified appeal.

[3] The plaintiff in error filed the writ of error in this court, and we transferred it to the Appellate Court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

v. *Skipwith*, 159 Conn. App. 502, 503, 123 A.3d 104 (2015). The Appellate Court determined that the trial court had properly concluded that it lacked jurisdiction to entertain the motion to vacate and dismissed the writ of error. Id., 512. We then granted the plaintiff in error's petition for certification to appeal.[4] We affirm the judgment of the Appellate Court on the alternative ground that the writ of error must be dismissed on the merits[5] because it seeks a form of relief that is barred by the victim's rights amendment. Accordingly, we need not reach the question of whether the Appellate Court properly found that the trial court lacked jurisdiction to entertain the plaintiff in error's motion to vacate the defendant's sentence.

The undisputed facts of this case are set forth in the opinion of the Appellate Court; see id., 503–506; and

[4] We granted the petition for certification to appeal on the following issue: "Did the Appellate Court properly determine that the trial court properly dismissed the plaintiff in error's motion to vacate the defendant's sentence because it was not an illegal sentence?" *State* v. *Skipwith*, 320 Conn. 911, 128 A.3d 955 (2015). Upon review of the record and the claims raised before the Appellate Court, we now conclude that the certified question is not an adequate statement of the issue properly before this court. Accordingly, we reformulate the certified question as follows: "Could the Appellate Court grant the relief requested by the plaintiff in error? If so, did the Appellate Court properly determine that the trial court properly dismissed the plaintiff in error's motion to vacate the defendant's sentence because it was not an illegal sentence?" See *State* v. *Ouellette*, 295 Conn. 173, 183–84, 989 A.2d 1048 (2010) (court may reformulate certified question to conform to issue actually presented and to be decided on appeal).

[5] For some time, this court and the Appellate Court have dismissed writs of error that lack merit. See, e.g., *Hardy* v. *Superior Court*, 305 Conn. 824, 827, 48 A.3d 640 (2012); *State* v. *Ross*, 272 Conn. 577, 613, 863 A.2d 654 (2005); *Ullmann* v. *State*, 230 Conn. 698, 724, 647 A.2d 324 (1994); *Sowell* v. *DiCara*, 161 Conn. App. 102, 122, 133, 127 A.3d 356, cert. denied, 320 Conn. 909, 128 A.3d 953 (2015); *State* v. *Peay*, 111 Conn. App. 427, 428, 959 A.2d 655 (2008), cert. denied, 291 Conn. 915, 970 A.2d 729 (2009); *Daniels* v. *Alander*, 75 Conn. App. 864, 883, 818 A.2d 106 (2003), aff'd, 268 Conn. 320, 844 A.2d 182 (2004). For purposes of clarity, in this opinion we use the phrase dismissed on the merits to distinguish that disposition from one where the writ of error is dismissed on a jurisdictional ground.

need not be repeated here, as the state concedes that the plaintiff in error was denied her right under article first, § 8, as amended, to object to the plea and to give a statement at the defendant's sentencing. Conn. Const., amend. XXIX (b) (7) and (8). After learning that the defendant had been sentenced, the plaintiff in error filed a motion to vacate the sentence based on violations of the victim's rights amendment. The trial court conducted a hearing on the motion, at which the plaintiff in error and a family friend gave statements, and ultimately dismissed the motion for lack of jurisdiction on the ground that the sentence was not illegal. Id., 505–506.

The plaintiff in error then filed this writ of error challenging the decision of the trial court. The Appellate Court concluded that the trial court properly had dismissed the motion to vacate the defendant's sentence, and then dismissed the writ of error on the merits. Id., 512. The Appellate Court reasoned that Practice Book § 43-22[6] authorizes the trial court to "correct a sentence imposed in an illegal manner," and the plaintiff in error had provided "no authority supporting the proposition that a defendant's sentence is imposed in an illegal manner . . . when the sentencing proceeding was conducted in violation of the *victim's* constitutional right to be present." (Citation omitted; emphasis in original; internal quotation marks omitted.) Id., 510–12. In addition, the Appellate Court observed that victims have no statutory authority to seek to vacate a defendant's conviction. Id., 512. This certified appeal followed.

The plaintiff in error contends that, contrary to the Appellate Court's determination, because the defendant's sentence was imposed without affording her the

[6] Practice Book § 43-22 provides: "The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner."

right under article first, § 8, as amended, to give a statement at the defendant's sentencing, the sentence was "imposed in an illegal manner" for purposes of Practice Book § 43-22, and, therefore, she was entitled to have the sentence vacated. The state contends that the Appellate Court correctly determined that the trial court had properly dismissed the plaintiff in error's motion to vacate the defendant's sentence and further claims, essentially as an alternative ground for affirmance, that, in the absence of any express constitutional or statutory provision, both the Appellate Court and this court lack jurisdiction to entertain a writ of error seeking to enforce the provisions of the victim's rights amendment. We conclude that this court had jurisdiction over the writ of error and, consequently, we had the authority to transfer it to the Appellate Court.[7] We also conclude, however, that the writ of error must be dismissed on the merits because it seeks a form of relief that is barred by the victim's rights amendment.[8]

Because it implicates this court's appellate jurisdiction, we first address the state's claim that this court lacks authority to entertain a writ of error seeking to enforce the victim's rights amendment because neither the state constitution nor any statute expressly confers such authority. This is a question of law over which our review is plenary. See *Pritchard* v. *Pritchard*, 281 Conn. 262, 274–75, 914 A.2d 1025 (2007) (whether party "properly invoked the jurisdiction of the Appellate Court is a question of law subject to plenary review").

