STATE OF CONNECTICUT *v.* A. B.*
(SC 20471)

Robinson, C. J., and McDonald, D'Auria, Kahn, Ecker and Keller, Js.

Syllabus

Pursuant to this court's decision in *State* v. *Crawford* (202 Conn. 443), the issuance of an arrest warrant within the time period prescribed by the applicable criminal statute of limitations commences a prosecution for purposes of satisfying that statute of limitations, so long as the warrant is executed without unreasonable delay.

The state, on the granting of permission, appealed from the trial court's dismissal of an information charging the defendant with possession of child pornography in the first degree. In 2009, the police executed a search warrant at the defendant's residence and seized two of his computers. Thereafter, the defendant signed a sworn statement in which he admitted to possessing child pornography. The defendant was not

* Following notice to the public and a hearing, the Appellate Court granted the defendant's motion to seal the defendant's name. See Practice Book §§ 77-3 and 77-4.

arrested at that time but was informed by the police that he would be arrested as soon as a forensic examination of his computers was completed. In 2011, the defendant moved to California. In 2013, after the state forensic laboratory issued a report confirming the presence of child pornography on the computers, and after the police confirmed the defendant's address in California, an arrest warrant for the defendant was issued. Between 2009 and 2018, the police, despite having the defendant's cell phone number, never attempted to communicate with the defendant about the status of his case. In 2018, nearly five years after the warrant was issued and more than three years after the applicable statute of limitations ((Rev. to 2009) § 54-193 (b)) purportedly expired, the defendant was arrested and charged with possession of child pornography in the first degree. Thereafter, the defendant filed a motion to dismiss the information, claiming that the delay in the execution of the arrest warrant was unreasonable under *Crawford* and, therefore, that his prosecution was time barred. In response, the state argued that, because the defendant had moved to California in 2011, the tolling provision of § 54-193 (c), which extends the time within which an information may be brought with respect to a person who fled from and resided outside of the state after the commission of the offense, tolled the limitation period within which the warrant could be executed. In granting the defendant's motion to dismiss, the trial court concluded that the tolling provision was inapplicable because the arrest warrant was issued within the limitation period, the defendant had not fled the state within the meaning of the tolling provision, the defendant met his burden of demonstrating his availability for arrest, and the state failed to meet its burden of demonstrating that the nearly five year delay in the warrant's execution was not unreasonable under *Crawford*. On appeal, the state, conceding that the five year delay in the execution of the arrest warrant was unreasonable, claimed that the trial court nevertheless incorrectly concluded that the tolling provision of § 54-193 (c) was inapplicable in light of the fact that the arrest warrant was issued within the limitation period. *Held* that the trial court correctly concluded that the tolling provision of § 54-193 (c) was inapplicable, as that provision tolls the limitation period solely with respect to the time within which a prosecution may be brought and does not purport to address prosecutions, such as the present one, that have already been brought, at which point there is no need for tolling because the statute of limitations has already been satisfied; moreover, contrary to the state's assertion that this court's interpretation of § 54-193 (c) penalizes it for obtaining an arrest warrant within the limitation period, this court's case law indicates that, so long as the warrant is executed without unreasonable delay, the state can continue to prosecute the defendant as soon as it is able to locate and arrest him.

Argued April 29—officially released October 1, 2021**

** October 1, 2021, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Procedural History

Information charging the defendant with the crime of possession of child pornography in the first degree, brought to the Superior Court in the judicial district of Ansonia-Milford, where the court, *Wilkerson Brillant*, *J.*, granted the defendant's motion to dismiss the information, and, on the granting of permission, the state appealed; thereafter, the court, *Wilkerson Brillant*, *J.*, granted the state's motion for reargument but denied the relief requested therein, and the state filed an amended appeal. *Affirmed.*

James M. Ralls, assistant state's attorney, with whom, on the brief, were *Margaret E. Kelley*, state's attorney, and *Matthew Kalthoff*, assistant state's attorney, for the appellant (state).

Andrew P. O'Shea, for the appellee (defendant).

Opinion

KELLER, J. In *State* v. *Crawford*, 202 Conn. 443, 521 A.2d 1034 (1987), this court held that the issuance of an arrest warrant within the limitation period set forth in General Statutes (Rev. to 1983) § 54-193 (b) commences a prosecution for purposes of satisfying that statute of limitations, so long as the warrant is executed without unreasonable delay. Id., 450–51. The defendant, A. B., was charged with possession of child pornography in the first degree in violation of General Statutes (Rev. to 2009) § 53a-196d and was arrested pursuant to a warrant on or about March 16, 2018, nearly five years after the warrant was issued and more than three years after the applicable five year statute of limitations had expired. See General Statutes (Rev. to 2009) § 54-193 (b).[1] The defendant filed a motion to dismiss the infor-

[1] General Statutes (Rev. to 2009) § 54-193 (b) provides in relevant part: "No person may be prosecuted for any offense . . . for which the punishment is or may be imprisonment in excess of one year, except within five years next after the offense has been committed. . . ."

In the interest of simplicity, hereinafter, unless otherwise indicated, all references to § 54-193 in this opinion are to the 2009 revision of the statute.

mation, arguing that, under *Crawford*, the delay in the warrant's execution was unreasonable and, therefore, that the prosecution was time barred. The state responded that, because the defendant had moved to California in 2011, § 54-193 (c)[2] tolled the limitation period within which the warrant could be executed. The trial court rejected the state's argument, concluding that the tolling provision of § 54-193 (c) was inapplicable once the warrant was issued within the limitation period set forth in § 54-193 (b) and that the nearly five year delay in the warrant's execution was unreasonable under *Crawford*. Accordingly, the trial court granted the defendant's motion to dismiss. On appeal,[3] the state claims that the trial court incorrectly concluded that the statute of limitations was not tolled by § 54-193 (c). We disagree and, accordingly, affirm the decision of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this appeal. On December 22, 2009, the Ansonia police executed a search warrant on the defendant's Ansonia residence. During the search, the police seized two of the defendant's computers and related electronics equipment. The defendant was aware that child pornography was the subject of the search and cooperated with the police by providing them with the passwords to his computers. Afterward, he voluntarily drove himself to police headquarters to be interviewed by Detective Gerald Tenney. During the interview, the defendant signed a sworn statement in which he admitted to pos-

[2] General Statutes (Rev. to 2009) § 54-193 (c) provides: "If the person against whom an indictment, information or complaint for any of said offenses is brought has fled from and resided out of this state during the period so limited, it may be brought against such person at any time within such period, during which such person resides in this state, after the commission of the offense."

[3] The state appealed to the Appellate Court from the judgment of the trial court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

sessing child pornography on his computers. Although the defendant was not arrested at that time, Detective Tenney informed him that an arrest warrant would be forthcoming as soon as a forensic examination of his computers was completed.

One and one-half years went by, during which the defendant did not hear back from Detective Tenney or anyone else from the Ansonia Police Department. On August 30, 2011, the defendant moved to Huntington Beach, California, where he lived until his arrest on or about March 16, 2018. While in California, the defendant resided at a single address, which was listed on his federal and state tax returns, on his California Department of Motor Vehicles records and on all of his bills. The defendant also maintained a Facebook account in his own name and posted accurate information about himself on that website. Between 2010 and 2013, Detective Tenney diligently checked on the status of the forensic laboratory's examination of the defendant's computers. On April 15, 2013, the forensic laboratory issued a report confirming the presence of child pornography on the computers. Shortly thereafter, Detective Tenney ascertained the defendant's California address through the LexisNexis law enforcement database and confirmed through the Huntington Beach police that the defendant still resided at that address.

A warrant for the defendant's arrest was issued on May 22, 2013, charging him with possession of child pornography in the first degree. Although Detective Tenney had requested that the warrant be extraditable, it was not authorized as such. Despite having the defendant's cell phone number, Detective Tenney never attempted to contact the defendant to inform him about the arrest warrant. Indeed, between 2009 and 2018, the Ansonia police never once attempted to communicate with the defendant about the status of his case. In September, 2016, Detective Tenney retired from the Anso-

nia Police Department. At the time of his retirement, no other officer had been assigned to work on the defendant's case.

In early 2018, a clerk of the Superior Court in the judicial district of Ansonia-Milford contacted Lieutenant Wayne Williams of the Ansonia Police Department to inquire about the status of the defendant's case and open arrest warrant. At that time, Lieutenant Williams requested and received permission from the state's attorney's office to extradite the defendant from California. On or about March 16, 2018, the defendant was arrested by the Huntington Beach police, posted bail, and was released with the understanding that he would organize his affairs and return to Connecticut to turn himself in to the Ansonia police, which he did on April 17, 2018. In light of the defendant's cooperation, no extradition proceedings were needed or conducted.

On December 18, 2018, the defendant filed a motion to dismiss the information, claiming that his prosecution was barred by the five year statute of limitations set forth in § 54-193 (b). The defendant argued that, although the arrest warrant was issued within the limitation period, the nearly five year delay in its execution was unreasonable under *Crawford*. The state opposed the motion, arguing that, because the defendant had moved to California prior to the issuance of the warrant, the defendant could not meet his burden of proving that he was available for arrest, as required by *Crawford*. Alternatively, the state argued, citing *State* v. *Ward*, 306 Conn. 698, 52 A.3d 591 (2012), that the statute of limitations was tolled under § 54-193 (c) because the defendant "fled" Connecticut in 2011.

An evidentiary hearing on the defendant's motion to dismiss was held over a period of two days, after which the trial court granted the defendant's motion. In so doing, the court rejected the state's contention that,

even though the arrest warrant was issued within the limitation period, § 54-193 (c) had tolled the statute of limitations within which the police were required to execute the warrant because of the defendant's relocation to California in 2011. The trial court concluded that § 54-193 (c) applies only to toll the limitation period within which a prosecution may be brought, not the time period within which a defendant must be notified of a prosecution that has already been initiated. Accordingly, the court considered whether the nearly five year delay in the execution of the arrest warrant by the Ansonia Police Department was reasonable under *Crawford*. In considering this question, the court explained that, in *State* v. *Swebilius*, 325 Conn. 793, 159 A.3d 1099 (2017), this court held that, once a defendant who has raised a statute of limitations defense "presents evidence of his availability for arrest during the limitation period, the burden shifts to the state to present evidence of its due diligence in executing the warrant." Id., 803. The trial court further explained that, under our case law, a defendant can demonstrate his availability for arrest by presenting evidence "suggest[ing] that he was not elusive, was available, and was readily approachable" during the relevant time period. Applying this standard, the court concluded that the defendant had met his burden. Specifically, the court found that, "although the defendant was residing out of state, the state was aware of his whereabouts . . . and could have easily executed the warrant within the [limitation] period or sooner than it did in 2018," that, "[a]fter the search of the defendant's home, the defendant voluntarily went to the police station and provided a sworn statement to the police in which he admitted to possessing child pornography," and that "[t]he police had the defendant's cell phone number and knew where he lived both in Connecticut and subsequently in California."

In light of its determination that the defendant had met his burden of demonstrating his availability for arrest, the trial court considered whether the state had met its burden of proving that the delay by the Ansonia police in executing the arrest warrant was not unreasonable. The trial court concluded that the state had not met its burden. Indeed, the court noted that the state had failed to present any evidence with respect to this issue. In light of the foregoing, the court concluded that the delay by the police in executing the warrant was unreasonable and granted the defendant's motion to dismiss.

Thereafter, the state filed a motion for reargument in which it claimed that the trial court incorrectly had determined that the defendant's motion to dismiss was controlled by *Crawford* rather than the tolling provision of § 54-193 (c), as interpreted by this court in *Ward*. The state further sought to address the significance of the Appellate Court's then recent decision in *Roger B.* v. *Commissioner of Correction*, 190 Conn. App. 817, 212 A.3d 693, cert. denied, 333 Conn. 929, 218 A.3d 70 (2019), and cert. denied, 333 Conn. 929, 218 A.3d 71 (2019),[4] which the defendant had filed with the trial court as supplemental authority following the hearing on his motion to dismiss. In *Roger B.*, the Appellate Court held that, when an arrest warrant is issued within

[4] In *Roger B.*, the petitioner appealed from the judgment denying his petition for a writ of habeas corpus, alleging ineffective assistance of counsel on the basis of his trial counsel's failure to assert a statute of limitations defense. *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 819–20. The habeas court denied the petition, reasoning, in part, that the statute of limitations was tolled under the tolling provision as a result of the petitioner's relocation outside of Connecticut. Id., 821–22. The Appellate Court agreed with the petitioner's claim on appeal that the habeas court incorrectly had concluded that the statute of limitations was tolled. Id., 831. The Appellate Court determined that, "[b]ecause the [arrest] warrant was issued within the limitation period, [the tolling provision] became irrelevant. The only question that remained was whether the warrant was executed without unreasonable delay." Id., 838.

the applicable limitation period, the statute of limitations is satisfied such that the tolling provision becomes irrelevant, and the only question is whether the warrant was executed without unreasonable delay. Id., 838. In its motion for reargument, the state claimed that *Roger B.* and the trial court's ruling on the defendant's motion to dismiss were inconsistent with this court's interpretation of § 54-193 (c) in *Ward*. The trial court disagreed and reaffirmed its ruling granting the defendant's motion to dismiss. The trial court further concluded that, even if § 54-193 (c) were applicable, it would not change the outcome of this case because the defendant had not fled the state within the meaning of that statute, and, therefore, the statute's tolling provision was never triggered.

On appeal, the state does not challenge the trial court's determination that the nearly five year delay in the execution of the arrest warrant by the Ansonia Police Department was unreasonable and, therefore, that the prosecution was time barred under *Crawford*. The state concedes that the delay was not reasonable. The state contends, however, that the trial court incorrectly determined that, because the arrest warrant was issued within the limitation period, the tolling provision of § 54-193 (c) was inapplicable. The state maintains that § 54-193 (c) is not only applicable but that, under *Ward*, its tolling provision was triggered when the defendant left the state for California, thereby "[giving] the state . . . an indefinite period to issue and execute the warrant . . . ." We disagree.

"Because a motion to dismiss effectively challenges the jurisdiction of the court, asserting that the state, as a matter of law and fact, cannot state a proper cause of action against the defendant, our review of the court's legal conclusions and resulting denial of the defendant's motion to dismiss is de novo." (Internal quotation marks omitted.) *State* v. *Kallberg*, 326 Conn. 1, 12, 160 A.3d

1034 (2017). Whether the trial court correctly determined that § 54-193 (c) is inapplicable to the present case presents a question of statutory interpretation over which we also exercise plenary review.[5] See, e.g., *State* v. *Ward*, supra, 306 Conn. 707. We previously have explained that "§ 54-193, like other criminal statutes of limitation, is remedial in nature. The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity. . . . Indeed, it is because of the remedial nature of criminal statutes of limitation that they are to be liberally interpreted in favor of repose." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Skakel*, 276 Conn. 633, 677, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006).

[5] "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and [common-law] principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Fedus* v. *Planning & Zoning Commission*, 278 Conn. 751, 756, 900 A.2d 1 (2006).

General Statutes (Rev. to 2009) § 54-193 (b) provides in relevant part that "[n]o person may be prosecuted for any offense . . . for which the punishment is or may be imprisonment in excess of one year, except within five years next after the offense has been committed. . . ." General Statutes (Rev. to 2009) § 54-193 (c), in turn, provides that, "[i]f the person against whom an indictment, information or complaint for any of said offenses is brought has fled from and resided out of this state during the period so limited, it may be brought against such person at any time within such period, during which such person resides in this state, after the commission of the offense." In determining whether the Ansonia police were required to execute the arrest warrant without unreasonable delay or whether § 54-193 (c) tolled the limitation period within which the warrant could be executed, we do not write on a blank slate. In *Crawford*, this court considered whether the issuance of an arrest warrant within the limitation period commenced the prosecution for purposes of satisfying[6] the statute of limitations set forth in § 54-193 (b). *State* v. *Crawford*, supra, 202 Conn. 447. The defendant, Ronald L. Crawford, filed a motion to dismiss the charges against him, arguing that they were barred by the applicable one year statute of limitations because the warrant for his arrest, which had been issued approximately two months after the commission of the charged offenses, was not executed until more than one year after the limitation period had expired. Id., 445. The trial court denied his motion, and this court

[6] In *Crawford*, this court used the term "tolled," and other forms of the verb "toll," rather than "satisfied," to describe the state's meeting its obligation under § 54-193 (b) to have "prosecuted" a crime within the relevant limitation period. See, e.g., *State* v. *Crawford*, supra, 202 Conn. 447. In *State* v. *Ali*, 233 Conn. 403, 660 A.2d 337 (1995), we explained that "satisfie[d]" is the appropriate term to describe the state's meeting such obligation under § 54-193 (b) and that "[o]nly § 54-193 (c) specifically concerns the tolling of the statute of limitations." Id., 413 n.8.

upheld the trial court's ruling, holding that the issuance of an arrest warrant within the limitation period satisfies the statute of limitations. Id., 446, 452. Specifically, we held that, "[w]hen an arrest warrant has been issued, and the prosecutorial official has promptly delivered it to a proper officer for service, he has done all he can under our existing law to initiate prosecution and to set in motion the machinery that will provide notice to the accused of the charges against him. When the prosecutorial authority has done everything possible within the period of limitation to evidence and effectuate an intent to prosecute, the statute of limitations is [satisfied]." (Footnote omitted.) Id., 450.

We further concluded, however, that "some limit as to when an arrest warrant must be executed after its issuance is necessary in order to prevent the disadvantages to an accused attending stale prosecutions, a primary purpose of statutes of limitation[s]." Id., 450. Thus, we held that, "in order to [satisfy] the statute of limitations, an arrest warrant, when issued within the time limitations of § 54-193 (b), must be executed without unreasonable delay." Id., 450–51. In so concluding, we declined to "adopt a per se approach as to what period of time to execute an arrest warrant is reasonable." Id., 451. Instead, we held that "[a] reasonable period of time is a question of fact that will depend on the circumstances of each case. If the facts indicate that an accused consciously eluded the authorities, or for other reasons was difficult to apprehend, these factors will be considered in determining what time is reasonable. If, on the other hand, the accused did not relocate or take evasive action to avoid apprehension, failure to execute an arrest warrant for even a short period of time might be unreasonable and fail to [satisfy] the statute of limitations."[7] Id.

[7] Because the statute of limitations is an affirmative defense and Crawford had failed to prove by a preponderance of evidence that the warrant was not served with due diligence, this court affirmed the trial court's denial of

In reaching our determination in *Crawford*, we noted that "[§ 54-193 (c)], which tolls the statute [of limitations] as to a person who has fled from and resides outside the state after the commission of the offense, simply extends the time within which an 'indictment, information or complaint' may be brought." Id., 450 n.12. We further explained that, although "the issuance of an arrest warrant within the period of limitation might accomplish the same result [i.e., toll the statute of limitations], there may be valid reasons why the prosecuting authority cannot procure an arrest warrant while an accused is absent from the state." Id. Thus, although not essential to our holding in *Crawford*, we interpreted the tolling provision of § 54-193 (c) to apply when a defendant, by fleeing the state, has made the procurement of an arrest warrant within the limitation period impossible. See id., 451. We further explained, however, that the timely issuance of an arrest warrant satisfies the statute of limitations, just as § 54-193 (c) tolls it with respect to the person who has fled the state, so long as any delay in the execution of the warrant is not unreasonable. See id., 450–51.

Subsequently, in *State* v. *Ali*, 233 Conn. 403, 660 A.2d 337 (1995), the defendant, Showkat Ali, claimed that the trial court improperly failed to instruct the jury to consider whether one of the charges against him was barred by the applicable statute of limitations. Id., 409.

Crawford's motion to dismiss. *State* v. *Crawford*, supra, 202 Conn. 451–52. In *State* v. *Swebilius*, supra, 325 Conn. 793, however, we clarified that, in asserting a statute of limitations defense, a defendant need only demonstrate that he was not elusive, was available, and was readily approachable during the limitation period. Id., 809. We stated that, "once a defendant has demonstrated his availability and nonelusiveness during the statutory period, the state must then demonstrate the reasonableness of any delay between the issuance and the service of an arrest warrant, at least when service occurs after the expiration of the limitation period." Id. We further stated that "the reasonableness determination must be made on a case-by-case basis in light of the particular facts and circumstances presented." Id., 809–10.

Ali, a resident of New York, was accused of kidnapping, sexually assaulting, and threatening his former wife in her New London home on July 9, 1991. Id., 405–409. After the victim reported the incident to the New London police, the police secured a warrant for Ali's arrest on July 19, 1991, well within the one year limitation period for the crime of threatening. Id., 409–10. Ali was not arrested pursuant to that warrant, however, for nearly two years, at which time New York authorities contacted the New London police and told them that Ali was in custody and willing to waive extradition. Id., 410. The New London police determined, however, that the July 19, 1991 arrest warrant must be vacated because they could not locate the victim, from whom they had failed to take a statement. Id. As a result, a second arrest warrant was secured on August 19, 1993, and executed on August 23, 1993. Id., 411.

At trial, Ali filed a request to charge, asking that the jury be allowed to consider his affirmative defense that the threatening count was barred by the applicable one year statute of limitations, which the trial court denied. Id. On appeal, this court agreed with Ali that the trial court improperly declined to instruct the jury on his statute of limitations defense because Ali had produced evidence that the police had not acted with due diligence in executing the arrest warrant.[8] Id., 416. In reaching our determination, we rejected the state's argument that "[Ali's] departure from the state [was] dispositive of [his statute of limitations defense]. Rather, we conclude[d] that the outcome [was] controlled by [*Crawford*], [in which] we held that the issuance of an arrest warrant qualifies as a 'prosecution' within the meaning of § 54-193 (b) only if the state executed it without

[8] This court agreed with the state that "the first and second warrants were essentially the same and that the issuance of the first warrant, within one year of the offense, satisfied [the statute of limitations]." *State* v. *Ali*, supra, 233 Conn. 412 n.7.

unreasonable delay and that, in determining whether the state executed the warrant without unreasonable delay, the fact finder may consider whether the defendant left the jurisdiction and was difficult to apprehend."[9] Id., 412.

In *State* v. *Ward*, supra, 306 Conn. 698, this court concluded that the trial court correctly determined that the limitation period set forth in § 54-193 (b) was tolled pursuant to § 54-193 (c) because the defendant, James T. Ward, had "fled" the state by returning to his home in Massachusetts after committing the charged offense. Id., 706, 713–14. Ward was convicted of sexually assaulting the victim inside her Killingly home in November, 1988. Id., 700–701. After the assault, Ward immediately returned to his home in Massachusetts. See id., 703–704. Unable to identify the perpetrator of the assault, the state police closed its investigation in March, 1990. Id., 704. Subsequently, in June, 2005, it reopened the investigation after receiving a tip that Ward was the person who committed the offense. Id. After DNA testing confirmed that Ward was the perpetrator; id.; the state police obtained and executed a warrant for his arrest in August, 2007, almost nineteen years after he committed the offense and fourteen years beyond the applicable five year statute of limitations. Id., 705. Ward filed a motion to dismiss the sexual assault charge on the ground that it was barred by the statute of limitations. Id. The trial court denied the motion, concluding that "§ 54-193 (c) operated to toll the statute of limitations because the state had proven that [Ward] fled from the state immediately after the commission of the crime and that he resided outside of the state during the period of limitation." Id.

[9] Although we did not expressly say so in *Ali*, a review of the record and briefs in that case indicates that the state relied on § 54-193 (c) as support for its assertion that Ali's departure from the state had tolled the statute of limitations within which the police were required to execute the arrest warrant.

Following his conviction, Ward appealed to this court, claiming that the trial court improperly denied his motion to dismiss because the state had failed to present evidence that he was aware of a criminal investigation against him and that he had fled the state to avoid prosecution. Id., 710. The state argued in response that the term "fled" in § 54-193 (c) does not require an intent to avoid arrest or prosecution. Id. Because the term "fled" was not defined in the statute, we consulted a dictionary definition of the word "flee," which "is defined alternatively as 'to run away often from danger of evil' and 'to hurry toward a place of security . . . .' " Id., 709. We observed that the "common usage of the term fled connotes a meaning that a defendant is running away from something. The term fled as we have ascertained from the dictionary definition means to run away from danger—in the context of § 54-193 (c), we understand this term to mean investigation—and [to] hurry toward a place of security—in the context of § 54-193 (c), we understand this term to mean outside of the jurisdiction." Id., 711. We further noted that the legislature's failure to include language in § 54-193 (c) requiring that a defendant must have fled for the purpose of avoiding prosecution supported the conclusion that no such intent was required under the statute. See id., 710. Because, when Ward returned home to Massachusetts, he had a reason to believe that an investigation would ensue into his criminal conduct at the victim's home, we agreed with the trial court that he had fled the state within the meaning of § 54-193 (c). See id., 711. Specifically, we concluded that "§ 54-193 (c) may toll the statute of limitations when a defendant absents himself from the jurisdiction with reason to believe that an investigation may ensue as the result of his actions." Id.

Most recently, in *State* v. *Swebilius*, supra, 325 Conn. 793, we were asked to determine whether a delay in

the execution of an arrest warrant could be reasonable as a matter of law. In that case, the defendant, Jon Swebilius, "was charged with possession of child pornography in the first degree . . . and was arrested thirty-two days after the issuance of [the] warrant for his arrest and thirteen days after the expiration of the applicable five year statute of limitations . . . . [Swebilius] moved to dismiss the charge on the ground that the prosecution was barred by the statute of limitations because . . . the delay in the execution of the warrant was unreasonable. The trial court denied the motion, and [Swebilius] appealed to the Appellate Court, which affirmed the judgment of the trial court, concluding that the delay was reasonable as a matter of law under *Crawford* and its progeny." (Footnote omitted.) Id., 796. We reversed the Appellate Court's judgment; id., 815; concluding that it "incorrectly determined that some delays in the execution of an arrest warrant may be so brief as to be reasonable as a matter of law for the purpose of tolling the applicable statute of limitations." Id., 801. Such a conclusion, we explained, was inconsistent "with this court's observation in *Crawford* that, '[i]f . . . the accused [does] not relocate or take evasive action to avoid apprehension, failure to execute an arrest warrant for even a short period of time might be unreasonable and fail to toll the statute of limitations.' " Id., 807, quoting *State* v. *Crawford*, supra, 202 Conn. 451.

We further observed that "a rule making some delays reasonable without any showing of due diligence is inconsistent with the purposes of statutes of limitations. As we have observed, such statutes serve several functions, among them '(1) prevent[ing] the unexpected enforcement of stale and fraudulent claims by allowing persons after the lapse of a reasonable time, to plan their affairs with a reasonable degree of certainty, free from the disruptive burden of protracted and unknown

potential liability, and (2) . . . aid[ing] in the search for truth that may be impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents or otherwise.' . . . *St. Paul Travelers Cos.* v. *Kuehl*, 299 Conn. 800, 809–10, 12 A.3d 852 (2011); see also [1 A.L.I. Model Penal Code and Commentaries (1985) § 1.06, comment, p. 86]. It is precisely because of these concerns that we require statutes of limitations to be strictly construed in favor of the accused. . . . Thus, although the precise length of any statutory limitation period is necessarily somewhat arbitrary, such statutes nevertheless reflect the will of the legislature that, at least in the absence of special or compelling circumstances, the limitation period shall serve as a firm bar to prosecution. See, e.g., [*State* v. *Whiteman*, 204 Conn. 98, 100, 526 A.2d 869 (1987)] (prosecution for sexual assault was barred when warrant was issued ten days after expiration of statute of limitations). It is also well established that statutes of limitations are not primarily concerned with demonstrable prejudice. . . . Instead, after the passage of the specified period of time, evidence of prejudice becomes less important than the virtues of predictability, repose, and societal stability. See, e.g., *United States* v. *Marion*, 404 U.S. 307, 322, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971) ('[S]tatutes [of limitations] represent legislative assessments of relative interests of the [s]tate and the defendant in administering and receiving justice; they are made for the repose of society and the protection of those who may [during the limitation period] . . . have lost their means of [defense]. . . . These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced.' . . .) . . . ." (Citations omitted; footnote omitted.) *State* v. *Swebilius*, supra, 325 Conn. 812–814.

In reaching our determination, we explained that the burden shifting approach adopted by the Appellate

Court for determining whether, under *Crawford*, an arrest warrant was executed without unreasonable delay "encourages diligence by law enforcement officials in providing timely notice of charges to defendants. Although we decline[d] to specify the precise actions that they must undertake to serve a warrant with due diligence, or the precise timeline within which they must act, [we held that] such officials must present some credible and persuasive factual basis for inaction when they fail to observe the statute of limitations. This requirement is consistent with the principle that, when a judicial doctrine, 'for all practical purposes, extends the statute [of limitations] beyond its stated term,' that doctrine 'should be applied in only limited circumstances . . . .' " Id., 808–809, citing *Toussie* v. *United States*, 397 U.S. 112, 115, 90 S. Ct. 858, 25 L. Ed. 2d 156 (1970).

Finally, we noted that it was "unlikely . . . that the legislature ever intended to allow the statute of limitations to be tolled simply by the issuance of a warrant without further efforts to apprise the defendant of the warrant's existence. Doing so would contravene the policy of notice fundamental to statutes of limitations." *State* v. *Swebilius*, supra, 325 Conn. 809 n.11. Thus, we concluded that "*Crawford* is more properly viewed as an exception to the rule that a defendant must have notice of prosecution within the limitation period. In that sense, it benefits the state by extending the period of limitation beyond its stated term and must be applied judiciously." Id.

Against this backdrop, we turn to the state's claim that the trial court incorrectly concluded that, because a warrant for the defendant's arrest was issued within the limitation period, the tolling provision of § 54-193 (c) was inapplicable such that, under *Crawford*, the Ansonia police were required to execute the warrant without unreasonable delay. The state argues that,

although this court and the Appellate Court consistently have analyzed statute of limitations cases involving timely issued arrest warrants using the *Crawford* framework, including cases in which the defendant left the state before or after the warrant was issued, in none of those cases did the state specifically claim that § 54-193 (c) had tolled the statute of limitations. Thus, according to the state, these cases "can hardly be read as an affirmative holding that, once warrants are issued, they must be served promptly even on those who fled the jurisdiction." The state further contends that, "in creating the . . . tolling exception to [§ 54-193 (b), the legislature] intended to toll the statute [of limitations] when suspects flee the state, regardless of whether a warrant has issued." Specifically, the state argues that, "given the lack of any reference in [the] tolling provision to issuance or execution of warrants, its plain language mandates that limitation periods be tolled regardless of the existence or status of any arrest warrant." Finally, the state contends that, when the defendant left Connecticut for California in 2011, he "fled" the state within the meaning of § 54-193 (c), as interpreted by this court in *Ward*, such that the statute of limitations was tolled until the defendant's return in 2018.

The defendant responds that the trial court properly utilized the *Crawford* framework in concluding that the nearly five year delay in the execution of the arrest warrant by the Ansonia police was unreasonable, and, therefore, the defendant's prosecution was barred by the statute of limitations. The defendant contends that, although § 54-193 (c) tolls the limitation period within which a prosecution may be commenced, *Crawford* and its progeny firmly establish that, once an arrest warrant has been issued, "the state must serve it without undue delay." We agree with the defendant.

By its express terms, § 54-193 (c) extends the time within which "an indictment, information or complaint[10] . . . may be brought" when a defendant has "fled from and resided out of this state . . . after the commission of the offense." (Footnote added.) Within the parlance of the law, an "action brought" is "[a]n action commenced." Ballentine's Law Dictionary (3d Ed. 1969) p. 19. Although § 54-193 (c) does not expressly refer to the issuance or execution of warrants as the point at which an action is "brought" for purposes of satisfying the time limits imposed under § 54-193 (b), this court has long ascribed that meaning to the word when applying the provisions of that statute. See, e.g., *State* v. *Ali*, supra, 233 Conn 416 ("the issuance of an arrest warrant is sufficient 'prosecution' to satisfy the statute of limitations . . . if the warrant is executed with due diligence"); *State* v. *Crawford*, supra, 202 Conn. 448 ("it is generally held that the prosecution is commenced, and the statute [satisfied], at the time a complaint is laid before a magistrate and a warrant of arrest is issued"). In light of the foregoing, we conclude that § 54-193 (c) tolls the limitation period solely with respect to the time within which a prosecution may be brought and does not purport to address prosecutions that have *already* been brought, at which point, as the Appellate Court aptly determined in *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 838, there is no need for tolling because the statute of limitations has already been satisfied. See, e.g., *State* v. *Ali*, supra, 233 Conn. 413 n.8 (distinguishing satisfying statute of limitations from tolling statute of limitations and noting

[10] An "indictment, information or complaint" are the formal means by which prosecutions are, or in the past were, brought against a defendant. General Statutes (Rev. to 2009) § 54-193 (c). As we explained in *Crawford*, "General Statutes § 54-46 previously required an indictment for crimes punishable by death or life imprisonment. This provision, however, was amended by No. 83-210 of the 1983 Public Acts. All felonies in Connecticut are now prosecuted by information and misdemeanors by information or complaint." *State* v. *Crawford*, supra, 202 Conn. 448 n.9; see also Practice Book § 36-11.

that "[o]nly § 54-193 (c) specifically concerns the tolling of the statute of limitations").

Our interpretation is consistent with our statement in *Ward* that § 54-193 (c) was intended to toll the statute of limitations when an offender has fled the state and, as a result, made an investigation into his crimes—and hence the timely procurement of an arrest warrant—impracticable if not impossible.[11] See *State* v. *Ward*, supra, 306 Conn. 712 (§ 54-193 (c) addresses "the practical problems that Connecticut police officers face in identifying and apprehending nonresident criminals" because "[i]nvestigation of crimes is easier for law enforcement officials when people central to the incident, and who may have vital information, are located within the state" (internal quotation marks omitted)); see also *United States* v. *Marshall*, 856 F.2d 896, 899–900 (7th Cir. 1988) ("[T]he statute of limitations, along with its companion tolling provisions, is designed to balance two competing interests. The statutes are intended to allow the government sufficient time to investigate and prosecute criminal conduct, while shielding the defendant from the burden and jeopardy of confronting distant offenses. . . . The tolling statute reflects the [legislature's] belief that [when] the defendant impedes the discovery and prosecution of his criminal conduct by fleeing from justice, his right to avoid prosecution for distant offenses is diminished while the government's need for additional discovery time is strengthened." (Citations omitted; internal quotation marks omitted.)).

We have long held that the primary purpose of statutes of limitations is to "encourag[e] law enforcement officials promptly to investigate suspected criminal

[11] We note that the statutory language at issue dates back to at least 1821; see General Statutes (1821 Rev.), tit. 59, § 11; long before the advent of modern forensic science, the Internet and jet travel, when a person's flight from the state after committing an offense likely would have ended any hope of solving the crime.

activity"; (internal quotation marks omitted) *State* v. *Ward*, supra, 306 Conn. 712; so as "to ensure that a defendant receives notice, within a prescribed time, of the acts with which he is charged . . . ." (Internal quotation marks omitted.) *State* v. *Almeda*, 211 Conn. 441, 446, 560 A.2d 389 (1989). When law enforcement is prevented from solving a crime because the perpetrator has fled from and resided outside of the state, the legislature has determined that the state should be allowed additional time within which to identify and bring to justice the offender. When, however, an offender's absence from the state poses no impediment to an investigation and the police are able to procure an arrest warrant within the time proscribed by § 54-193 (c), we can perceive no reason, and the state has identified none, why the state should not be required to promptly notify the defendant of the crimes with which he is charged. Such notice is the raison d'être of statutes of limitations. See, e.g., *State* v. *Swebilius*, supra, 325 Conn. 809 n.11 ("policy of notice [is] fundamental to statutes of limitations"); *State* v. *Almeda*, supra, 211 Conn. 446 ("[a]t the core of the limitations doctrine is notice to the defendant").