In support of its contention that this court lacks jurisdiction over a writ of error seeking to enforce the vic-

[7] See footnote 3 of this opinion.

[8] We therefore need not resolve the question of whether the defendant's sentence otherwise was imposed in an illegal manner for purposes of Practice Book § 43-22. Even if we were to assume that it was, we conclude that the victim's rights amendment prohibits the form of relief that the plaintiff in error is seeking, namely, an order requiring the trial court to vacate the defendant's sentence.

tim's rights amendment, the state relies primarily on this court's decision in *State* v. *Gault*, 304 Conn. 330, 39 A.3d 1105 (2012). In that case, the victim[9] appealed from an order of the trial court requiring that an affidavit supporting the arrest warrant for the defendant, which had been redacted to remove information that could identify the victim, be unsealed. Id., 335–36. She contended, among other things, that this order violated her right under article first, § 8, as amended, to be treated with fairness and respect throughout the criminal justice process. Id., 336; see also Conn. Const., amend. XXIX (b) (1). The state claimed on appeal that, because the victim was not a party to the criminal proceeding, she had no standing to appeal. *State* v. *Gault*, supra, 333, 337–38. This court agreed with the state. Id., 338. We observed in *Gault* that "except insofar as the constitution bestows upon this court jurisdiction to hear certain cases . . . the subject matter jurisdiction of . . . this court is governed by statute." (Internal quotation marks omitted.) Id., 339. We then noted that the victim's rights amendment did not contain a right to appeal from a ruling by the trial court implicating the rights created by that amendment. Id. We further noted that the statute authorizing appeals, General Statutes § 52-263, provided that the remedy of appeal was available only to parties to the case. Id., 342. Finally, we observed that, although Public Acts 1998, No. 98-231, § 2, as amended by Public Acts 2001, No. 01-211, § 12, codified at General Statutes § 46a-13c (5), authorized the Office of the Victim Advocate to "[f]ile a limited special appearance in any court proceeding for the purpose of advocating for any right guaranteed [by the victim's rights amendment or] the general statutes," the legislature did not intend that victims would have full party status or the right to appeal from rulings of the trial court. See *State* v. *Gault*,

[9] The victim in *Gault* was not identified in order to protect her privacy. See *State* v. *Gault*, supra, 304 Conn. 333.

supra, 347. Accordingly, we concluded that victims were not parties with standing to appeal from an order in a criminal case, and we dismissed the victim's appeal. Id., 348.

In the present case, the state contends that *Gault* stands for the proposition that, because the victim's rights amendment contains no self-executing remedial procedures; see id., 340–41; if the legislature has not expressly provided a remedy by which the rights protected by that constitutional provision may be vindicated, no such remedy exists.[10] Our decision in *Gault*, however, was premised on the principle that the right of *appeal* is created purely by statute. See id., 339. Because no statute provides victims with a right to appeal from rulings of the trial court, no such right exists. In contrast, a writ of error is a common-law

[10] We emphasize that this court did not hold in *Gault* that the provisions of article first, § 8, as amended, expressly conferring rights on victims, are not self-executing in the sense that they are not effective until the legislature passes implementing legislation. See *State* v. *Gault*, supra, 304 Conn. 340 (constitutional provisions that are not self-executing are not effective until implementing legislation is passed). We held only that the victim's rights amendment contains no self-executing provision conferring on victims the right to appeal from rulings in a criminal case. Id., 341, 347. Indeed, the state in the present case does not dispute that prosecutors and trial courts have regularly afforded victims their rights under the victim's rights amendment, including those that have not been expressly implemented by statute. The state has also consistently and forthrightly conceded that the failure to afford the plaintiff in error her rights in the present case was a rare and unfortunate exception to that general practice and *violated the plaintiff in error's state constitutional rights*, despite the fact that those rights are not the subject of any implementing legislation. The state claims only that the state constitution contains no self-executing provisions providing a *judicial remedy* for such violations. Thus, properly understood, the state's contention is not that the victim's rights amendment is not self-executing in its entirety; rather, its contention is that claims that the self-executing provisions of the amendment have been violated are nonjusticiable. See *Vieth* v. *Jubelirer*, 541 U.S. 267, 277, 124 S. Ct. 1769, 158 L. Ed. 2d 546 (2004) (claim of unlawfulness is nonjusticiable when it "involves no judicially enforceable rights"). We conclude that such claims are justiciable, but that the scope of the relief that the courts can provide is limited.

remedy. See, e.g., *State* v. *McCahill*, 261 Conn. 492, 499–500, 811 A.2d 667 (2002) ("[t]he writ of error . . . is a concept deeply rooted in our common law" and "the right to bring a writ of error . . . exists independent of [any] statutory authorization" [citations omitted; footnote omitted; internal quotation marks omitted]); *State* v. *Assuntino*, 173 Conn. 104, 112, 376 A.2d 1091 (1977) ("The writ [of error] has long lain to this court . . . in accordance with statutes which have been merely declaratory of the common law. It is therefore concluded that the writ, at common law, lies to this court . . . ."); *State* v. *Caplan*, 85 Conn. 618, 622, 84 A. 280 (1912) ("[t]he writ of error is the common-law method . . . of carrying up a cause from an inferior to a higher court for the revision of questions of law"). Thus, unlike in *Gault*, the lack of any express constitutional or statutory authorization for a victim to file a writ of error from a ruling of the trial court implicating his or her rights under the victim's rights amendment does not affect the victim's right to file a writ of error or this court's jurisdiction to entertain it. Rather, in the absence of any constitutional provision or statute *depriving* this court of its common-law jurisdiction over writs of error,[11] this court has jurisdiction if a victim falls within the class of persons who are entitled to file a writ of error.