The state argues nonetheless that our interpretation of § 54-193 (c) penalizes it for obtaining a warrant because, "once warrants [are] issue[d], they must be served promptly under *Crawford*, regardless of whether the suspect [has] fled the state." We disagree. This court stated unequivocally in *Crawford* that "[a]n accused should *not* be rewarded, [in the absence of] evidence of a lack of due diligence on the part of the officer charged with executing the warrant, for managing to avoid apprehension to a point in time beyond the period of limitation." (Emphasis added.) *State* v. *Crawford*, supra, 202 Conn. 450. Thus, we adopted what we believed to be "the sensible approach of the [M]odel [P]enal [C]ode," which requires that arrest warrants be served "without unreasonable delay." Id., 450–51. In so

doing, we emphasized that "what period of time to execute an arrest warrant is reasonable . . . *is a question of fact that will depend on the circumstances of each case. If the facts indicate that an accused consciously eluded the authorities, or for other reasons was difficult to apprehend, these factors will be considered in determining what time is reasonable.*" (Emphasis added.) Id., 451. Applying this standard, our courts routinely have determined that delays in the execution of an arrest warrant were reasonable when the defendant's departure from the state prevented the prompt execution of a warrant. See, e.g., *State* v. *Swebilius*, supra, 325 Conn. 811 n.14 ("delays that have been deemed to be reasonable [under *Crawford*] have been as long as fourteen years [when defendant left state]"); *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 845 (citing cases and noting that "Connecticut [courts] have determined that a delay in executing an arrest warrant is not unreasonable when a defendant has relocated outside of the state" (internal quotation marks omitted)); *State* v. *Derks*, 155 Conn. App. 87, 89–90, 95, 108 A.3d 1157 (delay of nearly twelve years was reasonable under *Crawford* when defendant moved out of state and was difficult to locate), cert. denied, 315 Conn. 930, 110 A.3d 432 (2015); *State* v. *Henriquez*, Superior Court, judicial district of New Haven, Docket Nos. CR-09-96308 and CR-09-96309 (February 4, 2011) (fourteen year delay in serving arrest warrant was not unreasonable under *Crawford* when defendant left state within days of committing offense and lived under assumed name, making it difficult for police to apprehend him).

Thus, our case law belies the state's assertion that obtaining an arrest warrant within the limitation period set by the legislature places the state at a disadvantage. So long as the warrant is executed without unreasonable delay—the state makes no claim and presented no

evidence in the trial court that the delay in the present case was reasonable—the state can continue to prosecute the defendant as soon as it is able to locate and arrest him. What the state cannot do under our case law, however, is what the state did in the present case—obtain an arrest warrant within the limitation period and then wait nearly five years before attempting to serve it, knowing all along the defendant's precise whereabouts. See, e.g., *State* v. *Swebilius*, supra, 325 Conn. 814 (statute of limitations should not be tolled "[when] the warrant is issued but no effort is made to arrest a defendant whose whereabouts are known" (internal quotation marks omitted)); *State* v. *Woodtke*, 130 Conn. App. 734, 744, 25 A.3d 699 (2011) ("[t]he mere fact that a police department is 'a very busy urban police department' is not enough for it to avoid its obligation to serve . . . warrants in a timely manner"). Such dilatory practices are antithetical to the fundamental policies furthered by our criminal statutes of limitations.[12]

The decision of the trial court is affirmed.

In this opinion the other justices concurred.

[12] The state contends that, under our decision, it would have been better off if it had not obtained an arrest warrant within the limitation period. Specifically, the state argues that, "had [the] police not sought a warrant until the defendant returned to Connecticut, [this court's decision in *Ward*]—bizarrely—[would have] allow[ed] [his] prosecution because the defendant 'fled from and resided out of this state.' " Because we conclude that § 54-193 (c) is inapplicable under the circumstances of this case, we need not address this argument except to say that we are dismayed by it. Although it is not our role to advise the state on such matters, it concerns us that something this court might have said in *Ward* would cause the state to think that, despite having enjoyed the defendant's full cooperation and knowing exactly how to locate him from 2009 onward, the state would have been better off to delay the defendant's prosecution for years merely because he relocated out of state. To the extent that this court's decision in *Ward* can be read to countenance any such tactics on the part of the state, it certainly was not our intention to convey that impression. *Ward* involved the paradigmatic case of an offender fleeing the state immediately after committing a serious felony. *State* v. *Ward*, supra, 306 Conn. 706. His identity was not revealed until almost nineteen years later through a fortuitous tip later confirmed by DNA testing. Id., 704. The sole issue before this court was

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(SC 20450)

Robinson, C. J., and McDonald, D'Auria, Kahn and Ecker, Js.

Syllabus

The defendant appealed to this court from the judgment of the Appellate Court, which affirmed the trial court's judgments following his conditional pleas of nolo contendere to the charges of sale of a controlled substance and violation of probation. The charges stemmed from the discovery by probation officers of marijuana in the defendant's possession while they were conducting a visit at his home. The defendant had filed motions to dismiss, claiming that the legislature's enactment of the statute ((Rev. to 2017) § 21a-277 (b)) criminalizing the sale of, inter alia, marijuana was based on a racially discriminatory motive and, therefore, violated his rights under the federal constitution. Following a hearing on the defendant's motions, the trial court concluded that, although the defendant, a Caucasian, was not a member of a minority group that § 21a-277 (b) allegedly discriminated against, he had standing to pursue his challenge in his individual capacity because he was aggrieved by the application of an unconstitutional law. The trial court nevertheless denied the defendant's motions to dismiss on the merits. Subsequently, the defendant appealed to the Appellate Court from the trial court's judgments, claiming that the trial court had improperly denied his motions to dismiss. The Appellate Court affirmed the trial court's judgments on the alternative ground that the defendant lacked standing to assert his constitutional claim, and the defendant, on the granting of certification, appealed to this court. On appeal, the defendant claimed

whether, *under the facts of that case*, the defendant had "fled" the state within the meaning of § 54-193 (c) such as to trigger the tolling provision. See, e.g., *Fedus* v. *Planning & Zoning Commission*, 278 Conn. 751, 756, 900 A.2d 1 (2006) (in construing a statute, "we seek to determine . . . the meaning of the statutory language *as applied to the facts of* [*the*] *case*, *including the question of whether the language actually does apply*" (emphasis added; internal quotation marks omitted). We were not required to determine whether a person who signed a sworn confession and then two years later relocated outside of the state, after fully cooperating with the police and providing them with a valid cell phone number at which he could be reached, and who took no evasive actions to avoid detection, also could be deemed to have fled the state within the meaning of the statute. To the extent that the state reads *Ward* as having resolved that question, it is quite mistaken.

that he had standing, in his individual capacity, to raise a due process challenge to his conviction under § 21a-277 (b) because that statute violated the equal protection clause of the United States constitution insofar as it was enacted for the purpose of discriminating against African Americans and Mexican Americans. *Held* that the defendant lacked standing to assert his claim that § 21a-277 (b) violated the equal protection rights of African Americans and Mexican Americans, as the defendant, a Caucasian, was not aggrieved by the legislature's enactment of a law that allegedly discriminated against other racial and ethnic groups: the defendant failed to demonstrate a specific, personal and legal interest, rather than a general interest shared by the community, in the underlying equal protection challenge to Connecticut's criminalization of the sale of marijuana, as the defendant did not claim that he was a member of the group of racial or ethnic minorities that § 21a-277 (b) was allegedly enacted to discriminate against; moreover, the defendant's reliance on this court's decision in *State* v. *Long* (268 Conn. 508) and on Justice Ruth Bader Ginsburg's concurrence in *Bond* v. *United States* (564 U.S. 211) was misplaced, as the analysis in *Long* was confined to the second prong of the two-pronged inquiry for determining classical aggrievement, whereas this case turned on whether the defendant satisfied the first prong of that inquiry, and as Justice Ginsburg's concurrence was not controlling precedent and was based on federal third-party standing doctrine that was inapplicable to the defendant because he did not assert standing in a representative capacity.

(*One justice dissenting*)

Argued March 26—officially released October 5, 2021*

Procedural History

Information, in the first case, charging the defendant with the crimes of possession of one-half ounce or more of a cannabis-type substance within 1500 feet of a school and sale of a controlled substance, and information, in the second case, charging the defendant with violation of probation, brought to the Superior Court in the judicial district of Middlesex, where the court, *Keegan*, *J.*, denied the defendant's motions to dismiss; thereafter, the defendant was presented to the court on conditional pleas of nolo contendere to the charges of sale of a controlled substance and violation of probation; judgments in accordance with the pleas; subse-

* October 5, 2021, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

quently, the state entered a nolle prosequi on the charge of possession of one-half ounce or more of a cannabis-type substance within 1500 feet of a school, and the defendant filed separate appeals with the Appellate Court, which consolidated the appeals; thereafter, the Appellate Court, *DiPentima*, *C. J.*, and *Keller* and *Sheldon*, *Js.*, affirmed the trial court's judgments, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Naomi T. Fetterman, for the appellant (defendant).

James M. Ralls, assistant state's attorney, with whom, on the brief, were *Michael A. Gailor*, state's attorney, and *Russell Zentner*, supervisory assistant state's attorney, for the appellee (state).

Opinion

McDONALD, J. Today we are called on to decide whether a defendant has standing to assert a violation of his right to due process based on his conviction under a statute that he claims is unconstitutional. The twist in that otherwise straightforward question is that the defendant, who is Caucasian, claims that Connecticut's statute criminalizing the sale of marijuana violates the equal protection clause of the United States constitution because it was enacted to discriminate against African Americans[1] and Mexican Americans.

The defendant, William Hyde Bradley, appeals from the judgment of the Appellate Court affirming the trial court's judgments following his conditional pleas of nolo contendere to charges of sale of a controlled substance and violation of probation. The defendant's prin-

[1] We recognize that the term "African American" is restrictive in that it does not necessarily encompass the entire Black population in America. Nevertheless, to remain consistent with the parties' briefs, the Appellate Court opinion, and the certified issues before this court, we use the term "African American" throughout this opinion.

cipal claim on appeal is that the Appellate Court incorrectly concluded that he lacked standing to argue that his conviction for sale of a controlled substance in violation of General Statutes (Rev. to 2017) § 21a-277 (b)[2] violated his due process rights because he was convicted under an unconstitutional statute. Specifically, he contends that the Appellate Court erroneously held that a defendant cannot bring a constitutional challenge, in his individual capacity, based on an alleged violation of others' equal protection rights. Because the defendant cannot meet the requirements to establish classical aggrievement, we affirm the judgment of the Appellate Court. Accordingly, we do not reach the merits of the defendant's equal protection claim in this appeal.

The Appellate Court's decision sets forth the facts and procedural history; see *State* v. *Bradley*, 195 Conn. App. 36, 38–41, 223 A.3d 62 (2019); which we summarize in relevant part. In 2017, while the defendant was serving a sentence of probation for a prior conviction of possession of marijuana with intent to sell, probation officers conducting a visit at the defendant's home discovered marijuana in the defendant's possession. Consequently, the state charged the defendant, in two separate informations, with one count of sale of a controlled substance in violation of § 21a-277 (b), and with one count of violation of probation in violation of General Statutes § 53a-32.[3]

Relevant to this case, the defendant subsequently filed motions to dismiss, arguing, among other things, that the state's criminalization of the sale of marijuana

[2] Hereinafter, all references to § 21a-277 in this opinion are to the 2017 revision of the statute.

[3] The defendant was also charged with one count of possession of one-half ounce or more of marijuana within 1500 feet of a school in violation of General Statutes (Rev. to 2017) § 21a-279 (b). The state subsequently entered a nolle prosequi with respect to this charge.

was based on a racially discriminatory motive and, therefore, violated the equal protection clause of the fourteenth amendment to the United States constitution and the equal protection guarantees under article first, § 20, of the Connecticut constitution, as amended. Following a hearing on the defendant's motions, the trial court ordered the parties to file supplemental memoranda of law regarding the issue of standing. In particular, the court ordered the parties to address whether the defendant, who the trial court found to be Caucasian, could raise an equal protection claim on the ground that the legislature's purpose in enacting a law criminalizing the sale of marijuana was to discriminate against members of a minority group of which the defendant was not a member.[4] In his supplemental memoranda in support of his motions to dismiss, the defendant argued that his prosecution under § 21a-277 (b) violated his due process right not to be convicted under an unconstitutional statute. Although the defendant conceded that he is not a member of a minority group that the statute was allegedly enacted to discriminate against, he claimed that he had standing to pursue this challenge in his individual capacity, arguing that he is aggrieved by the application of an unconstitutional law.

[4] We acknowledge the numerous complexities of race. For example, critical race theorists maintain that "race and races are products of social thought and relations. Not objective, inherent, or fixed, they correspond to no biological or genetic reality; rather, races are categories that society invents, manipulates, or retires when convenient." R. Delgado & J. Stefancic, Critical Race Theory: An Introduction (New York University Press 3d Ed. 2017) p. 9. In this case, however, the defendant does not dispute the trial court's finding that he is Caucasian. Although the defendant claimed in his motions to dismiss that the legislature's purpose in enacting a statute criminalizing the sale of marijuana was to discriminate against African Americans and Mexican Americans, the defendant makes no argument that he identifies as African American or Mexican American. Rather, the defendant consistently argues that, although he is *not* a member of either class, he is aggrieved because of his prosecution and conviction under an unconstitutional statute. Accordingly, we confine our analysis to whether a Caucasian defendant has standing to raise a challenge to a statute on the basis that it violates the equal protection rights of a class of persons of which he is not a member.

The trial court agreed with the defendant, reasoning that a party need not be a member of the class discriminated against in order to have standing to challenge an allegedly unconstitutional statute. The court noted that, because the defendant was charged—and could be convicted—under the challenged statute, he established classical aggrievement consistent with our holding in *State* v. *Long*, 268 Conn. 508, 533, 847 A.2d 862, cert. denied, 543 U.S. 969, 125 S. Ct. 424, 160 L. Ed. 2d 340 (2004). Ultimately, however, the trial court denied the defendant's motions to dismiss on the merits, finding that the defendant could not prove that the legislature's purpose in enacting the law criminalizing the sale of marijuana was to discriminate against African Americans or Mexican Americans.

Thereafter, the defendant entered pleas of nolo contendere to the charges of sale of a controlled substance and violation of probation, conditioned on preserving his right to appeal from the conviction of sale of a controlled substance and finding of violation of probation based on the trial court's denial of his motions to dismiss. The trial court sentenced the defendant for his conviction of sale of a controlled substance to an unconditional discharge, and, on his violation of probation, the defendant's probation was revoked, and he was sentenced to a term of five and one-half years of incarceration, execution suspended, and two years of probation.

The defendant appealed from the judgments to the Appellate Court, claiming that the trial court improperly denied his motions to dismiss. *State* v. *Bradley*, supra, 195 Conn. App. 41. The defendant again argued that Connecticut's statute criminalizing the sale of marijuana violates the equal protection clause of the United States constitution. Id. The defendant did not, however, challenge the trial court's denial of his alternative equal protection claim under the Connecticut constitution.

Id. The Appellate Court subsequently affirmed the judgments of the trial court on the alternative ground that the defendant lacked standing to assert his claim. Id., 59.

Thereafter, the defendant filed a petition for certification to appeal, which we granted, limited to the following two issues: (1) "Did the Appellate Court correctly conclude that the defendant did not have standing to raise a due process challenge to his prosecution under a criminal statute, namely, [§ 21a-277 (b)], that he claims was enacted for the purpose of discriminating against minority groups to which he does not belong?" And (2) "[i]f the answer to the first question is 'no,' was § 21a-277 (b) enacted for the purpose of discriminating against African Americans and/or Mexican Americans?" *State* v. *Bradley*, 334 Conn. 925, 223 A.3d 379 (2020).

On appeal to this court, the defendant maintains that he has standing to challenge his conviction of sale of a controlled substance in violation of § 21a-277 (b) on the ground that it violates his right to due process. Specifically, the defendant contends that the statute criminalizing the sale of marijuana violates the equal protection clause of the United States constitution because it was enacted for the purpose of discriminating against African Americans and Mexican Americans, and, consequently, the statute is unconstitutional. The defendant argues that—regardless of the challenger's own race or ethnicity—every person has a right to be free from conviction under an unconstitutional statute. Thus, the defendant contends that the application of § 21a-277 (b) to him, as a basis for his conviction, violates his due process rights. On this basis, the defendant argues that he has established classical aggrievement as articulated by this court in *State* v. *Long*, supra, 268 Conn. 531–32, because he has been "specially and injuriously affected" by the application of § 21a-277 (b), insofar as he has been charged, prosecuted, and con-

victed under the statute. (Internal quotation marks omitted.) Id., 532.

The state disagrees and contends that the Appellate Court correctly concluded that the defendant lacked standing to claim that § 21a-277 (b) violates the equal protection rights of minorities because the defendant is not a member of a minority class. Specifically, the state claims that the defendant cites no authority for the proposition that there is a "due process right not to be prosecuted under a statute [that] violates the equal protection rights of others . . . ." It also contends that the defendant has not been aggrieved by the legislature's enactment of a law that allegedly discriminates against African Americans and Mexican Americans. Finally, the state contends that, "[although] the defendant, and indeed the state, share the concern of 'all members of the community as a whole' in preventing discrimination, the defendant cannot demonstrate a 'specific, personal and legal interest in [the subject matter of the challenged action],' " as required to demonstrate classical aggrievement under *State* v. *Long*, supra, 268 Conn. 531. We agree with the state.