[11] We express no opinion here as to whether such a statute would pass muster under the state constitution. See *Banks* v. *Thomas*, 241 Conn. 569, 585 n.16, 698 A.2d 268 (1997) (because court rejected claim that statute had limited court's jurisdiction over writs of error, court was not required to "determine whether such a bar would be a constitutionally impermissible encroachment upon this court's authority to entertain a writ of error"); *State* v. *Assuntino*, supra, 173 Conn. 110 (because legislature had not attempted to abrogate common-law writ of error by statute, it was "unnecessary for this court to consider whether the jurisdiction to hear such a writ is an essential attribute of the constitutional role of this court"); see also *Moore* v. *Ganim*, 233 Conn. 557, 573, 660 A.2d 742 (1995) ("article first, § 10, [of the Connecticut constitution] prohibits the legislature from abolishing or significantly limiting common law and certain statutory rights that were redressable in court as of 1818" [footnote omitted]).

The state has not claimed that any statute deprives this court of its jurisdiction over writs of error seeking relief for a violation of the victim's rights amendment, and we conclude that nothing in the state constitution does so. Article first, § 8, as amended, provides in relevant part: "The general assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case." Conn. Const., amend. XXIX (b). With respect to the first quoted sentence, that provision merely authorizes the legislature to enforce through legislation the rights created by the constitutional provision. It does not abrogate the basic constitutional obligation of courts to interpret and implement constitutional provisions.[12] See *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) ("[i]t is emphatically the province and duty of the judicial department to say what the law is"). Indeed, to the extent that there is any ambiguity as to whether the constitutional provision deprives courts of their authority to adjudicate claims arising from the victim's rights amendment, the legislative history reveals that the legislature expressly contemplated that victims would be able to seek relief both in the trial court and in the appellate courts.[13]

[12] In this regard, we note that § 5 of the fourteenth amendment to the United States constitution, providing that "[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article," has never been construed to deprive the courts of their authority to interpret and implement that amendment.

[13] See 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2833, remarks of Representative Ellen Scalettar (proposed constitutional amendment "really gives the courts the ability to be the primary interpreter of what the obligations of the state are, and in certain ways we are giving up our power to do that and giving it to the courts"); id., p. 2837, remarks of Representative Michael P. Lawlor (explaining that remedy for victim who was deprived of right created by proposed amendment "would be for an appellate court or a trial court to decide what the state's obligation is under the terms of the constitutional amendment"); id., p. 2872, remarks of Representative Dale W. Radcliffe ("[i]t

The second quoted sentence, providing that the victim's rights amendment shall not be "construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case"; Conn. Const., amend. XXIX (b); also does not deprive the appellate courts entirely of their authority to interpret and implement the constitutional provision. First, as we have indicated, the legislative history of the provision clearly indicates that the legislature contemplated that both the trial courts and the appellate courts would have a role in interpreting and implementing it. See footnote 13 of this opinion. Second, in ordinary usage, the phrase "appellate relief" connotes relief granted on appeal from a *judgment* disposing of the case, not relief provided to a nonparty in connection with a collateral issue that will not directly affect the substantive issues or the ultimate disposition of the case. See *State* v. *Moore*, 158 Conn. 461, 463, 262 A.2d 166 (1969) ("[a]n appeal lies only from a final judgment, and there can be no judgment in a criminal case until sentence is pronounced"). Indeed, the legislative history indicates that the purpose of the provision barring "appellate relief" was to ensure that any relief provided would not deprive defendants of their existing substantive rights; its purpose was not to deprive victims of any appellate redress for a violation of their rights, even when providing relief would not affect the judgment or the rights of the defendant.[14] Third, we can perceive no reason why, before

is naturally left to a court to interpret sections of a constitution"); id., p. 2873, remarks of Representative Marie L. Kirkley-Bey ("we're passing a piece of paper onto a judicial system that can therefore incorporate and determine the law").

[14] See 39 S. Proc., Pt. 6, 1996 Sess., p. 1991, remarks of Senator Martin M. Looney (rights created by proposed amendment "directly conflict with those of the defendant and fashioning a remedy for one without affecting the rights of the other would be extremely difficult"); 39 S. Proc., Pt. 10, 1996 Sess., p. 3247, remarks of Senator Thomas F. Upson (clarifying that purpose of provision prohibiting vacation of conviction and barring appellate relief was to ensure that no right of defendant was abridged); 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2817, remarks of Representative Michael P. Lawlor (proposed

the victim's rights amendment was adopted, a victim could not have obtained relief by filing a writ of error in this court to vindicate rights conferred by chapter 968 of the General Statutes governing victim services, including the right to present a statement to the prosecutor and the trial court prior to the acceptance of a plea and the right to submit a statement to the prosecutor before sentencing.[15] See General Statutes § 54-203 (b) (7) (B) and (C). There is no evidence, and it would be anomalous to conclude, that the victim's rights amendment was intended to *eliminate* preexisting mechanisms for obtaining such relief from this court. Rather, it is reasonable to conclude that the bar on appellate relief was intended to be the constitutional equivalent to General Statutes § 54-223, which provides that the "[f]ailure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes shall not constitute grounds for vacating an otherwise lawful conviction or voiding an otherwise lawful sentence or parole determination."[16]

We conclude, therefore, that the bar on appellate relief set forth in article first, § 8, as amended, merely

amendment "is not intended to deprive any person of any liberty right that they have under the federal or state constitution"); 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2840, remarks of Representative Michael P. Lawlor (proposed amendment "doesn't deprive any liberty or due process rights of any person who is a citizen of the state who might be accused of a crime").

[15] General Statutes § 54-224 provides that the state and its agents cannot be held liable for damages for the failure to afford a victim any rights protected by the General Statutes. That statute does not bar victims, however, from seeking to enforce their rights.

[16] Indeed, the legislative history of the victim's rights amendment indicates that the intent of the amendment was to give constitutional status to the statutory rights that victims already had. See 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2817, remarks of Representative Michael P. Lawlor ("[the amendment] only provides rights to victims of crime as they're defined in our statute[s]"); id., p. 2830, remarks of Representative Michael P. Lawlor ("everything in the amendment is something that's already law in the state of Connecticut"). Section 54-223 was enacted in 1986, ten years before the victim's rights amendment was adopted. See 1986 Public Acts, No. 86-401, §§ 3, 7.

prohibits this court from granting any relief that would directly affect the judgment in a criminal case or otherwise abridge the substantive rights of a defendant.[17] Accordingly, we conclude that this provision does not deprive this court of its jurisdiction over writs of error arising from the victim's rights amendment.

With this background in mind, we must address an issue that we left unresolved in our decision in *Gault*. Specifically, we stated in that case that it was unclear whether the prohibition on appellate relief contained in article first, § 8, as amended, "is intended to apply to victims or only to criminal defendants." *State* v. *Gault*, supra, 304 Conn. 339–40 n.12. Our conclusion here that the prohibition on appellate relief was intended to bar any form of relief that would directly affect the judgment or abridge the defendant's rights makes it clear, however, that the focus of the prohibition is on the *substance* of the relief, not on the identity of the party seeking the relief. Accordingly, we now conclude that the prohibition was intended to apply to any person seeking a prohibited form of relief, including victims. Similarly, because the prohibition goes to the substance

[17] We recognize that this conclusion severely limits the relief that is available to victims for violations of their constitutional rights. Because it is not clear, however, that the bar on appellate relief that would affect the judgment or abridge a defendant's rights effectively bars *all* appellate relief, we cannot conclude at this juncture that it deprives this court of jurisdiction over writs of error arising from the victim's rights amendment. Accordingly, we leave it for another day to resolve the question of whether, if a trial court failed to comply with the provisions of article first, § 8, as amended, the victim could file an interlocutory writ of error before the plea was entered or the defendant was sentenced, seeking an order requiring the trial court to comply, provided that the victim could establish that the criteria for an appealable interlocutory order under *State* v. *Curcio* 191 Conn. 27, 31, 463 A.2d 566 (1983), were met and that granting relief would not abridge any of the defendant's existing rights, including the right to a speedy trial. See, e.g., *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, 305 Conn. 750, 755–56, 48 A.3d 16 (2012) (this court had jurisdiction over writ of error challenging interlocutory discovery order that satisfied criteria for appealable final judgment under *Curcio*).

of the relief sought, and not to the vehicle by which the relief is sought, we conclude that, to the extent that there is any doubt as to whether a writ of error is technically a form of appellate relief in this context, the constitutional prohibition imposes the same limitations on writs of error that it would impose on appeals by victims, if they were statutorily authorized. See *State* v. *Caplan*, supra, 85 Conn. 622; see also *State* v. *Salmon*, 250 Conn. 147, 153–54, 735 A.2d 333 (1999) (writ of error is proper vehicle for appellate review when party is unable to appeal).

Thus, what our analysis also makes clear is that, although the plaintiff in error has standing to file the writ of error,[18] she seeks a form of relief—an order requiring the trial court to vacate the defendant's sentence—that is barred by the prohibition on appellate relief contained in the victim's rights amendment. Although the victim's rights amendment does not deprive victims of their right to file a writ of error

[18] The common-law requirements for standing to file a writ of error are now codified in Practice Book § 72-1 (a). See *State* v. *Rupar*, 293 Conn. 489, 501–502, 978 A.2d 502 (2009) (concluding that plaintiff in error who had satisfied requirements of § 72-1 had standing to file writ of error). Section 72-1 provides in relevant part: "(a) Writs of error for errors in matters of law only may be brought from a final judgment of the superior court to the supreme court in the following cases: (1) a decision binding on an aggrieved nonparty . . . and (4) as otherwise necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law.

"(b) No writ of error may be brought in any civil or criminal proceeding for the correction of any error where (1) the error might have been reviewed by process of appeal, or by way of certification, or (2) the parties, by failure timely to seek a transfer or otherwise, have consented to have the case determined by a court or tribunal from whose judgment there is no right of appeal or opportunity for certification."

The plaintiff in error in the present case meets these requirements because she has raised a pure question of law from a final judgment of the Superior Court that is binding on her and by which she is aggrieved, namely, the ruling of the trial court dismissing her motion to vacate the defendant's sentence. In addition, under *State* v. *Gault*, supra, 304 Conn. 347, she has no right to appeal from that decision, and she did not consent to have the issue finally decided by the trial court.

to enforce their constitutional rights, it also does not expand their rights to seek a form of appellate relief that previously had been barred by statute. Because victims were barred by § 54-223 from seeking to vacate a criminal sentence for the violation of their rights when the victim's rights amendment was adopted; see footnote 16 of this opinion;[19] we conclude that this form of relief is barred, and, therefore, we affirm the judgment of the Appellate Court on this alternative ground.[20]

The judgment of the Appellate Court is affirmed.

In this opinion PALMER, EVELEIGH, ESPINOSA, ROBINSON and D'AURIA, Js., concurred.

[19] See also 39 H. R. Proc., Pt. 9, 1996 Sess., p. 2819, remarks of Representative Michael P. Lawlor ("[i]t is certainly not the intent [of the proposed amendment] to provide a veto power to a victim of a crime").