We begin our analysis with the standard of review and relevant legal principles. "The issue of standing implicates the trial court's subject matter jurisdiction and therefore presents a threshold issue for our determination." *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 511, 518, 970 A.2d 583 (2009). "Because a determination regarding the trial court's subject matter jurisdiction raises a question of law, our review is plenary." (Internal quotation marks omitted.) *Wilcox* v. *Webster Ins., Inc.*, 294 Conn. 206, 214, 982 A.2d 1053 (2009).

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or

representative capacity, some real interest in the cause of action . . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . .

"Standing is established by showing that the party claiming it is authorized by statute to bring [an action] or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a [well settled] twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) Id., 214–15.

This court has explained that the two prongs of the standing analysis are distinct and, thus, cannot be conflated. See, e.g., *New England Rehabilitation Hospital of Hartford, Inc.* v. *Commission on Hospitals & Health Care*, 226 Conn. 105, 122–23 and n.12, 627 A.2d 1257 (1993) (noting that party claiming aggrievement must demonstrate "certainty of a specific personal and legal interest in the subject matter of the decision," which is separate from "the second prong of the aggrievement test that requires only a possibility . . . that some legally protected interest has been adversely affected" (internal quotation marks omitted)). When a defendant cannot demonstrate that he has a specific, personal and legal interest in the subject matter of the challenged action, a court need not decide whether his interest

has been specially and injuriously affected. See, e.g., *Connecticut Business & Industry Assn., Inc.* v. *Commission on Hospitals & Health Care*, 214 Conn. 726, 730–34, 573 A.2d 736 (1990) (explaining that, when plaintiffs could not establish legal interest in subject matter of certain settlement agreements at issue, as distinct from interest of general public, it was unnecessary for court to consider second part of test for aggrievement).

We first note that the defendant challenges his conviction, as well as the constitutionality of the state's statute prohibiting the sale of marijuana, in his individual capacity. He does not claim that he was authorized by statute to bring such a challenge or that he has third-party standing to bring the challenge in a representational capacity on behalf of others. Rather, the defendant claims that he has been aggrieved by the statute's unconstitutionality because he was prosecuted and convicted thereunder. Accordingly, we confine our analysis to whether the defendant has standing, in his individual capacity, to challenge the state's statute criminalizing the sale of marijuana on the ground that it violates the equal protection rights of others.

To substantiate his claim to standing, the defendant principally relies on this court's decision in *State* v. *Long*, supra, 268 Conn. 508. In *Long*, the defendant, who had been charged with assault in the second degree, was found not guilty by reason of mental disease or defect and was subsequently committed to the custody of the Commissioner of Mental Health and Addiction Services for initial confinement and examination. Id., 511–12. Following a mandatory psychiatric evaluation, "the commissioner issued a report concerning the defendant's mental health . . . ." (Footnotes omitted.) Id., 512. On the basis of the report, the trial court ultimately found that the defendant was "a person who should be confined" and ordered him to be committed

to the jurisdiction of the Psychiatric Security Review Board. (Internal quotation marks omitted.) Id. Although the defendant was initially to be committed to the jurisdiction of the board for a period of five years, the state successfully petitioned the trial court to extend the defendant's commitment four additional times pursuant to the court's authority under the challenged statute. Id., 512–13. When the state, for a fifth time, filed a petition for recommitment, the defendant moved to, among other things, dismiss the state's petition. Id., 513. The defendant argued that, once an acquittee reaches his maximum term of commitment, any order granting the state's petition for recommitment pursuant to the challenged statute was unconstitutional. Id. The trial court ultimately granted the defendant's motion to dismiss and concluded, in relevant part, that the challenged statute, as applied to the defendant, deprived him of his liberty without giving him the right to a mandatory periodic judicial review of his commitment, a right that is afforded to convicted prisoners who are civilly committed to psychiatric treatment facilities after they are incarcerated. See id., 514.

On appeal, the state claimed, among other things, that the defendant lacked standing to assert his constitutional claim, arguing that the defendant had not satisfied the traditional, two-pronged test for classical aggrievement. See id., 527–28. The state did not claim that the defendant lacked a "specific, personal and legal liberty interest in [the subject matter of the challenged action]"; id., 532; as it was clear that the defendant, an acquittee challenging his recommitment, had a specific interest in a statute prescribing standards for acquittee recommitment proceedings. Instead, the state challenged the defendant's ability to meet the second prong of the test. Id. In particular, the state claimed that the defendant could not prove that he was "specially and injuriously affected" by his recommitment because, as

an acquittee, the defendant received more judicial review of his commitment than a civil committee would have been entitled to receive. (Internal quotation marks omitted.) Id. This court ultimately concluded that the defendant had standing to challenge the statute at issue, explaining that a showing of classical aggrievement can rest on the likelihood of a defendant's future recommitment. Id., 533. Specifically, we explained: "[I]n the present case, the defendant challenges the acquittee recommitment statute . . . which, if applied to him in the future, could subject him to further recommitment that adversely would affect his liberty interest. Moreover, the trial court specifically found at the most recent recommitment hearing that the defendant still suffered from a mental illness and posed a danger to others were he discharged from confinement. These factual findings demonstrate a genuine likelihood that the defendant is susceptible to the deprivation of his liberty interest in the future via recommitment . . . . Consequently, because the defendant risks actual prospective deprivation of his liberty interest under the challenged statute, we conclude that he is classically aggrieved, and has standing to challenge the statute." (Internal quotation marks omitted.) Id.

The defendant relies on this court's holding in *Long* to establish his standing in this case. Specifically, the defendant maintains that he was aggrieved because he had been prosecuted and convicted under an unconstitutional statute. In contrast to the defendant in *Long*, the defendant in this case correctly notes that he faces more than a "genuine likelihood" of *future* application of the challenged statute; he has *actually been prosecuted and convicted* under the statute, and, thus, he contends that he satisfies the test for aggrievement. The defendant's argument, however, collapses the two distinct inquiries under the two part standing analysis. Antecedent to his claim that his interest has been spe-

cially and injuriously affected, the defendant must establish that he has a "specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole." (Internal quotation marks omitted.) Id., 531. Because the defendant has not specifically made this showing, he is not "classically aggrieved," as that concept is defined by our standing jurisprudence.

As the Appellate Court correctly noted, our holding in *Long* cannot be construed as conferring on parties a right to assert constitutional challenges, in their individual capacities, based on the alleged violation of *others'* constitutional rights. See *State* v. *Bradley*, supra, 195 Conn. App. 47. Indeed, this court has previously explained: "Only members of a class whose constitutional rights are endangered by a statute may ask to have it declared unconstitutional. . . . Courts are instituted to give relief to parties whose rights have been invaded, and to give it at the instance of such parties; and a party whose rights have not been invaded cannot be heard to complain if the court refuses to act at his instance in righting the wrongs of another who seeks no redress." (Citations omitted; internal quotation marks omitted.) *Shaskan* v. *Waltham Industries Corp.*, 168 Conn. 43, 49–50, 357 A.2d 472 (1975). *Long*, instead, stands for the proposition that, although a party has individual standing to challenge alleged violations of his own rights, such challenges are not necessarily confined to ongoing violations but may also include future violations of such rights that are reasonably likely to occur. See *State* v. *Long*, supra, 268 Conn. 532–33. The defendant in *Long* was not aggrieved simply because he faced future commitment. It was the combination of this future threat and the fact that he was also a member of the class of insanity acquittees whose rights he sought to vindicate that gave him standing. Indeed,

the parties in *Long* agreed that the defendant had a "specific, personal and legal liberty interest in [the subject matter of the challenged action]," as the defendant was an acquittee whose personal and legal interests were squarely implicated by the challenged statute. Id., 532. Our analysis, accordingly, was confined to the second prong of the two part test for classical aggrievement, namely, whether the party's interest was "specially and injuriously affected" by the challenged action. (Internal quotation marks omitted.) Id. In *Long*, we did not discuss the first prong of the test for classical aggrievement, let alone determine whether a defendant who asserts a violation of the constitutional rights of others satisfies the first prong. In sum, our holding in *Long*—a case in which the parties agreed that the first prong of our test for classical aggrievement was satisfied—is wholly inapplicable to the present case, in which the question turns on whether the defendant has satisfied the first prong of the classical aggrievement test.

Our case law addressing the first prong of the test for classical aggrievement states that a defendant has a specific, personal and legal interest when his property rights are affected; see, e.g., *Brady-Kinsella* v. *Kinsella*, 154 Conn. App. 413, 417, 106 A.3d 956 (2014) (concluding that, in marital dissolution action, plaintiff had "specific, personal, and legal interest in equitable distribution of the marital property"), cert. denied, 315 Conn. 929, 110 A.3d 432 (2015); when he is within the class of persons implicated by the challenged statute; see, e.g., *State* v. *Long*, supra, 268 Conn. 533 (holding that acquittee had standing to challenge statute pertaining to acquittee recommitment); *Ramos* v. *Vernon*, 254 Conn. 799, 810–11, 761 A.2d 705 (2000) (holding that minor and his mother had standing to challenge town ordinance that imposed curfew on minors and corresponding penalties for minors' parents); and when

the defendant's conduct is the very essence of the dispute. See, e.g., *Rose* v. *Freedom of Information Commission*, 221 Conn. 217, 219, 231, 602 A.2d 1019 (1992) (noting that, in arguing that Freedom of Information Commission had wrongfully denied them party status, plaintiffs satisfied first prong of aggrievement test because plaintiffs' conduct during "mock arrest" was substance of "board's investigation, executive session and vote"); *Cannavo Enterprises, Inc.* v. *Burns*, 194 Conn. 43, 47, 478 A.2d 601 (1984) (holding that defendant had personal and legal interest in subject matter of default judgment, namely, whether defendant should be held liable for services rendered by plaintiff). Common among all of these cases is the direct connection between the challenger and the subject matter of the dispute, a correlation between the harm to be avoided and the person subjected to the harm. This correlation cannot be found here. The defendant has not demonstrated a *specific* interest in his underlying equal protection challenge to Connecticut's criminalization of the sale of marijuana. The defendant does not claim to be a member of the group of racial or ethnic minorities that he asserts the statute was enacted to discriminate against. We can all agree that nonminorities might share in the general interest in eradicating racial discrimination, and, indeed, the defendant's own asserted interest—premised on an equal protection claim to vindicate others' rights—cannot be distinguished from that of the interest of the general community, at large.

Furthermore, the defendant's standing argument is circular. To frame his due process argument, the defendant maintains that he was charged and convicted under an unconstitutional statute, the constitutionality of which is the subject of the merits of his underlying claim, which we cannot reach unless we conclude that the defendant has standing to assert such a claim. The defendant impermissibly relies on this court's assumption of certain predicate conclusions—namely, that the

challenged statute is unconstitutional—prior to our disposition regarding the defendant's standing to challenge the constitutionality of the statute at issue. In other words, the defendant's argument that he has standing because he has a right not to be convicted under an unconstitutional statute assumes the merits of his equal protection claim.

The defendant also contends that Justice Ruth Bader Ginsburg's concurrence in *Bond* v. *United States*, 564 U.S. 211, 226, 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011) (Ginsburg, J., concurring), supports his contention that he has standing based on a due process right not to be convicted under an unconstitutional statute. We are not persuaded. In *Bond*, the United States Supreme Court considered whether a citizen of Pennsylvania, Carol Anne Bond, had the authority to challenge a federal statute on the ground that it violated the tenth amendment to the United States constitution or, alternatively, whether her rights to challenge the statute belonged to the state. Id., 214. The majority concluded that Bond, who was indicted for violating the federal statute, had standing to bring her tenth amendment claim, reasoning that an "individual, in a proper case, can assert injury from governmental action taken in excess of the authority that federalism defines." Id., 220. It emphasized that, when a party can establish article three standing, namely, proof of "actual or imminent harm that is concrete and particular, fairly traceable to the conduct complained of, and likely to be redressed by a favorable decision"; id., 225; "she is not forbidden to object that her injury results from disregard of the federal structure of our [g]overnment." Id., 225–26. Because Bond met the requirements for article three standing, and because she asserted a cognizable tenth amendment violation, the court concluded that she had standing to raise her claims.[5] See id.

[5] The United States Supreme Court's holding in *Bond* has largely been interpreted as confirming federalist principles. The court ultimately con-

Justice Ginsburg joined the majority's opinion but wrote separately to emphasize one observation. In her concurrence, Justice Ginsburg maintained that—regardless of whether a defendant asserted a tenth amendment challenge, or a due process challenge, or one rooted in the establishment clause—"a court has no 'prudential' license to decline to consider whether the statute under which the defendant has been charged lacks constitutional application to her conduct." Id., 226–27 (Ginsburg, J., concurring). Whereas the majority held that a defendant has standing to assert a claim alleging a violation of the *tenth amendment*, Justice Ginsburg asserted that—regardless of the alleged constitutional violation a defendant asserts—courts "must entertain the objection—and reverse the conviction—even if the right to equal treatment resides in someone other than the defendant." Id., 227 (Ginsburg, J., concurring).

Here, the defendant relies on Justice Ginsburg's concurrence for the proposition that he has standing to challenge the constitutionality of a statute that violates the equal protection rights of others. The defendant's argument, however, centers on an isolated quote from the concurrence, in which Justice Ginsburg wrote: "[A]ny . . . defendant . . . has a personal right not to be convicted under a constitutionally invalid law. . . . Due process . . . is a guarantee that a man should be tried and convicted only in accordance with valid laws

cluded: "Just as it is appropriate for an individual, in a proper case, to invoke [separation of powers] or [checks and balances] constraints, so too may a litigant, in a proper case, challenge a law as enacted in contravention of constitutional principles of federalism." *Bond* v. *United States*, supra, 564 U.S. 223–24. Indeed, among scholars, the court's decision in *Bond* has provided an opportunity to opine on contemporary and future federalism doctrine. See generally, e.g., H. Gerken, Comment, "Slipping the *Bonds* of Federalism," 128 Harv. L. Rev. 85 (2014); see also, e.g., A. LaCroix, "Redeeming *Bond*?," 128 Harv. L. Rev. F. 31 (2014) (response to H. Gerken, supra, 128 Harv. L. Rev. 85).

of the land." (Citations omitted; internal quotation marks omitted.) Id., 226 (Ginsburg, J., concurring). The defendant reasons that, because he was convicted under a statute that he claims violates equal protection, his due process right to be free from "convict[ion] under a constitutionally invalid law" has been violated. Id.

The defendant's reliance on Justice Ginsburg's concurrence is misplaced. In addition to the fact that it is neither controlling with respect to this court nor binding on the United States Supreme Court, Justice Ginsburg's concurrence in *Bond* relies on precedent distinguishable from the case now before us, including federal third-party standing precedent.[6] See, e.g., *Eisenstadt* v. *Baird*, 405 U.S. 438, 440, 445–46, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972) (holding that defendant, who was convicted of giving contraceptive to woman in violation of state statute, could prove aggrievement in representative capacity on behalf of unmarried persons entitled to contraceptives); see also, e.g., *Craig* v. *Boren*, 429 U.S. 190, 191–92, 194–97, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976) (holding that licensed vendor of beer could bring action challenging state statute that prohibited sale of beer to males under age of twenty-one and females under age of eighteen on basis of gender discrimination

[6] In addition to her reliance on third-party standing cases, Justice Ginsburg cited *Grayned* v. *Rockford*, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), a case holding that a defendant had standing to assert an overbreadth challenge to a local ordinance. *Bond* v. *United States*, supra, 564 U.S. 227 (Ginsburg, J., concurring); see *Grayned* v. *Rockford*, supra, 114. According to United States Supreme Court precedent, a defendant is "permitted to raise [a statute's] vagueness or unconstitutional overbreadth as applied to others" under the first amendment to the United States constitution. (Internal quotation marks omitted.) *Gooding* v. *Wilson*, 405 U.S. 518, 521, 92 S. Ct. 1103, 31 L. Ed. 2d 408 (1972). First amendment overbreadth challenges are unique in that speakers may challenge a statute because it is overbroad as applied to others, not themselves. See, e.g., *New York* v. *Ferber*, 458 U.S. 747, 769, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982) (empowering persons to "attack overly broad statutes even though the conduct of the person making the attack is clearly unprotected"). The defendant has not asserted any such first amendment overbreadth challenge in this case or demonstrated that a similar exception to challenging the rights of others exists in this context.

because buyers' market of vendor was effectively constricted by statute). We have never applied the federal third-party standing doctrine under Connecticut law, and, as we previously discussed in this opinion, the defendant does not assert that he has standing in a representative capacity. Accordingly, we are not persuaded by the defendant's reliance on Justice Ginsburg's concurrence in *Bond*.

The defendant also relies on a number of other federal cases for the proposition that a defendant has standing to challenge a statute on the ground that it is unconstitutional as applied to others. Notably, nearly all of the cases the defendant relies on also refer exclusively to third-party standing.[7] These cases are inapplicable to the present case because the defendant does not assert a third-party standing claim. Third-party standing is a distinct legal concept from the individual standing argument the defendant advances to support his own aggrievement.[8]

[7] The defendant also cites *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 96 S. Ct. 2831, 49 L. Ed. 2d 788 (1976), and *Doe* v. *Bolton*, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973), cases in which the United States Supreme Court concluded that physicians had standing to challenge statutes criminalizing abortion because, in both cases, the physicians asserted a "sufficiently direct threat of personal detriment," as their conduct was of the type the statutes criminalized. (Internal quotation marks omitted.) *Planned Parenthood of Central Missouri* v. *Danforth*, supra, 62, quoting *Doe* v. *Bolton*, supra, 188. In contrast to the physicians in *Doe* and *Danforth*, who had standing to assert claims based on the unconstitutionality of the statute at issue because the statutes affected their rights to render abortion services and also subjected them to criminal punishment, the defendant here does not allege a specific injury to himself as a seller of marijuana. Put differently, the defendant challenges his conviction under § 21a-277 (b) because it violates the equal protection rights of others, *not* because he was injured by the application of the statute as a vendor of marijuana. Thus, precedent that bases a party's standing on the intertwined relationship between doctor and patient—or buyer and seller—is inapplicable.

[8] The United States Supreme Court has explained that a party may bring an action on behalf of third parties when it meets the requirements of article three standing and makes two additional showings. See, e.g., *Kowalski* v. *Tesmer*, 543 U.S. 125, 129–30, 125 S. Ct. 564, 160 L. Ed. 2d 519 (2004). First,

The defendant cites no authority, and we found none, in which a court concluded that a defendant had standing—in his *individual* capacity—to assert a claim based on the alleged violations of others' constitutional rights. When a defendant has not established individual standing and has not asserted a claim based on third-party standing, this court is without subject matter jurisdiction to consider the merits of his underlying claim. Cf. *Steeneck* v. *University of Bridgeport*, 235 Conn. 572, 589, 668 A.2d 688 (1995) ("[when] a plaintiff lacks standing to sue, the court is without subject matter jurisdiction").

Although federal precedent has permitted parties to establish standing by proving classical aggrievement in a representative capacity based on alleged violations of others' constitutional rights, it has never expanded the scope of classical aggrievement in an individual capacity to eliminate the requirement that a party must be personally aggrieved by the alleged violation. Because the defendant in this case has failed to establish any specific, personal and legal interest in the equal protection argument, which forms the basis of his due process claim, challenging the state's law criminalizing the sale of marijuana, as distinguished from a general interest, the defendant has not established that he is classically aggrieved and, therefore, does not have standing to assert any such claim. Accordingly, we affirm the judgment of the Appellate Court and decline to consider the merits of the defendant's constitutional claim.

"the party asserting the right [must have] a 'close' relationship with the person who possesses the right. . . . Second . . . there [must exist] a 'hindrance' to the possessor's ability to protect his own interests." (Citation omitted.) Id., 130, quoting *Powers* v. *Ohio*, 499 U.S. 400, 411, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991). The defendant expressly maintained before the Appellate Court; *State* v. *Bradley*, supra, 195 Conn. App. 50; and at oral argument before this court, that he does not claim to have met the requirements to assert any such representational claim.

The judgment of the Appellate Court is affirmed.

In this opinion ROBINSON, C. J., and D'AURIA and KAHN, Js., concurred.

ECKER, J., dissenting. The majority holds that the defendant, William Hyde Bradley, does not have standing to challenge the constitutionality of the statute under which he was convicted, General Statutes § 21a-277 (b). This holding is counterintuitive because the standing doctrine exists, as the majority correctly states, to ensure that a litigant has a " 'real interest,' " as opposed to merely a " 'general interest,' " in the subject matter of the controversy. "Standing . . . is a *practical* concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions [that] may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented." (Emphasis added; internal quotation marks omitted.) *Soto* v. *Bushmaster Firearms International, LLC*, 331 Conn. 53, 96–97, 202 A.3d 262, cert. denied sub nom. *Remington Arms Co., LLC* v. *Soto*, U.S. , 140 S. Ct. 513, 205 L. Ed. 2d 317 (2019). In my view, a defendant facing prosecution under § 21a-277 (b), which carries a maximum sentence of seven years of incarceration and a $25,000 fine for a first offense; see General Statutes § 21a-277 (b) (2) (A); has sufficient motivation vigorously to pursue a claim that the statute is unconstitutional under the equal protection clause of the United States constitution, regardless of the defendant's race or ethnicity. I respectfully dissent for this reason.

Elemental to the rule of law is the precept that "an act of the legislature, repugnant to the constitution, is void . . . ." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803). Justice Ruth Bader Ginsburg stated a corollary to that proposition in *Bond* v. *United*

States, 564 U.S. 211, 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011): "[a criminal] defendant . . . has a personal right not to be convicted under a constitutionally invalid law." Id., 226 (Ginsburg, J., concurring). Among other authorities, Justice Ginsburg cites in support an article written by Professor Richard H. Fallon, Jr., a leading legal scholar in the field of constitutional law. See id., citing R. Fallon, "As-Applied and Facial Challenges and Third-Party Standing," 113 Harv. L. Rev. 1321, 1331–33 (2000). Professor Fallon explains the connection between Chief Justice John Marshall's "valid law"[1] pronouncement in *Marbury* and a defendant's standing to challenge a conviction under an allegedly invalid criminal law: "Within [Professor Fallon's] understanding of constitutional law, the valid rule requirement is fundamental. Its roots lie in the history and structure of the [c]onstitution and in the deeper values that the [c]onstitution serves. The notion that an 'invalid law' is not law at all underlies *Marbury* . . . . And the foundations of *Marbury*, in turn, inhere in the ideal of the rule of law, which demands that '[t]he law should rule officials, including judges,' and precludes them from imposing legal disabilities not authorized by (valid) law. This ideal explains why it is almost universally acknowledged that criminal defendants must be set free when the statutes under which they were convicted are held invalid (under the [f]irst [a]mendment, for example), even when their conduct is not absolutely privileged against governmental regulation, and even when a lawmaking authority has attempted to prohibit their conduct. If the statute under which a defendant is convicted is invalid . . . the defendant's conviction must be reversed for the sole and simple reason that there is no constitutionally valid rule of law under which the

[1] The " 'valid rule requirement' " encompasses "the notion that everyone has a personal constitutional right not to be subjected to governmental sanctions except pursuant to a constitutionally valid rule of law." R. Fallon, supra, 113 Harv. L. Rev. 1331.

defendant could be sanctioned . . . . Through the history of American constitutionalism, there has been wide debate about which (if any) 'remedies' for constitutional violations are constitutionally required, but never about the proposition that a defendant cannot be sanctioned without the authority of a valid law." (Footnotes omitted.) R. Fallon, supra, 1331–33.

The majority in the present case points out that Justice Ginsburg's opinion in *Bond* is a concurrence and finds it unpersuasive because the cases on which she relies involve claims of third-party standing. Justice Ginsburg's citation to third-party standing cases does not reflect any doctrinal confusion on her part. Her concurring opinion makes two points. First, as I discussed, Justice Ginsburg contends that a criminal defendant has first-party standing because he "has a *personal* right not to be convicted under a constitutionally invalid law." (Emphasis added.) *Bond* v. *United States*, supra, 564 U.S. 226 (Ginsburg, J., concurring). She relies on a fundamental due process principle, not third-party standing cases, in support of this assertion. See id., 226–27 (Ginsburg, J., concurring), citing *North Carolina* v. *Pearce*, 395 U.S. 711, 739, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969) (Black, J., concurring in part and dissenting in part) ("[d]ue process . . . is a guarantee that a man should be tried and convicted only in accordance with valid laws of the land"), and *Ex parte Siebold*, 100 U.S. 371, 376–77, 25 L. Ed. 717 (1880) ("[a] conviction under [an unconstitutional law] is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment").

Justice Ginsburg then makes a second point, for which she cites the third-party standing cases: if a third party has standing to challenge "criminal laws infected with discrimination," then, a fortioari, the person actually prosecuted and punished under the allegedly unconstitutional law must have standing. *Bond* v.

United States, supra, 564 U.S. 227 (Ginsburg, J., concurring); see id., 227 ("[t]he [c]ourt must entertain the objection [of discriminatory animus]—and reverse the conviction—even if the right to equal treatment resides in someone other than the defendant").[2] If a litigant has standing to challenge an invalid statute as a third party on the basis of the harm it inflicts on another person, Justice Ginsburg states, then, of course, the person harmed (i.e., the criminal defendant) must have first-party standing to challenge the statute being enforced directly against him in a criminal prosecution. Cf. *Campbell* v. *Louisiana*, 523 U.S. 392, 400, 118 S. Ct. 1419, 140 L. Ed. 2d 551 (1998) (holding that white defendant had third-party standing to raise equal protection challenge to discriminatory selection of grand jurors and also "ha[d] standing to litigate [the violation of] his . . . own due process rights").

I regret that the majority opinion does not give greater weight to Justice Ginsburg's trenchant analysis. I would suggest that the defendant in the present case, like the petitioner in *Bond*, has a personal interest in vindicating the underlying constitutional values at stake.[3] The

[2] In addition, numerous scholars have pointed out that the third-party standing cases easily can be recast as first-party standing cases. See, e.g., W. Fletcher, "The Structure of Standing," 98 Yale L.J. 221, 244 (1988) ("Properly understood . . . [third-party] standing cases are not conceptually different from other standing cases. In [third-party] standing cases, as in all standing cases, the issue is a question of law on the merits: Does the plaintiff have the right to enforce the legal duty in question?"); see also R. Fallon, supra, 113 Harv. L. Rev. 1360 (observing that "commentators have argued that many, if not most, seeming departures from the prohibition against third-party standing can be understood as applications of the familiar valid rule requirement [i.e., as first-party standing cases]").

[3] The majority contends that the defendant's standing argument is circular because his contention that "he has a right not to be convicted of [violating] an unconstitutional statute assumes the merits of his equal protection claim." The "circular" structure of defendant's argument is a relatively common feature of many cases in which a jurisdictional issue and the merits become intertwined or even indistinguishable. See, e.g., *Wolfork* v. *Yale Medical Group*, 335 Conn. 448, 466 n.11, 239 A.3d 272 (2020) (recognizing that, "in certain circumstances the question of jurisdiction [may be so] intertwined

defendant has a *personal* right not to be convicted under a constitutionally invalid rule and to vindicate the precious values that, for the past 150 years, have been enshrined in the equal protection clause. Racial and ethnic equality is a value from which every individual derives a profound and enduring benefit. Cf. *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 210, 93 S. Ct. 364, 34 L. Ed. 2d 415 (1972) (holding that white tenant had standing to bring suit for racial discrimination in housing because both white and black tenants are injured by "the loss of important benefits from interracial associations"). Indeed, it becomes increasingly obvious each day that all of us, regardless of our own particular race or ethnicity, hold a collective interest in equal treatment for all persons, and that such equality can be achieved only if nonminorities stand with other oppressed groups to enforce and vindicate equal rights. The goal of equality under the law is doomed to fail if only the oppressed groups themselves are permitted to advocate for equal treatment.

Finally, although there may be other litigants with a stronger interest than the defendant in vindicating the abstract principles underlying the equal protection clause, the standing doctrine does not require a litigant to be the best (or even a strong) representative of the interest at stake. See, e.g., *Saunders* v. *KDFBS, LLC*, 335 Conn. 586, 604, 239 A.3d 1162 (2020) ("[a]ggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected" (internal quotation marks omitted)). Various cases striking down discriminatory statutes animated by archaic and overbroad gen-

with the merits of the case [such] that the issue of whether the court has jurisdiction over the plaintiffs' claims and whether the plaintiffs ultimately can prevail on those claims appear to turn on the same question" (internal quotation marks omitted)); *Angersola* v. *Radiologic Associates of Middletown, P.C.*, 330 Conn. 251, 277–78, 193 A.3d 520 (2018) (same).

eralizations regarding gender stereotypes, for example, were litigated by male plaintiffs. See, e.g., *Califano* v. *Goldfarb*, 430 U.S. 199, 201, 208, 97 S. Ct. 1021, 51 L. Ed. 2d 270 (1977) (man challenged gender based discrimination under Federal Old-Age, Survivors, and Disability Insurance Benefits program, and court held that statute was unconstitutional because "female insureds received less protection for their spouses solely because of their sex"); *Weinberger* v. *Wiesenfeld*, 420 U.S. 636, 641, 651, 95 S. Ct. 1225, 43 L. Ed. 2d 514 (1975) (man challenged provision of Social Security Act, arguing that it was "unconstitutional to the extent that men and women are treated differently," and court agreed, holding that "the [gender based] distinction . . . is entirely irrational"). That fact may be ironic, but it does not dilute the importance of the right being vindicated or the personal interest motivating the party litigating the claim. The defendant in the present case was convicted and sentenced under what he claims to be an invalid penal law. The defendant therefore has a distinct personal interest sufficient to ensure that he vigorously will litigate his constitutional attack on the legitimacy of the statute

I would reverse the judgment of the Appellate Court and remand the case to that court for a decision on the merits of the defendant's claim.

STATE OF CONNECTICUT *v.* JAMAAL COLTHERST (SC 20401)

Robinson, C. J., and McDonald, D'Auria, Kahn, Ecker and Keller, Js.

Syllabus

Pursuant to statute (§ 54-91g), when sentencing a child whose case has been transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court and the child has been convicted of a class A or B felony pursuant to such transfer, the sentencing court is required

to consider certain factors, including the defendant's age at the time of the offense and the hallmark features of adolescence.

Pursuant further to statute (§ 54-125a (f) (1)), a person convicted of a crime or crimes committed while such person was under the age of eighteen years of age and serving a sentence for that crime or crimes of more than fifty years of imprisonment shall be eligible for parole after serving thirty years.

The defendant, who had been convicted of numerous crimes, including capital felony, murder and felony murder, in connection with the shooting death of the victim, appealed to the Appellate Court, challenging the sentence imposed by the trial court following its granting of his motion to correct an illegal sentence. The defendant, who was seventeen years old at the time of the shooting and, pursuant to then applicable law, was charged and tried as an adult, originally had been sentenced to life imprisonment without the possibility of release followed by seventy-one years of imprisonment. In light of the enactment of legislation (P.A. 15-84), which, pursuant to certain of its provisions, retroactively afforded certain juvenile offenders, including the defendant, parole eligibility and rendered the defendant's capital felony conviction invalid, the defendant filed a motion to correct an illegal sentence in which he sought to have his conviction of capital felony vacated and argued that § 54-91g required the trial court, in resentencing him, to consider the relevant factors set forth therein. The trial court granted the defendant's motion and, following a hearing, dismissed the capital felony and felony murder counts, and sentenced the defendant to a total effective sentence of eighty years of imprisonment to run consecutively to a sentence of eighty-five years of imprisonment that he was serving in connection with his conviction of unrelated crimes. In resentencing the defendant, the trial court, pursuant to § 54-91g, considered youth related mitigating factors, as well as other relevant factors, and noted that the defendant would be eligible for parole. On appeal, the Appellate Court upheld the trial's court sentence, rejecting the defendant's claim that the trial court, in imposing that sentence, failed to account adequately for his youth at the time he committed the underlying crimes, as required by § 54-91g. On the granting of certification, the defendant appealed to this court, claiming that the Appellate Court incorrectly concluded that the trial court had followed the statutory requirements of § 54-91g in resentencing him. *Held*:

1. The defendant, who was serving two definite sentences of 85 and 80 years imprisonment that were to run consecutively, will be eligible for parole after serving 30 years of the 165 year aggregate term of the two definite sentences; on the basis of its interpretation of § 54-125a (f) (1) and the statute (§ 53a-38 (b) (2)) governing the calculation of the aggregate term of multiple, definite sentences that run consecutively, and in light of the legislative history underlying 54-125a (f) (1), this court concluded that, when a defendant, such as the defendant in the present case, is

serving more than one definite sentence, his parole eligibility date for purposes of § 54-125a (f) (1) is calculated on the basis of the aggregate term of the definite sentences.

2. Contrary to the defendant's claim, § 54-91g did not apply to the defendant, as neither of the two conditions that would make that statute applicable to him and trigger its required sentencing considerations was met: the plain language of § 54-91g restricts its application to a child whose case has been transferred from the juvenile docket to the regular criminal docket and who has been convicted of a class A or B felony pursuant to that transfer, and, because the defendant, who was not a child under the applicable law ((Rev. to 1999) § 46b-120 (1)) when he committed his crimes, was charged as an adult and prosecuted under the regular criminal docket, his case was not transferred from the juvenile docket to the regular criminal docket, and he was not convicted pursuant to any such transfer; moreover, consistent with this court's decision in *State* v. *Delgado* (323 Conn. 801) and the plain language of § 54-91g, that statute does not apply retroactively to defendants, like the defendant in the present case, who, although under the age of eighteen when they committed their offenses, were initially charged and tried as adults; accordingly, although the trial court incorrectly applied § 54-91g in considering adolescent related mitigating factors in resentencing the defendant, the defendant received more consideration than that to which he was statutorily entitled, resulting in a much reduced sentence with the possibility of parole after he serves thirty years, and, therefore, the Appellate Court's judgment upholding the defendant's sentence was affirmed.

Argued March 30—officially released October 13, 2021*

Procedural History

Substitute information charging the defendant with the crimes of capital felony, murder, felony murder, kidnapping in the first degree, conspiracy to commit kidnapping in the first degree, robbery in the first degree, robbery in the second degree, larceny in the first degree and larceny in the fourth degree, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Mulcahy*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court, which affirmed the trial court's judgment; thereafter, the court, *Dewey*, *J.*, granted the defendant's

* October 13, 2021, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

motion to correct an illegal sentence, dismissed the charges of capital felony and felony murder, and resentenced the defendant, and the defendant appealed to the Appellate Court, *DiPentima*, *C. J.*, and *Alvord* and *Lavery*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Michael W. Brown, for the appellant (defendant).

Jennifer F. Miller, assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, and *Vicki Melchiorre*, supervisory assistant state's attorney, for the appellee (state).