[20] But see *Kenna* v. *United States District Court*, 435 F.3d 1011, 1017 (9th Cir. 2006) (when trial court denied victim his right to give statement at defendant's sentencing hearing and victim filed writ of mandamus as authorized by federal law, reviewing court concluded that trial court "must avoid upsetting constitutionally protected rights, but it must also be cognizant that the only way to give effect to [the victim's] right to speak . . . is to vacate the sentence and hold a new sentencing hearing"); *State* v. *Barrett*, 350 Or. 390, 406–407, 255 P.3d 472 (2011) (when victim was denied right to be heard at defendant's sentencing and appealed as authorized by statute from trial court's ruling that there was no remedy for violation, reviewing court concluded that vacating defendant's sentence and conducting new sentencing hearing at which defendant could receive harsher sentence did not violate defendant's double jeopardy rights); *State* v. *Casey*, 44 P.3d 756, 765–66 (Utah 2002) (when victim was denied right to make statement at plea hearing, trial court properly determined that remedy was to " 'informally' " reopen the plea hearing at sentencing and accept testimony from victim). These cases, however, are distinguishable from the present case. Neither *Kenna* nor *Barrett* involved constitutional provisions barring appellate relief that would affect the judgment. The constitutional provision at issue in *Casey* barred "relief from any criminal judgment"; see *State* v. *Casey*, supra, 761 n.5; but relief was granted in that case before the defendant was sentenced. Because we conclude in the present case that an order vacating the defendant's sentence would affect the judgment in violation of the state constitutional prohibition on appellate relief, we need not determine whether doing so would violate the defendant's double jeopardy or other substantive rights.

McDONALD, J., concurring in the judgment. The victim's rights amendment to our state constitution was adopted to ensure that crime victims would no longer be relegated to the sidelines as largely silent, passive observers of a process in which their sole role was as witness and informant.[1] See Conn. Const., amend. XXIX (b). However, because the courts are barred from construing it to create a basis for any form of appellate relief and the legislature has not enacted any enforcement mechanisms in accordance with the constitutional directive, the promise of the amendment is largely illusory under the law as it currently stands. This state of affairs undermines the foundational principle, declared more than 200 years ago, that a government of laws "will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). In light of the constitutional and statutory constraints on this court, I agree with the majority that this court lacks the authority to grant the form of relief sought by the plaintiff-in-error, Tabatha Cornell.[2] Nonetheless, this court can shine a light on

[1] See 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2808, remarks of Representative Michael P. Lawlor (amendment would provide victims with "true role in the process"); 39 S. Proc., Pt. 6, 1996 Sess., p. 1982, remarks of Senator Kevin Sullivan (amendment would give victims their voice and "a part in the process"); cf. *Kenna* v. *United States District Court*, 435 F.3d 1011, 1013 (9th Cir. 2006) ("The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children—seen but not heard. The [federal] Crime Victims' Rights Act sought to change this by making victims independent participants in the criminal justice process.").

[2] The majority's logic that the victim's rights amendment of the Connecticut constitution does not preclude the exercise of our jurisdiction over a writ of error alleging a violation thereunder, but does preclude affording relief on a legitimate claim brought by way of the writ seems counterintuitive. Indeed, the most natural construction of the language in this provision barring us from construing it to create a ground for "appellate relief" would seem to apply only to parties to the underlying criminal prosecution entitled to appeal, which does not include the crime victim. Nonetheless, I am persuaded that the majority's ultimate conclusion that we cannot vacate the sentence as requested in the present writ is correct because: (1) vacating

the circumstances that gave rise to the violation of her constitutional rights. We can also exercise our supervisory authority to adopt procedures to prevent a similar recurrence. I would do both.

I

Our state constitution conferred on the plaintiff-in-error "the right to object to . . . any plea agreement

a sentence is a form of appellate relief; (2) the amendment directs the legislature to provide for the enforcement of the victim's rights amendment and it has not authorized this court to provide any such relief; (3) the legislative debates on the proposed victim's rights amendment clearly indicate an intent simply to elevate existing statutory rights to constitutional status; and (4) the existing statutory scheme, which was not altered concurrently with this amendment, unambiguously precluded the courts from vacating a plea solely on the ground that a right conferred on victims had been violated. See General Statutes § 54-223 ("[f]ailure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes shall not constitute grounds for vacating an *otherwise* lawful conviction or voiding an *otherwise* lawful sentence or parole determination" [emphasis added]).

I note that several other jurisdictions have provided, by way of constitutional amendment or statute, remedies for constitutional violations of victims' rights. See, e.g., 18 U.S.C. § 3771 (d) (3) and (5) (permitting victim to file writ of mandamus to remedy violation of victim's rights and authorizing court to reopen plea or sentence under certain conditions); *Kenna* v. *United Stated District Court*, 435 F.3d 1011, 1017–18 (9th Cir. 2006) (granting writ of mandamus under 18 U.S.C. § 3771 [d] [3] and ordering trial court to conduct new sentencing hearing allowing victims to speak if other statutory requirements met); Ariz. Rev. Stat. Ann. §§ 8-416 A and 13-4437 A (West Supp. 2016) ("[t]he victim has standing to seek an order, to bring a special action or to file a notice of appearance in any appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims"); *State* v. *Barrett*, 350 Or. 390, 255 P.3d 472 (2011) (construing constitutional and statutory provisions to authorize court to vacate sentence and conduct resentencing hearing to remedy violation of constitutional right to be present at sentencing after court accepted plea agreement without notice to victim); see generally D. Beloof, "The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review," 2005 B.Y.U. L. Rev. 255, 300–31 (2005) (overviewing remedy and review concerns and approaches in various jurisdictions). Illinois' constitutional provision on crime victims' rights, which also barred the provision of such rights to be construed as a basis for appellate relief, was in large part the model for our state's victim's rights amendment. See 39 H.R. Proc., Pt. 9, 1996 Sess., pp. 2822, 2825, 2851, 2853; 39 S. Proc., Pt. 10, 1996 Sess., pp. 3246–47. Illinois amended its constitution

entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused" and "the right to make a statement to the court at sentencing . . . ." Conn. Const., amend. XXIX (b) (7) and (8). In other words, the plaintiff-in-error had the right to state her opinion, orally or in writing, as to both the substance of the plea and the attendant penalty, before the court accepted the plea and sentenced the defendant, Justin Skipwith. Statutes elaborate on the obligations of both the prosecution and the court to ensure that crime victims have notice and an opportunity to take advantage of these rights. The Office of Victim Services is charged with providing a training program for judges and prosecutors, among others, to ensure that they are familiar with these obligations. See General Statutes § 54-203 (b) (16).

Central to the present case is General Statutes § 54-91c.[3] That statute prescribes the prosecutor's obliga-

in 2014, to change the appellate relief bar to provide: "Nothing in this [s]ection or any law enacted under this [s]ection shall be construed as creating (1) a basis for vacating a conviction or (2) *a ground for any relief requested by the defendant*." (Emphasis added.) Ill. Const., art. I, § 8.1 (e).

[3] General Statutes § 54-91c provides in relevant part: "(a) For the purposes of this section, 'victim' means a person who is a victim of a crime, the legal representative of such person, a member of a deceased victim's immediate family or a person designated by a deceased victim in accordance with [General Statutes §] 1-56r.

"(b) Prior to the imposition of sentence upon any defendant who has been found guilty of any crime or has pleaded guilty or nolo contendere to any crime, and prior to the acceptance by the court of a plea of guilty or nolo contendere made pursuant to a plea agreement with the state wherein the defendant pleads to a lesser offense than the offense with which such defendant was originally charged, the court shall permit any victim of the crime to appear before the court for the purpose of making a statement for the record, which statement may include the victim's opinion of any plea agreement. In lieu of such appearance, the victim may submit a written statement or, if the victim of the crime is deceased, the legal representative or a member of the immediate family of such deceased victim may submit a statement of such deceased victim to the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case. Such state's attorney, assistant state's attorney or deputy assistant state's attorney

tions and then requires the trial court to "inquire on the record whether any victim is present for the purpose of making an oral statement or has submitted a written statement. *If no victim is present and no such written statement has been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim* [*of the date, time and place of the judicial proceeding concerning the acceptance of a plea pursuant to a plea agreement, provided the*

shall file the statement with the sentencing court and the statement shall be made a part of the record at the sentencing hearing. Any such statement, whether oral or written, shall relate to the facts of the case, the appropriateness of any penalty and the extent of any injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced. The court shall inquire on the record whether any victim is present for the purpose of making an oral statement or has submitted a written statement. If no victim is present and no such written statement has been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim as provided in subdivision (1) of subsection (c) of this section . . . . After consideration of any such statements, the court may refuse to accept, where appropriate, a negotiated plea or sentence, and the court shall give the defendant an opportunity to enter a new plea and to elect trial by jury or by the court.

"(c) (1) Except as provided in subdivision (2) of this subsection, prior to the imposition of sentence upon such defendant and prior to the acceptance of a plea pursuant to a plea agreement, the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case shall notify the victim of such crime of the date, time and place of the original sentencing hearing or any judicial proceeding concerning the acceptance of a plea pursuant to a plea agreement, provided the victim has informed such state's attorney, assistant state's attorney or deputy assistant state's attorney that such victim wishes to make or submit a statement as provided in subsection (b) of this section and has complied with a request from such state's attorney, assistant state's attorney or deputy assistant state's attorney to submit a stamped, self-addressed postcard for the purpose of such notification. . . .

"(3) If the state's attorney, assistant state's attorney or deputy assistant state's attorney is unable to notify the victim, such state's attorney, assistant state's attorney or deputy state's attorney shall sign a statement as to such notification.

"(d) Upon the request of a victim, prior to the acceptance by the court of a plea of a defendant pursuant to a proposed plea agreement, the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case shall provide such victim with the terms of such proposed plea agreement in writing. . . ."

*victim has informed the assistant state's attorney that the victim wishes to make or submit a statement*] . . . . After consideration of any such statements, the court may refuse to accept, where appropriate, a negotiated plea or sentence, and the court shall give the defendant an opportunity to enter a new plea and to elect trial by jury or by the court. . . .'' (Emphasis added.) General Statutes § 51-91c (b). This court has recognized that ''acceptance of a guilty plea must be contingent upon hearing from the victim in order to provide the victim with a meaningful right to participate in the plea bargaining process.'' *State* v. *Thomas*, 296 Conn. 375, 390–91, 995 A.2d 65 (2010).