Opinion

KELLER, J. In this certified appeal,[1] the defendant, Jamaal Coltherst, appeals from the judgment of the Appellate Court affirming the judgment of the trial court, which resentenced him for crimes he committed in 1999, when he was seventeen years old. In his original brief to this court, the defendant claimed that the Appellate Court incorrectly concluded that the trial court followed the statutory requirements of General Statutes § 54-91g in resentencing him to eighty years of incarceration.[2] He argued that the statute created a presumption

[1] This court granted the defendant's petition for certification to appeal, limited to the following issue: "Did the Appellate Court correctly conclude that the trial court had followed the statutory requirements under General Statutes § 54-91g in resentencing the defendant to eighty years of incarceration?" *State* v. *Coltherst*, 333 Conn. 946, 219 A.3d 377 (2019).

[2] General Statutes § 54-91g provides in relevant part: "(a) If the case of a child, as defined in section 46b-120, is transferred to the regular criminal docket of the Superior Court pursuant to section 46b-127 and the child is convicted of a class A or B felony pursuant to such transfer, at the time of sentencing, the court shall:

"(1) Consider, in addition to any other information relevant to sentencing, the defendant's age at the time of the offense, the hallmark features of adolescence, and any scientific and psychological evidence showing the differences between a child's brain development and an adult's brain development; and

"(2) Consider, if the court proposes to sentence the child to a lengthy sentence under which it is likely that the child will die while incarcerated,

against the imposition of an effective life sentence, which can be overcome only upon the court's finding that the defendant is incorrigible. Because we conclude, as we explain in this opinion, that § 54-91g does not apply to the defendant, we do not reach the issue of whether the Appellate Court correctly concluded that the trial court followed the statutory requirements of § 54-91g in resentencing the defendant to a term of eighty years of incarceration.

Following oral argument, this court ordered the parties to file supplemental briefs addressing two issues: First, "[d]oes [§] 54-91g apply in cases where, as here, the defendant was not charged as a child and transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court pursuant to [General Statutes §] 46b-127 but, rather, [was] charged as an adult under the regular criminal docket of the Superior Court?" Second, "[i]s the defendant eligible for parole when he received two distinct total effective sentences of 85 years and 80 years, respectively, to run consecutively, and, if so, when is he eligible for parole on each case?" As to the second issue, we conclude, consistent with an affidavit submitted by Richard Sparaco, the executive director of the Connecticut Board of Pardons and Paroles (board), that the defendant will be eligible for parole after serving 30 years of the 165 year aggregate term of the two distinct total effective sentences that he is currently serving. As to the first issue, we conclude that § 54-91g does not apply to the defendant. Accordingly, we affirm the judgment of the Appellate Court.

how the scientific and psychological evidence described in subdivision (1) of this subsection counsels against such a sentence.

* * *

"(c) Whenever a child is sentenced pursuant to subsection (a) of this section, the court shall indicate the maximum period of incarceration that may apply to the child and whether the child may be eligible to apply for release on parole pursuant to subdivision (1) of subsection (f) of section 54-125a. . . ."

The following facts and procedural background are relevant to the resolution of this appeal. This case arose from the October 15, 1999 carjacking, kidnapping, and murder of the victim, Kyle Holden, by the defendant and Carl Johnson. See *State* v. *Coltherst*, 263 Conn. 478, 485–86, 820 A.2d 1024 (2003). On the day that the defendant was released from juvenile detention, where he had been incarcerated for violating probation after having been convicted on charges of assault in the third degree, the defendant and Johnson planned to commit a carjacking. Id., 483–84. They scouted out various locations and potential targets before settling on the victim, whose car was parked outside an exotic dance club in East Hartford. Id., 484–85. When the victim exited the club, Johnson held a gun to his head, and Johnson and the defendant forced the victim into his car. Id., 485. Johnson then drove the car to an automated teller machine (ATM), while the defendant, who held the gun, sat with the victim in the backseat. Id. They used the victim's bank card to withdraw money from the ATM and then brought the victim to a nearby entrance ramp to Interstate 84, where Johnson shot the victim in the head, killing him almost instantly. Id., 485–86. Over the next eight days, the defendant and Johnson continued to use the victim's car and made withdrawals from his bank account using his bank card. Id., 486. Thereafter, they were arrested by the police, who had been on the lookout for the victim's car after the victim was reported missing. See id., 486–87.

Because the defendant was seventeen years old at the time he committed these crimes, he was tried as an adult under the then applicable law. See General Statutes (Rev. to 1999) § 46b-120 (1) (limiting, as general rule, for purposes of delinquency, definition of "child" to persons under sixteen years of age at time of offense). "After a jury trial, the defendant was convicted of capital felony, murder, felony murder, kidnapping in the

first degree, robbery in the first degree, robbery in the second degree, larceny in the first degree, conspiracy to commit kidnapping in the first degree, and larceny in the fourth degree. The trial court merged the convictions of capital felony, murder, felony murder and kidnapping in the first degree and imposed a sentence of life imprisonment without the possibility of release on the capital felony count, twenty years imprisonment on the count of robbery in the first degree, ten years imprisonment on the count of robbery in the second degree, twenty years imprisonment on the count of larceny in the first degree, twenty years imprisonment on the count of conspiracy to commit kidnapping in the first degree, and one year imprisonment on the count of larceny in the fourth degree, all to be served consecutively to the sentence of life imprisonment, for a total effective sentence of life imprisonment without the possibility of release followed by seventy-one years [of] imprisonment." *State* v. *Coltherst*, supra, 263 Conn. 487–88.

Subsequent to the defendant's original sentencing, significant changes in juvenile sentencing law prompted the resentencing proceedings that are the subject of this appeal. We recently summarized the effect of those changes: "Under the federal constitution's prohibition [against] cruel and unusual punishments, a juvenile offender cannot serve a sentence of imprisonment for life, or its functional equivalent, without the possibility of parole, unless his age and the hallmarks of adolescence have been considered as mitigating factors. *Miller* v. *Alabama*, 567 U.S. 460, 476–77, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *Casiano* v. *Commissioner of Correction*, 317 Conn. 52, 60–61, 115 A.3d 1031 (2015), cert. denied sub nom. *Semple* v. *Casiano*, 577 U.S. 1202, 136 S. Ct. 1364, 194 L. Ed. 2d 376 (2016); *State* v. *Riley*, 315 Conn. 637, 641, 110 A.3d 1205 (2015), cert. denied, 577 U.S. 1202, 136 S. Ct. 1361, 194 L. Ed. 2d 376 (2016)."

State v. *Williams-Bey*, 333 Conn. 468, 470, 215 A.3d 711 (2019). The United States Supreme Court has held that *Miller* applies retroactively to cases on collateral review. *Montgomery* v. *Louisiana*, 577 U.S. 190, 206, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016). The court clarified, however, that "[g]iving *Miller* retroactive effect . . . does not require [s]tates to relitigate sentences, let alone convictions, in every case [in which] a juvenile offender received mandatory life without parole. A [s]tate may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." Id., 212.

To comply with the decision of the United States Supreme Court in *Miller*, as well as this court's decisions in *Riley* and *Casiano*, the legislature enacted No. 15-84 of the 2015 Public Acts (P.A. 15-84). Section 1 of P.A. 15-84, codified at General Statutes § 54-125a (f) (1), ensures parole eligibility for all persons convicted of crimes committed when they were under eighteen years of age who received a sentence of ten years or more.[3] Section 2 of P.A. 15-84, codified at § 54-91g, requires a sentencing court to consider, inter alia, the "the hallmark features of adolescence" and the differences between the brain development of a child and

[3] General Statutes § 54-125a (f) (1) provides: "Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, a person convicted of one or more crimes committed while such person was under eighteen years of age, who is incarcerated on or after October 1, 2015, and who received a definite sentence or total effective sentence of more than ten years for such crime or crimes prior to, on or after October 1, 2015, may be allowed to go at large on parole in the discretion of the panel of the Board of Pardons and Paroles for the institution in which such person is confined, provided (A) if such person is serving a sentence of fifty years or less, such person shall be eligible for parole after serving sixty per cent of the sentence or twelve years, whichever is greater, or (B) if such person is serving a sentence of more than fifty years, such person shall be eligible for parole after serving thirty years. Nothing in this subsection shall limit a person's eligibility for parole release under the provisions of subsections (a) to (e), inclusive, of this section if such person would be eligible for parole release at an earlier date under any of such provisions."

an adult when sentencing a child who has been convicted of a class A or B felony following transfer of the child's case from the docket for juvenile matters to the regular criminal docket of the Superior Court.

The defendant became eligible for resentencing pursuant to § 6 of P.A. 15-84, which repealed General Statutes § 53a-46a, the capital felony provision, pursuant to which the defendant had been sentenced. The substitute provision, codified at General Statutes (Supp. 2016) § 53a-46a, made persons who committed a capital felony when they were under eighteen years of age ineligible for the death penalty.[4] The passage of P.A. 15-84, therefore, rendered the defendant's capital felony conviction invalid.[5] Relying on that change in the law, the defendant filed a motion to correct an illegal sentence.

[4] This court has since held that, regardless of a defendant's age at the time of the commission of a crime, the death penalty violates article first, §§ 8 and 9, of the Connecticut constitution. See *State* v. *Santiago*, 318 Conn. 1, 119, 122 A.3d 1 (2015).

[5] Because the passage of § 6 of P.A. 15-84 rendered § 53a-46a, the provision under which the defendant had been sentenced, invalid, this case is distinguishable from *State* v. *McCleese*, 333 Conn. 378, 215 A.3d 1154 (2019), and *State* v. *Delgado*, 323 Conn. 801, 151 A.3d 345 (2016). In each of those cases, this court concluded that the trial court lacked subject matter jurisdiction over the defendant's motion to correct an illegal sentence. See *State* v. *McCleese*, supra, 387; *State* v. *Delgado*, supra, 813. In those cases, the sole defect relied on by the defendants in seeking resentencing was the failure of the trial court, in the original sentencing, to consider the mitigating factors of youth in sentencing each of them to a sentence without eligibility for parole. See *State* v. *McCleese*, supra, 385; *State* v. *Delgado*, supra, 803–804. Because the passage of §1 of P.A. 15-84, codified at § 54-125a, made those defendants eligible for parole, we explained, their sentences were no longer invalid. See *State* v. *McCleese*, supra, 387; *State* v. *Delgado*, supra, 812.

By contrast, in the present case, although the defendant is now eligible for parole, it is indisputable that his capitol felony conviction and sentence were rendered invalid by the passage of § 6 of P.A. 15-84. Thus, not only did the trial court retain jurisdiction to modify his sentence, but, because the sentence had been rendered invalid, the court was required to resentence him. See Practice Book § 43-22 ("[t]he 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").

He sought to have his conviction of capital felony vacated and argued that, upon resentencing, § 54-91g (a) (1) required the trial court to consider his age at the time of the offense, the hallmark features of adolescence, and any scientific and psychological evidence showing the developmental differences between child and adult brains. He also argued that § 54-91g (a) (2) required the court, if it proposed to sentence him to a lengthy sentence under which he would be likely to die while incarcerated, to consider how the factors listed in subsection (a) (1) counseled against such a sentence.

At the hearing on the defendant's motion, neither the state nor the trial court questioned the defendant's reliance on § 54-91g. In resentencing the defendant, the court considered the mitigating factors of youth but also took into account the horrific nature of the crimes, the defendant's level of involvement in them, his criminal history, his attempts to deflect blame for his crimes, and his disciplinary record in prison. The court dismissed the counts of capital felony and felony murder, and sentenced him to a total effective sentence of eighty years of imprisonment on the remaining counts.[6] The court further ordered the defendant's total effective sentence in the present case to run consecutively to the sentence of eighty-five years of imprisonment the

[6] The court sentenced the defendant as follows: on count two, for murder in violation of General Statutes §§ 53a-8 and 53a-54a (a), forty years; on count four, for kidnapping in the first degree in violation of General Statutes §§ 53a-8 and 53a-92 (a) (2) (B), twenty years; on count five, for robbery in the first degree in violation of General Statutes § 53a-134 (a) (2), ten years; on count six, for robbery in the second degree in violation of General Statutes (Rev. to 1999) § 53a-135 (a) (1), five years; on count seven, for larceny in the first degree in violation of General Statutes (Rev. to 1999) §§ 53a-8 and 53a-122 (a) (3), ten years; on count eight, for conspiracy to commit kidnapping in the first degree in violation of General Statutes §§ 53a-48 and 53a-92 (a) (2) (B), ten years; and, on count nine, for larceny in the fourth degree in violation of General Statutes (Rev. to 1999) § 53a-125 (a), one year. Counts two, four, five, and eight run consecutively. Counts six, seven, and nine run concurrently to counts two, four, five, and eight.

defendant is serving for a conviction involving his shooting of another victim four days after he and Johnson killed the victim in the present case. See *State* v. *Coltherst*, 87 Conn. App. 93, 95–98, 864 A.2d 869, cert. denied, 273 Conn. 919, 871 A.2d 371 (2005). The court noted that the defendant would be eligible for parole.

In his appeal to the Appellate Court, the defendant claimed, inter alia, that the trial court improperly failed, pursuant to § 54-91g, "to account adequately for the defendant's youth at the time he committed the underlying crimes . . . ."[7] *State* v. *Coltherst*, 192 Conn. App. 738, 740, 218 A.3d 696 (2019). The Appellate Court rejected the defendant's argument that § 54-91g creates a presumption against the imposition of an effective sentence of life imprisonment—in the present case, eighty years—for defendants who were minors at the time they committed their crimes. Id., 752–53. The court grounded its decision on the plain and unambiguous language of the statute; see id., 751; which requires that the sentencing court "[c]onsider" how the scientific and psychological evidence showing the differences between a child's brain development and an adult's brain development counsels against the imposition of a lengthy sentence under which it is likely that the child will die while incarcerated. General Statutes § 54-91g (a) (1) and (2); see also *State* v. *Riley*, 190 Conn. App. 1, 26–28, 209 A.3d 646 (rejecting, on basis of plain language of § 54-91g, defendant's argument that language and legislative history of P.A. 15-84 created "a presumption against the imposition of a life sentence on a juvenile defendant,[8] and such exceedingly rare sentences can only be

[7] The defendant also claimed that the trial court improperly allowed him to provide additional remarks to the court at the time of resentencing, in violation of his rights to counsel, due process, and allocution. *State* v. *Coltherst*, 192 Conn. App. 738, 740–41, 218 A.3d 696 (2019). The Appellate Court's rejection of that claim is not before us in this appeal.

[8] Although the defendant in the present case often refers to himself as a "juvenile" because he was a minor when he committed the crimes, we emphasize that, in 1999, the law did not afford him juvenile status for

imposed after a specific finding that the juvenile being sentenced is permanently incorrigible, irreparably corrupt, or irretrievably depraved" (footnote added; internal quotation marks omitted)), cert. denied, 333 Conn. 923, 217 A.3d 993 (2019).[9] This certified appeal followed.

I

We first address the question of whether and when the defendant, who has received two distinct total effective sentences of eighty-five years of imprisonment and eighty years of imprisonment, respectively, to run consecutively, will be eligible for parole. On the basis of the parties' submissions, we conclude that the defendant will be eligible for parole after serving thirty years of the aggregate term of the two definite sentences of imprisonment that he is currently serving.

The following additional facts are relevant to our resolution of this issue. Four days after the defendant and Johnson killed the victim in the present case, they, along with a third person, Rashad Smith, accosted Michael Clark in the parking lot of an insurance firm in Wethersfield where Clark worked. *State* v. *Coltherst*, supra, 87 Conn. App. 96. They took Clark's laptop and credit card, and were in the process of forcing him into his car when he broke free and ran, but Johnson tackled him. Id., 97. The defendant and Clark then struggled, and the defendant shot Clark in the head. Id. Grievously injured, Clark nonetheless survived the shooting. See

purposes of delinquency proceedings. Seventeen year olds were not afforded juvenile status until 2012. See generally Public Acts, Spec. Sess., June, 2007, No. 07-4, §§ 73 through 78; Public Acts, Spec. Sess., September, 2009, No. 09-7, §§ 69 through 89.

[9] The United States Supreme Court recently held that *Miller* does not require a sentencing court, prior to imposing a discretionary sentence of life imprisonment without the possibility of parole on defendants convicted of a homicide committed when they were under the age of eighteen, to make a separate factual finding of permanent incorrigibility. See *Jones* v. *Mississippi*, U.S. , 141 S. Ct. 1307, 1318–19, 209 L. Ed. 2d 390 (2021).

id., 98. In connection with this incident, the defendant was convicted of numerous offenses (Wethersfield assault conviction) and received a total effective sentence of eighty-five years of imprisonment. Id., 95. In the present case, when the trial court resentenced the defendant, it ordered the total effective sentence of eighty years in the present case to run consecutively to the total effective sentence of eighty-five years that the defendant received as a result of the Wethersfield assault conviction.

Under the facts of these two cases, the defendant's parole eligibility is governed by General Statutes § 53a-38 (b) (2), read in conjunction with § 54-125a (f) (1). The question of how the defendant's parole eligibility date is calculated under those two statutes presents a question of statutory interpretation subject to plenary review. See, e.g., *Commissioner of Emergency Services & Public Protection* v. *Freedom of Information Commission*, 330 Conn. 372, 380, 194 A.3d 759 (2018); *Barrett* v. *Montesano*, 269 Conn. 787, 792, 849 A.2d 839 (2004). In construing the relevant statutes, "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature." (Internal quotation marks omitted.) *Testa* v. *Geressy*, 286 Conn. 291, 308, 943 A.2d 1075 (2008).

We begin with the language of the statutes. Section 53a-38 (b) provides: "A definite sentence of imprisonment commences when the prisoner is received in the custody to which he was sentenced. Where a person is under more than one definite sentence, the sentences shall be calculated as follows: (1) If the sentences run concurrently, the terms merge in and are satisfied by discharge of the term which has the longest term to run; (2) if the sentences run consecutively, the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term."

Pursuant to § 53a-38 (b) (2), therefore, the defendant's aggregate term is 165 years and the two consecutive, definite sentences are satisfied by the discharge of the 165 year aggregate term. Section 54-125a (f) (1), which is set forth in full in footnote 3 of this opinion, does not expressly provide that the aggregate term is used for purposes of calculating eligibility for parole when an incarcerated person is serving more than one definite sentence. It refers only to a "definite sentence" and provides that, if a person who falls within the ambit of the statute "is serving a sentence of more than fifty years, such person shall be eligible for parole after serving thirty years." General Statutes § 54-125a (f) (1) (B). The plain language of §§ 53a-38 (b) (2) and 54-125a (f) (1), accordingly, does not resolve whether the parole eligibility date of a prisoner serving more than one definite sentence should be calculated on the basis of the aggregate term or each definite sentence.

Interpreting §§ 53a-38 (b) (2) and 54-125a (f) (1) to require that parole eligibility be calculated on the basis of the defendant's definite sentences rather than the aggregate term, however, would be contrary to the legislative intent underlying § 54-125a (f) (1). As we have explained in this opinion, the legislative intent behind the parole eligibility guarantee in § 54-125a (f) (1) is to comply with the constitutional standards enunciated in the decisions of the United States Supreme Court in *Miller* and *Montgomery*, as well as in this court's decisions in *Riley* and *Casiano*. See *Miller* v. *Alabama*, supra, 567 U.S. 479 (holding that "the [e]ighth [a]mendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders"); see also *Montgomery* v. *Louisiana*, supra, 577 U.S. 212 (holding that "[a] [s]tate may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them"); *Casiano* v. *Commissioner of Correction*,

supra, 317 Conn. 54, 69 (holding that *Miller* announced watershed rule of criminal procedure, applicable retroactively); *State* v. *Riley*, supra, 315 Conn. 659–61 (applying *Miller* to state's sentencing scheme and holding that defendant's 100 year sentence violated *Miller* because sentencing court did not consider mitigating factors of youth in sentencing defendant, who was under eighteen years of age at time of offense, to functional equivalent of life).

Treating each definite sentence separately for purposes of parole eligibility would yield the result that the defendant's only opportunity for parole would be 30 years after he began serving the 80 year sentence in the present case, 115 years after he began serving the sentence for the Wethersfield assault conviction. He would die long before becoming eligible for parole, rendering the intended remedy of parole eligibility meaningless—his sentence would effectively be one without the opportunity for parole. That interpretation would flout every recent juvenile sentencing decision of both this court and the United States Supreme Court and, therefore, would also be inconsistent with the intent of the legislature in § 54-125a (f) (1). Accordingly, consistent with the legislative intent underlying § 54-125a (f) (1), we conclude that, when a defendant is serving more than one definite sentence, his parole eligibility date for purposes of § 54-125a (f) (1) is calculated on the basis of the aggregate term of the definite sentences.

Our conclusion is consistent with the board's interpretation of and current practice in applying §§ 53a-38 (b) (2) and 54-125a (f) (1). In an affidavit procured by the state in response to the second issue in this court's order for supplemental briefing regarding the defendant's parole eligibility, Sparaco, the executive director of the board, stated that, in circumstances such as those in the defendant's case, pursuant to §§ 53a-38 (b) (2)

and 54-125a (f) (1), the board uses the aggregate term to calculate a parole eligibility date. Accordingly, Sparaco stated that, because the defendant's 165 year aggregate sentence is more than 50 years, he will be eligible for parole after serving 30 years. On the basis of our interpretation of §§ 53a-38 (b) (2) and 54-125a (f) (1), we agree with Sparaco's conclusion that the defendant will be eligible for parole after serving 30 years of the 165 year aggregate term of the two definite sentences.

II

We next address the question of whether § 54-91g applies to the defendant. The defendant, whose case was not transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court but, rather, was charged under the then applicable law as an adult under the regular criminal docket; see General Statutes (Rev. to 1999) § 46b-120; claims that the provisions of § 54-91g nonetheless apply to him. We conclude that the plain language of the statute, which restricts its application to children whose cases are transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court, makes clear that the statute does not apply to the defendant.

The applicability of § 54-91g to the defendant presents a question of statutory interpretation, subject to plenary review. See *State* v. *Ruiz-Pacheco*, 336 Conn. 219, 232, 244 A.3d 908 (2020). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining

such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Trinity Christian School* v. *Commission on Human Rights & Opportunities*, 329 Conn. 684, 694, 189 A.3d 79 (2018).

We begin with the language of the statute. Section 54-91g (a) provides: "If the case of a child, as defined in section 46b-120, is transferred to the regular criminal docket of the Superior Court pursuant to section 46b-127 and the child is convicted of a class A or B felony pursuant to such transfer, at the time of sentencing, the court shall: (1) Consider, in addition to any other information relevant to sentencing, the defendant's age at the time of the offense, the hallmark features of adolescence, and any scientific and psychological evidence showing the differences between a child's brain development and an adult's brain development; and (2) Consider, if the court proposes to sentence the child to a lengthy sentence under which it is likely that the child will die while incarcerated, how the scientific and psychological evidence described in subdivision (1) of this subsection counsels against such a sentence."

Subsection (a) of § 54-91g sets forth two conditions that trigger the required sentencing considerations in subdivisions (1) and (2) of that subsection. First, the case of a child, as defined in General Statutes § 46b-120, must be transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court pursuant to § 46b-127. Second, the child must be convicted of a class A or B felony pursuant to the transfer. Under the facts of the present case, neither of these two conditions has been met. Because the defendant was over the age of sixteen at the time that he committed his crimes, he was not a "child" under

the then applicable law. See General Statutes (Rev. to 1999) § 46b-120 (1).

In 1999, when the defendant committed his crimes, General Statutes (Rev. to 1999) § 46b-120 (1) defined a delinquent "child"[10] as "any person (A) under sixteen years of age . . . ."[11] The defendant, who was seventeen at the time he committed the crimes, was treated as an adult criminal. Accordingly, the defendant's case was never initiated as a juvenile matter in the docket of the Superior Court for juvenile matters. Instead, the defendant was charged as an adult, and the state's case against him was filed in the regular criminal docket. See General Statutes (Rev. to 1999) § 46b-127 (a). Of course, because the defendant's case was not transferred from the docket for juvenile matters to the regular criminal docket, the defendant was not convicted pursuant to any such transfer. See General Statutes § 54-91g (a). Thus, neither of the two conditions that would make § 54-91g (a) applicable was met.

This court's previous interpretation of § 54-91g confirms that the legislature did not intend the statute to apply retroactively to defendants who, although under the age of eighteen when they committed their offenses, were initially charged and tried as adults. Specifically,

[10] By contrast, under the current statute, a delinquent "child" includes "any person . . . who is . . . under eighteen years of age and has not been legally emancipated . . . ." General Statutes § 46b-120 (1) (A) (i) (I).

[11] General Statutes (Rev. to 1999) § 46b-120 (1) (B) provides that the term "child" applies to a person over sixteen years of age only if that person, "prior to attaining sixteen years of age, has violated any federal or state law or municipal or local ordinance, other than an ordinance regulating behavior of a child in a family with service needs, and, subsequent to attaining sixteen years of age, violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to such delinquency proceeding . . . ." A child under sixteen years old charged as a delinquent in 1999 and made subject to a court order in that delinquency proceeding by the Superior Court for juvenile matters could, at any time after he turned sixteen or older, be subject to a juvenile prosecution for violating the court's order.

in *State* v. *Delgado*, 323 Conn. 801, 151 A.3d 345 (2016), although the defendant did not expressly claim that § 54-91g applied to him retroactively, we considered and rejected that interpretation of the statute as part of our analysis of his claim that he was entitled to be resentenced. See id., 814. We explained: "There are ten sections in P.A. 15-84, four of which specify that they are '[e]ffective October 1, 2015, and applicable to any person convicted prior to, on or after said date.' . . . P.A. 15-84, §§ 6 through 9. In contrast, P.A. 15-84, § 2, provides [that] it is '[e]ffective October 1, 2015,' indicating that the legislature did not intend for this section to apply retroactively. Moreover, there is nothing in the text of . . . § 54-91g or the legislative history of P.A. 15-84 to suggest that the legislature intended that all [persons] convicted of a class A or B felony [committed when they were under the age of eighteen] who were sentenced without consideration of the age related mitigating factors identified in *Miller* would be resentenced. In sum, even if the defendant had alleged that his sentence was imposed in an illegal manner because the trial court failed to adhere to the requirements of [§ 54-91g], he would not be able to demonstrate that that [statute] applies to him." *State* v. *Delgado*, supra, 814. We added: "Although the text of [§ 54-91g] seems clear insofar as the retroactivity issue is concerned, to the extent that there is any ambiguity in the applicable statutory language, the pertinent legislative history clarifies that the legislature did not intend for this [statute] to apply retroactively. The limited discussion on this topic occurred before the Judiciary Committee. Attorney Robert Farr, a member of the working group of the Connecticut Sentencing Commission, which helped craft the proposed legislative language, discussed how the legislation would affect previously sentenced individuals. See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 2, 2015 Sess., pp. 949, 955–56. He first mentioned this court's decision in *Riley*, in which the

defendant in that case had been sentenced to 100 years in prison and then resentenced, and noted that, under the proposed legislation, 'instead of having to worry about resentencing what would have happened is in 30 years, 21 years from now there will be a parole hearing and then that parole hearing would decide whether [the defendant in *Riley*] was going to be—get another parole hearing . . . . So it gave some resolution to this which was consistent we believe with the federal—with the [United States] Supreme Court cases.' Id., p. 956, remarks of Attorney Farr." *State* v. *Delgado*, supra, 814 n.9.[12]

Relying on both the statutory language and its legislative history, we concluded in *Delgado* that, even if the defendant in that case had claimed that the trial court had failed to adhere to the requirements of § 54-91g, his claim would fail because the statute's provisions did not apply to him. Id., 814. Our conclusion in *Delgado* that § 54-91g does not apply retroactively is consistent with the plain language of the statute, which, as we have explained, limits its application, effective October 1, 2015, to children convicted of a class A or B felony following transfer from the docket for juvenile matters to the regular criminal docket of the Superior Court, and supports our conclusion that § 54-91g does not apply to the defendant.[13] Accordingly, because the trial court

[12] Neither of the parties addressed in their supplemental briefs the import of our conclusion in *Delgado* that § 54-91g does not apply retroactively. We observe, however, that, in light of that conclusion, even if the defendant had been transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court pursuant to § 46b-127, § 54-91g would not apply to him.

[13] We disagree with the defendant's conclusory statement in his supplemental brief that this construction renders § 54-91g unconstitutional because it violates his right to equal protection. Even if we agreed with the defendant's statement that he is similarly situated to a child sentenced after October 1, 2015, who is convicted of a class A or B felony following transfer to the regular criminal docket—which we do not—the differing treatment survives rational basis review. That is, the legislature rationally could provide one remedy for persons in the defendant's class and a different remedy to persons

incorrectly applied § 54-91g in considering adolescent mitigating factors in resentencing the defendant, he received more consideration than was required, resulting in a much reduced sentence with the possibility of parole after he serves thirty years. The state recognizes that the defendant received more consideration than that to which he was statutorily entitled but does not request that the defendant's case be remanded for resentencing and requests that this court affirm the Appellate Court's judgment.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

JOHN TILLMAN ET AL. *v.* PLANNING AND ZONING COMMISSION OF THE CITY OF SHELTON ET AL.
(SC 20549)

Robinson, C. J., and McDonald, D'Auria, Mullins, Kahn, Ecker and Keller, Js.

Syllabus

The plaintiffs, who own real property in the city of Shelton, appealed to the trial court from the decision of the defendant planning and zoning commission approving an application for a planned development district submitted by the defendant S Co. The trial court dismissed the plaintiffs' appeal from the commission's decision, and the plaintiffs appealed, claiming, inter alia, that this court's decision in *Campion* v. *Board of Alderman* (278 Conn. 500), in which the court concluded that a special act of the legislature authorizing zoning in the city of New Haven allowed for the creation of a planned development district, did not authorize municipalities, such as Shelton, that derive their authority to zone by statute (§ 8-2), rather than by a special act, to establish such districts. *Held*:

1. The plaintiffs could not prevail on their claim that the zoning authority conferred by § 8-2 did not support the creation of planned development districts: a comparison of the language in the special act at issue in *Campion*, the language of the enabling act at issue in *Sheridan* v.

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who meet the conditions under which the provisions of § 54-91g apply. This is the sole constitutional argument that the defendant raises in this appeal.

Planning Board (159 Conn. 1), and the language of § 8-2, which allowed the defendant commission to create and alter zones, led this court to conclude that § 8-2 permits the creation of planned development districts like the one at issue in the present case; moreover, the legislature's prior repeal of legislation that provided for a detailed procedure for the approval of planned developments did not evince a legislative intent to eliminate or severely limit the use of planned developments, as that legislation was repealed because its provisions were largely viewed as unnecessary and unduly burdensome, and the legislature's enactment of a statute (§ 8-2m) expressly allowing for the use of flexible zoning techniques was not intended to preclude the generalized application of § 8-2 or to restrict the zoning devices that it allows; furthermore, there was no indication that the development in the present case resulted from impermissible spot zoning, as previous claims of spot zoning had involved smaller areas than the area at issue in the present case, and there was little reason to disagree with the commission's determination that the proposal was consistent with Shelton's comprehensive plan for development, as the majority of the subject parcel had been located in an industrial zone for more than fifty years, and the applicable regulations identified the area at issue as an appropriate location for planned development districts.

2. There was no merit to the plaintiffs' claim that the use of planned development districts in Shelton, generally, and the creation of the planned development district proposed by S Co., in particular, violated the uniformity requirement of§ 8-2: the uniformity requirement did not require regulations governing adjacent zones to be consistent, and § 8-2 indicated that regulations in one district may differ from those in another district; moreover, the uniformity requirement does not prohibit the commission from permitting a combination of residential, commercial and professional uses, and the commission's decision created a new zone governed by a single set of regulations, including a specific, preapproved mixture of uses for the planned development district and a detailed set of standards applicable to the various classes and kinds of structures to be constructed therein.

3. The commission's decision, which delineated separate development areas, did not result in an unlawful subdivision: even though the various development areas were occasionally referred to in the record as parcels, there was no indication that the commission's approval of the planned development district caused the alteration of any previously existing property line, and the statement of uses and standards approved by the commission in granting S Co.'s application noted that any subdivision of the subject parcel would require separate approval.

Argued February 18—officially released October 20, 2021*

* October 20, 2021, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Procedural History

Appeal from the decision of the named defendant approving the application of Shelter Ridge Associates, LLC, for a planned development district, brought to the Superior Court in the judicial district of Ansonia-Milford; thereafter, Shelter Ridge Associates, LLC, was permitted to intervene as a defendant; subsequently, the case was transferred to the land use litigation docket in the judicial district of Hartford, where the case was tried to the court, *Domnarski*, *J.*, who, exercising the powers of the Superior Court, rendered judgment dismissing the appeal, from which the plaintiffs appealed. *Affirmed*.

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

Francis A. Teodosio, for the appellee (named defendant).

Dominick J. Thomas, *Jr.*, with whom was *Ian A. Cole*, for the appellee (defendant Shelter Ridge Associates, LLC).

Opinion

KAHN, J. The principal question raised in this appeal is whether the zoning authority granted to municipalities by General Statutes § 8-2[1] permits the use of a zoning device known as a planned development district. The plaintiffs, John Tillman and Judith Tillman, appeal from the decision of the trial court dismissing their appeal from the decision of the named defendant, the Planning and Zoning Commission of the City of Shelton (commission), approving an application for such a dis-

[1] We note that the legislature has made several amendments to § 8-2 since the events underlying the present appeal. See, e.g., Public Acts 2018, No. 18-28, §§ 1–2; see also Public Acts 2021, No. 21-29, § 4. Those amendments, however, are not relevant to the issues presented in the present appeal. For the sake of simplicity, we refer to the current revision of the statute.

trict submitted by the defendant Shelter Ridge Associates, LLC (Shelter Ridge). On appeal, the plaintiffs claim that (1) this court's decision in *Campion* v. *Board of Aldermen*, 278 Conn. 500, 899 A.2d 542 (2006), which concluded that the special act authorizing zoning in the city of New Haven allows for the creation of a planned development district, is inapplicable to municipalities that derive their authority to zone from § 8-2, (2) the planned development district proposed by Shelter Ridge violates the uniformity requirement contained in § 8-2, and (3) the commission's decision resulted in an unlawful subdivision. For the reasons that follow, we reject each of these claims and, accordingly, affirm the judgment of the trial court.

We begin by briefly reviewing the municipal zoning regulations relevant to the present appeal. Chapter 3, § 34.1, of the Shelton Zoning Regulations (regulations) authorizes the creation of planned development districts in order to encourage "unique and desirable" developments that cannot be accommodated by conventional zoning. Those regulations provide that "[e]ach [planned development district] is [an] independent zoning district created to accomplish a specific purpose, complete with its unique and narrowly drawn permitted uses . . . ." Shelton Zoning Regs., c. 3, § 34.1. Such zones can be established in a set of specifically mapped "[s]pecial [d]evelopment [a]rea[s]" and may be used to incorporate those uses "appropriate" to a mixed-use development.[2] Id. In addition to the foregoing limitations, the regulations detail minimum lot sizes, the maximum percentage of lot coverage, applicable floor area ratios, restrictions with respect to building height, various requirements with respect to utility connections,

[2] The regulations expressly provide that a planned development district "is not allowed on any site or parcel that is entirely surrounded by single family residential zones" and "shall not be used when an alternative, conventional zoning district is available." Shelton Zoning Regs., c. 3, § 34.1.

and additional provisions with respect to both architecture and the preservation of natural features. See id., §§ 34.3.1 through 34.3.8.