The record in the present case reveals the following undisputed facts relevant to compliance with these requirements. In connection with his actions causing the death of the plaintiff-in-error's daughter, Briana Washington, the defendant was charged with manslaughter in the first degree, manslaughter in the second degree with a motor vehicle, misconduct with a motor vehicle, and operation of a motor vehicle while under the influence of liquor. In October, 2012, Attorney Jeffrey D. Brownstein notified the assistant state's attorney of record in the case, in writing, that he represented the plaintiff-in-error. Brownstein asked to be contacted prior to any offer and disposition on the case, stating that he and the plaintiff-in-error planned to be present at disposition and ''want the opportunity to be a part of the plea negotiations and to address the court at sentencing.'' Brownstein further indicated that the plaintiff-in-error was opposed to any suspended sentence and to any plea that would permit the defendant to avoid an admission of guilt (*Alford* or nolo contendere plea).[4] Before trial commenced, the case was trans-

[4] Under an *Alford* plea; see *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970); a criminal defendant is not required to admit his guilt, but acknowledges that the state's evidence against him is sufficient to establish his guilt beyond a reasonable doubt. See *State* v. *Faraday*, 268 Conn. 174, 204–205, 842 A.2d 567 (2004). Under a nolo conten-

ferred to another assistant state's attorney, Jason Germain. Brownstein did not receive a response to his letter from anyone in the office of the defendant-in-error, the state's attorney for the judicial district of Waterbury.

Prior to the commencement of jury selection on March 4, 2013, a victim's advocate for the state, Barbara Jean Quinn, initiated several communications to Brownstein, including an acknowledgement of his letter and an offer to discuss the case, but Brownstein was unavailable to do so at that time. Quinn also provided Brownstein with information about case status and various pretrial dates, including jury selection. Neither the plaintiff-in-error nor Brownstein were available on March 4, but the plaintiff-in-error's son and a close friend of Washington, who identified herself as Washington's "sister," attended jury selection that day. Quinn and Germain spoke with the two of them at that time. Either at that time or in a telephone call between Quinn and Brownstein that same day, Quinn or Germain explained that there may be serious problems with the charge of manslaughter in the first degree, that one of the state's witnesses may have given false information to the police, and that the defendant may not receive a lengthy sentence.

Approximately one month later, on April 2, 2013, Germain, defense counsel, and the defendant appeared before the trial court, at which time they presented the court with a proposed plea agreement. Pursuant to that agreement, the defendant would plead nolo contendere to the charge of manslaughter in the second degree with a motor vehicle, as well as to the charge of operation of a motor vehicle while under the influence of liquor.

dere plea, a defendant simply elects not to contest his guilt, and therefore, unlike an *Alford* plea, a plea of nolo contendere may not be used against a defendant as an admission in a subsequent criminal or civil case. See id., 205 n.17.

The agreed upon total effective sentence was ten years imprisonment, execution suspended after two years, and three years probation.

After the court conducted a plea canvass with the defendant and accepted the plea, but before the defendant was sentenced, the court directed the following inquiry to Germain:

"The Court: You're in contact with the family?

"[Germain]: I did contact them. I talked to them before this case started. It's the sister that's still involved. I did have [Quinn], our victim advocate from part A, contact her and advise her. We talked about the problems with the case being [the defendant] was stabbed, the situation, how it unfolded, and the problems we did have with the case. She understood it would be a tough case. I don't think there's going to be any problem. I think they'll be happy with the disposition."

The trial court then confirmed the parties' waiver of the presentence investigation report and imposed sentence on the defendant. Later that day, Brownstein received word from Quinn that the defendant had been sentenced in accordance with the plea agreement.

The foregoing facts reflect a clear abrogation of the plaintiff-in-error's constitutional and statutory rights, which she unambiguously invoked through her counsel's letter to the assistant state's attorney of record. The trial court may have intended its open-ended question to ascertain whether the members of Washington's immediate family had been notified of, and intended to exercise, their rights, but it plainly did not elicit such information. It is unclear whether Germain's oblique response was intentionally or inadvertently misleading. Germain's representation to the court that the "sister"

was the only family member involved[5] was directly contradicted by Quinn's communications with Brownstein up until the final notice that the defendant had been sentenced, and Brownstein's letter, which presumably was in Germain's case file. Even assuming that Germain misunderstood that Washington's "sister" was the only family member intending to be involved, there is no indication that the fact or substance of the proposed plea agreement had been discussed with her, that she had been informed that family members had a right to make a statement to the court before they decided whether to accept the plea, or that she had been given notice of the plea hearing date in order to avail herself of that right. The preface to Germain's final remarks—"I don't think" and "I think"—strongly suggests that no such conversation occurred, as it reflects speculation rather than an informed basis upon which he could make a representation to the court that the plea agreement would meet the expectations of Washington's family. There was, of course, reason to believe it would not. Even if Washington's family members had resigned themselves to the possibility that the defendant would not serve a lengthy sentence because of information communicated to them about the difficulties in prosecuting the case, it was a paramount concern to them that he not be offered a plea agreement under which he could avoid acknowledging responsibility for causing Washington's death. That concern, however, was never brought to the court's attention.

As the trial court later acknowledged at the hearing on the plaintiff-in-error's motion to correct an illegal sentence, the blame for this outcome did not rest solely with the state. Germain's vague reply to the court's open-ended inquiry should have prompted the court to

[5] At the hearing before the trial court, Brownstein conceded that Germain could not be faulted for assuming that Washington's friend was her sister, because she had identified herself as such.

press him further to ascertain whether he had fulfilled his statutory obligations as a prosecutor. See footnote 3 of this concurring opinion. Had the court done so, it presumably would have ascertained facts that would have caused it to withdraw and defer acceptance of the plea until such time as the plaintiff-in-error was afforded her constitutional right to review and respond to the plea agreement.

To their credit, once these defects were subsequently brought to their attention, the defendant-in-error and the trial court made commendable efforts to acknowledge the failures and to make amends. Germain and the trial court both repeatedly apologized to the plaintiff-in-error. Maureen Platt, the state's attorney for the judicial district of Waterbury, demonstrated laudable leadership by appearing at the hearing on the plaintiff-in-error's motion to personally accept responsibility for the actions of Germain, her subordinate, and to apologize for unnecessarily adding to the plaintiff-in-error's grief. In addition to these measures, the trial court gave the plaintiff-in-error every leeway to address the court and to voice her views on the record in the presence of the defendant. By providing that opportunity and then explaining why it would have accepted the plea agreement even if it had known her position in advance, the trial court arguably cured, or at least ameliorated, the constitutional violation in the present case. Cf. *State* v. *Casey*, 44 P.3d 756, 758, 766 (Utah 2002) (concluding trial court remedied prosecutor's failure to convey victim's opposition to plea when it reopened plea at sentencing, afforded victim opportunity to state objection to reduced charge, and reaffirmed prior plea agreement). The plaintiff-in-error's writ to this court makes clear, however, that a post hoc hearing was not an adequate remedy in her view.

II

Hopefully, the present case will prompt our legislature and the Rules Committee of the Superior Court to take steps to prevent a similar recurrence. In the meantime, because no form of appellate relief is available, it is all the more important that our trial courts be vigilant and proactive in protecting victims' rights. Several states have prescribed in greater detail the procedure whereby the trial court should elicit information from the state regarding steps undertaken to protect the victim's rights before accepting a plea or imposing sentence.[6] It has been recognized that "[c]ourt certification of compliance efforts provides a system of checks and balances that can help preserve victims' consultation rights without placing an undue burden on the criminal justice process." United States Department of Justice, Office for Victims of Crimes, Office of Justice Programs, Legal Series #7 Bulletin, "Victim Input Into Plea Agreements," (November 2002), p. 3 (available at https://www.ncjrs.gov/ovc archives/bulletins/legalseries/bulletin7/ncj189188.pdf (last visited July 28, 2017). Drawing on these sources, I would exercise our supervisory authority to prescribe such a procedure to fill the current gap in our scheme.

"It is well settled that [a]ppellate courts possess an inherent supervisory authority over the administration of justice. . . . Supervisory powers are exercised to direct trial courts to adopt judicial procedures that will address matters that are of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole."

[6] See, e.g., Ala. Code § 15-23-71 (West 2010); Ariz. Rev. Stat. Ann. § 13-4423 (West 2010); 725 Ill. Comp. Stat. Ann. 120/4.5 (West 2008); Ind. Code Ann. § 35-35-3-5 (LexisNexis 2012); Me. Rev. Stat. Ann. tit. 17-A, § 1173 (West Supp. 2016); Md. Code Ann., Crim. Proc. § 11-403 (LexisNexis Supp. 2016); N.M. Stat. Ann. § 31-26-10.1 (2010); Ariz. Rules of Crim. Proc. 39 (f); Md. Rules of Crim. Proc. 4-243; N.M. Rules of Crim. Proc. 6-113.

(Internal quotation marks omitted.) *Kervick* v. *Silver Hill Hospital*, 309 Conn. 688, 710, 72 A.3d 1044 (2013). We have previously exercised this authority to direct our trial court to conduct a canvass or a particular inquiry to protect important rights. See, e.g., *In re Yasiel R.*, 317 Conn. 773, 788–96, 120 A.3d 1188 (2015) (requiring canvass of parent prior to termination of parental rights); *State* v. *Gore*, 288 Conn. 770, 787, 955 A.2d 1 (2008) (requiring canvass of defendant to establish validity of jury trial waiver); *Duperry* v. *Solnit*, 261 Conn. 309, 329, 803 A.2d 287 (2002) (requiring canvass of defendant entering plea of not guilty by reason of mental disease or defect to ensure that plea is knowing and voluntary when state substantially agrees with claim of mental disease or defect); *State* v. *Brown*, 235 Conn. 502, 526, 668 A.2d 1288 (1995) (requiring preliminary inquiry, on record, when court is presented with allegation of jury misconduct in criminal case).

In accordance with this authority, I would direct our trial courts to undertake the following measures at the outset of a sentencing hearing or any judicial proceeding concerning the acceptance of a plea pursuant to a plea agreement:

(a) If the victim is not present or has not submitted a written statement, the trial court shall ascertain from the state's attorney:

(1) Whether the victim was informed of his or her right to make a statement to the court, orally or in writing, regarding the plea or sentence, and, if not, whether reasonable measures were undertaken to do so;

(2) If the victim elected to provide such a statement, whether the victim (or the victim's counsel) was notified of the date, place and time of the proceeding;

(3) If the state has proposed a plea agreement, whether the victim has been informed of his or her

right to be provided with the terms of the proposed agreement in writing;

(b) If the state's attorney has not established that a reasonable attempt has been made to notify the victim of the foregoing rights, the court shall, unless doing so would violate a jurisdictional requirement or the defendant's substantive rights:

(1) reschedule the hearing; or

(2) proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and

(3) order the state's attorney to notify the victim of the rescheduled hearing.

(c) If the victim is present, the court shall inquire whether he or she has been informed of the foregoing rights and shall recess the hearing or undertake appropriate measures if necessary to afford the victim a reasonable opportunity to exercise those rights.

By enumerating these procedures, I do not intend to limit the trial court's authority to undertake any other measures that would advance the purposes of the victim's rights amendment.

This case provides a stark reminder that a constitutional right, unadorned by a remedy to enforce or vindicate that right, is a hollow one. Indeed, a victim of crime who is denied her constitutional rights by a prosecutor or the court is, in a very real sense, victimized all over again. Without understating the significance of the primary victimization, this second victimization may be in some ways more odious because it is inflicted upon her by the levers and gears of the judicial system itself, the very institutional mechanism she—and all people in civilized society—relies on to have her offender held to account. We as a state must do better than this.

I respectfully concur in the judgment.