Approval of a new planned development district zone proceeds in a series of distinct stages. First, the applicant engages in an informal review by the commission and its staff. Id., § 34.4. The applicant then submits a formal proposal that includes both a written statement "identifying the permitted uses and setting forth the specific area, location and bulk standards to be applicable to the district"; id., § 34.5.1; and an initial development concept plan including, inter alia, "property maps, [s]ite [p]lans, [a]rchitectural [p]lans and other drawings as relevant in sufficient detail to show the existing conditions and improvements proposed to be erected on the site . . . ."[3] Id., § 34.5.2. Following the receipt of an application, the commission can solicit comments from numerous municipal officials and authorize the preparation of any independent reports that it deems necessary for its consideration. Id., § 34.6. The commission is then required by regulation, as it would be for any application for an amendment to a zoning regulation, to hold a duly noticed public hearing. Id., § 34.7.

The commission may approve an initial development concept plan and adopt a planned development district only if it makes several specific factual findings. Id., §§ 34.8 and 34.9. Most notably for present purposes,

[3] In addition to mapping both existing and proposed buildings and uses, an applicant is also required to submit information relating to vehicular and pedestrian traffic, parking facilities, access roads, lighting, open areas, landscaping, utilities, floor plans, exterior elevations, drainage plans, soil and geology reports, a sedimentation and erosion control plan, and "[a]ny additional information which the [c]ommission may reasonably require . . . ." Shelton Zoning Regs., c. 3, § 34.5.2 (a) through (n). This last category of information may include marketability studies, economic impact analysis, perspective renderings, lists of proposed covenants or restrictions, maintenance schedules, and additional specifications relating to development phasing. Id., § 34.5.2 (n).

the commission must find that a proposal "will not have a significant adverse impact [on] surrounding properties or on property values in the area"; id., § 34.8 (f); that "[a]nother zoning district could not be appropriately established to accomplish such purposes"; id., § 34.9 (c); and that the proposal "will be consistent with any comprehensive plan of development . . . for the area in which it is located . . . ." Id., § 34.9 (d). If a planned development district is approved, the commission adopts a "[s]tatement of [u]ses and [s]tandards" as an amendment to its zoning regulations that "authorize[s] uses, building structures and site development in accordance with the approved [i]nitial [d]evelopment [c]oncept [p]lan," and updates its official zoning map to show the creation of a new zone. Id., § 34.13. An applicant then has a period of six months to submit detailed final site development plans to the commission. Id., § 34.10.

Although the Appellate Court once described planned development districts as "creature[s] not normally spotted in Connecticut's jurisprudential forests"; (internal quotation marks omitted) *Blakeman* v. *Planning & Zoning Commission*, 82 Conn. App. 632, 637 n.7, 846 A.2d 950, cert. denied, 270 Conn. 905, 853 A.2d 521 (2004); the trial court in the present case accurately noted that they have "thrived in the environs of Shelton." Specifically, the trial court observed that this flexible zoning technique has been used more than seventy-five times in the city of Shelton alone. Indeed, an inventory of planned development districts set forth in an appendix to the regulations indicates a more or less consistent use of that device in Shelton since the late 1970s.

The following undisputed facts and procedural history relating to the present case are relevant to our analysis. On March 16, 2016, Shelter Ridge filed an application with the commission seeking the creation of a planned development district on a parcel of real prop-

erty consisting of approximately 121 acres of land. That parcel, almost all of which had existed within a "[l]ight [i]ndustrial [p]ark" zone for more than fifty years,[4] is bounded by (1) a one-half mile stretch of Bridgeport Avenue[5] to the east, (2) approximately 1800 feet of frontage on Mill Street to the south, (3) the rear lot lines of several residential properties on Old Kings Highway, certain parcels maintained by Shelton as open space, and a short length of Buddington Road to the west, and (4) a mobile home park and a few office buildings to the north. The parcel slopes steeply up from Bridgeport Avenue and Mill Street to a ridgeline running generally north to south and has areas of exposed bedrock. The property is also bisected by a series of overhead power transmission lines and an underground gas transmission line. Several wetlands, including a vernal pool, are located on the western side of the parcel. Although Shelton's 2006 plan of conservation and development contemplated improvement of this land for either office space or industrial use, the parcel has remained vacant with the exception of one single-family home near Buddington Road.

Shelter Ridge submitted a proposed statement of uses and standards for this planned development district that contemplated the construction of buildings in five separate development areas. The two areas closest to Bridgeport Avenue were reserved for retail use. The other three development areas, which are located on the interior of the parcel, were slated for (1) a mixture of retail, offices and food services, (2) medical and professional offices, and (3) a multistory residential structure. The remaining land, which consisted of

[4] The record indicates that approximately one acre of the property fell within a residential zone.

[5] Bridgeport Avenue, also known as state route 714, is a major thoroughfare in Shelton. Certain areas adjacent to it, including the parcel at issue in this case, fell within a special development area and, thus, were available for improvement as a planned development district.

approximately twenty-four acres near the western edges of the parcel, would be traversed by a proposed hiking trail and would remain otherwise undeveloped as dedicated open space. Maps submitted with the proposal showed the size and location of, inter alia, proposed buildings, parking lots, and various internal access roads. A series of perspective renderings showed, in great detail, the visual impacts of the proposed development.

In 2016, the commission held six public hearings relating to this development over a period of several months. As the trial court noted, "the commission had before it some 65 exhibits, including a full engineering report . . . a 900 page traffic impact study . . . supplemented by a revision to address certain questions from the commission . . . a retail demand study . . . and the blowup of the rings and drive times related to the retail analysis . . . an environmental report . . . and a traffic peer review. . . . The applicant also presented numerous articles and data related to existing apartment developments, parking, school-age children, fire and safety, and downtown development. . . . All of the applicant's submissions were supplemented by the testimony of the authors of the reports." (Citations omitted.)

Public opposition to the development was substantial and focused on several significant concerns relating to traffic, effects on nearby residential areas, and various environmental impacts. As a result of those concerns, Shelter Ridge modified its initial proposal (1) to replace a proposed public entrance located on Buddington Road with a gated access limited to emergency personnel, (2) to reorganize certain parking facilities to increase dedicated open space, (3) to reduce the size of the residential structure from nine stories to no more than five stories, and (4) to abandon previous plans for an assisted living facility.

On March 7, 2017, the commission adopted a resolution approving both Shelter Ridge's application and a detailed statement of uses and standards containing a series of additional conditions and restrictions. In making its decision, the commission explicitly found that "[d]ifficult physical site features, coupled with marketing constraints, have precluded the ability to develop the site for light industrial and/or major office building development," that "[t]he subject property can be improved to accommodate the proposed mixed-use development in a manner that minimizes intrusion on neighboring areas," and that the proposal was "consistent with the comprehensive plan of zoning for the area . . . ."

The plaintiffs, the owners of a single family residence located on an adjacent parcel, subsequently appealed to the trial court pursuant to General Statutes § 8-8.[6] In that appeal, the plaintiffs argued, inter alia, that (1) municipalities deriving their authority to zone from § 8-2 lack the authority to create planned development districts, (2) the proposed planned development district violates the uniformity requirement contained in § 8-2, and (3) the commission's decision resulted in an unlawful subdivision under General Statutes § 8-18.

The trial court subsequently issued a detailed, thorough, and well reasoned memorandum of decision, disagreeing with each of these claims. The trial court reviewed *Sheridan* v. *Planning Board*, 159 Conn. 1, 266 A.2d 396 (1969), and *Campion* v. *Board of Aldermen*, supra, 278 Conn. 500, and concluded that those decisions implicitly supported "the conclusion that § 8-2 authorizes the creation of [planned development districts]." The trial court also concluded that the uniformity requirement set forth in § 8-2 mandates only "intradis-

[6] Although Shelter Ridge was not initially named as a party defendant, the trial court subsequently granted it permission to intervene.

trict uniformity" and that, because the present case involved the creation of an entirely new zone governed by a single set of regulations, the commission's actions did not violate that statutory mandate. (Emphasis omitted; internal quotation marks omitted.) Finally, the trial court rejected the plaintiffs' argument that the commission had created an unlawful subdivision because the mere discussion of separate "development areas" did not amount to a division of the larger parcel into smaller lots. As a result of these conclusions, the trial court dismissed the plaintiffs' appeal from the commission's decision. This appeal followed.[7]

In the present appeal, the plaintiffs renew their claims that (1) municipalities, like Shelton, that derive their zoning powers from § 8-2, rather than a special act, lack the authority to establish planned development districts; (2) the proposal at issue in this case violates the uniformity requirement contained in § 8-2, and (3) the commission's decision constituted an unlawful subdivision. We address each of these claims in turn.

I

The plaintiffs' principal claim is that the zoning authority conferred by § 8-2 does not support the creation of planned development districts. In support of this claim, the plaintiffs argue that this court's decision in *Campion* v. *Board of Aldermen*, supra, 278 Conn. 514–15, which concluded that the 1925 special act authorizing zoning in New Haven allowed for the creation of planned development districts, does not extend permission to other municipalities, acting under § 8-2, to create similar planned development districts. The defendants respond by arguing that both § 8-2 and the reasoning

[7] The Appellate Court granted certification for the plaintiffs to appeal from the judgment of the trial court pursuant to General Statutes § 8-9, and we subsequently transferred that appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

of *Campion* are not so limited. For the reasons that follow, we agree with the defendants.

Before turning to the specific question at issue, we begin by setting forth certain general principles of law relevant to our consideration of this appeal. In this state, it is well established that "zoning authorities can only exercise such power as has been validly conferred upon them by the General Assembly." (Internal quotation marks omitted.) *Eden* v. *Town Plan & Zoning Commission*, 139 Conn. 59, 63, 89 A.2d 746 (1952); see also *Capalbo* v. *Planning & Zoning Board of Appeals*, 208 Conn. 480, 490, 547 A.2d 528 (1988); *MacKenzie* v. *Planning & Zoning Commission*, 146 Conn. App. 406, 426, 77 A.3d 904 (2013); *Keiser* v. *Zoning Commission*, 72 Conn. App. 721, 729, 806 A.2d 103, cert. denied, 262 Conn. 909, 810 A.2d 274 (2002). Indeed, "[n]o administrative or regulatory body can modify, abridge or otherwise change the statutory provisions under which it acquires authority unless the statute specifically grants it that power." (Internal quotation marks omitted.) *Finn* v. *Planning & Zoning Commission*, 156 Conn. 540, 546, 244 A.2d 391 (1968).

"Municipalities in Connecticut may exercise zoning power either by adopting the provisions of chapter 124 of the General Statutes . . . or by enacting a municipal charter authorized by a special act of the legislature. . . . In either case, the power of the local zoning authority to adopt regulations is limited by the terms of the statute or special act." (Internal quotation marks omitted.) *Campion* v. *Board of Aldermen*, supra, 278 Conn. 510–11. Whether the legislature has granted a particular power to a municipality presents a question of statutory interpretation and, thus, is subject to plenary review. Id., 509.

"In traditional zoning appeals, the scope of judicial review depends on whether the zoning commission has

acted in its legislative or administrative capacity. The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function. . . . Acting in such legislative capacity, the local [zoning] board is free to amend [or to refuse to amend] its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for [or the undesirability of] a change. . . . Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment. . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. . . . In contrast, when acting in an administrative capacity, a zoning commission's more limited function is to determine whether the applicant's proposed use is one which satisfies the standards set forth in the [existing] regulations and the statutes. . . . In fulfilling its administrative function, a zoning commission is less concerned with the development of public policy than with the correct application of law to facts in the particular case." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Kaufman* v. *Zoning Commission*, 232 Conn. 122, 150–51, 653 A.2d 798 (1995); see also *Campion* v. *Board of Aldermen*, supra, 278 Conn. 526–27.

There is no dispute that Shelton derives its authority to adopt zoning regulations from chapter 124 of the General Statutes. See T. Tondro, Connecticut Land Use Regulation (2d Ed. 1992) pp. 38–42. The provision of that chapter at issue in the present case, § 8-2, provides in relevant part: "The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories

and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes . . . . Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception . . . . Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23. . . . Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. . . .'' General Statutes § 8-2 (a).

With this background in mind, we turn to the narrow question of whether the grant of zoning authority contained in § 8-2 permits a municipal zoning authority to create planned development districts when it acts in a legislative capacity. In answering this question, we do not write on a blank slate. As the trial court in the present case aptly noted, this court has examined the validity of modern flexible zoning techniques in both *Sheridan* v. *Planning Board*, supra, 159 Conn. 1, and

Campion v. *Board of Aldermen*, supra, 278 Conn. 500. A brief review of those two decisions is instructive.

Sheridan related to the use of a modern zoning technique referred to as a floating zone. See *Sheridan* v. *Planning Board*, supra, 159 Conn. 16. The most traditional and common form of zoning, called Euclidean zoning, is "a system . . . whereby a [municipality] is divided into areas in which specific uses of land are permitted." Merriam-Webster's Dictionary, available at https://www.merriam-webster.com/legal/Euclidean%20zoning (last visited October 18, 2021); see also *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926); R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 1:1, p. 2. By contrast, a floating zone involves the initial creation of an unmapped zone that is later applied to a particular piece of property. As such, it "differs from the traditional [Euclidean] zone in that it has no defined boundaries and is said to 'float' over the entire area where it may eventually be established." 9 R. Fuller, supra, § 3.9, p. 42; see also T. Tondro, supra, pp. 70–72.

As in the present case, the plaintiffs in *Sheridan* claimed that the relevant enabling act did not permit the city of Stamford to use a floating zone device. *Sheridan* v. *Planning Board*, supra, 159 Conn. 15. Our rejection of that claim was straightforward. This court held that the relevant provisions of Stamford's enabling act,[8] which were similar to those in § 8-2, clearly allowed the municipal authority to both adopt and amend zoning

[8] The municipality in *Sheridan*, the city of Stamford, had enacted a charter authorized by a special act of the legislature, providing in relevant part: "The zoning board is authorized to regulate the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes . . . ." (Internal quotation marks omitted.) *Sheridan* v. *Planning Board*, supra, 159 Conn. 17–18.

boundaries. See id., 18. We noted that the language of the enabling act, "just as that in . . . § 8-2, is sufficiently broad to permit the creation of floating zones. In creating a floating zone, and in applying it to a particular area, the . . . zoning board is regulating the location and use of buildings and land in a manner which clearly is permitted under the enabling act in question." Id. The fact that floating zones differed from more traditional, Euclidean means of zoning was irrelevant; the legislative function exercised by the municipal zoning authority in that case, we noted, had simply met an existing "need for flexibility in modern zoning ordinances . . . ." Id., 17.

Almost forty years later, a similar question arose with respect to the use of planned development districts in the city of New Haven. See *Campion* v. *Board of Aldermen*, supra, 278 Conn. 515. New Haven, like Stamford, also exercised its zoning authority pursuant to a special act. Id., 510–13. The relevant provisions of that legislation provided New Haven's Board of Aldermen with the authority to "divide the city of New Haven into districts of such number, shape and area as may best be suited to carry out the provisions of [the] act." (Internal quotation marks omitted.) Id., 514.

Relying on our reasoning in *Sheridan*, this court similary held that this language was "sufficiently broad to permit the creation of planned development districts . . . ." Id., 518. In the course of our analysis, we compared planned development districts to floating zones and noted that, notwithstanding certain procedural distinctions, both of those devices "[alter] the zone boundaries of [an] area by carving a new zone out of an existing one." (Internal quotation marks omitted.) Id., 518–19. The creation of planned development districts was, therefore, permissible in New Haven because its zoning enabling act, like Stamford's, "authorize[d] the city to create new zones, as well as to make alterations

to the zones previously created." Id., 515. Our holding, reduced to a single sentence, was simply that "[t]he approval of a planned development district is not different from the creation of any other new zoning district . . . ." Id., 514. In reaching this result, we expressly rejected the plaintiffs' claim that the creation of planned development districts "improperly breaks from the Euclidean zoning model," stating, in no uncertain terms, that "we never have held . . . that zoning ordinances must be judged by the standards of traditional Euclidean zoning." Id., 529–30.

A comparison of the language in the enabling acts in both *Sheridan* and *Campion* to the language contained in § 8-2 provides us with no principled basis to conclude that the legislature intended to allow for the use of modern, flexible zoning techniques in only a handful of municipalities. The special act cited in *Sheridan* permitted the city of Stamford to regulate "the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes . . . ." (Internal quotation marks omitted.) *Sheridan* v. *Planning Board*, supra, 159 Conn. 17–18. That exact language appears in § 8-2. The special act at issue in *Campion* allowed the New Haven Board of Aldermen to "divide the city of New Haven into districts of such number, shape and area as may be best suited to carry out the provisions of [the] act." (Internal quotation marks omitted.) *Campion* v. *Board of Aldermen*, supra, 278 Conn. 514. Again, almost the exact same language can be found in § 8-2. As in those cases, the relevant question in the present case "is not whether the [enabling act] authorizes 'planned development districts' by name, but whether it authorizes the city to create new zones, as well as to make

alterations to the zones previously created." Id., 515. The plaintiffs readily admit that § 8-2 allows the commission to both create and alter zones. As a result, we conclude that the language of § 8-2 permits the creation of planned development districts like the one at issue in the present case.[9]

In urging us to reach the opposite conclusion, the plaintiffs point to two legislative actions that, they argue, evince the General Assembly's intent either to eliminate or to severely limit the use of planned developments. The first is the repeal of chapter 124a of the 1985 revision of the General Statutes. See Public Acts 1985, No. 85-409, § 7. The provisions in that chapter, which provided a detailed procedure for the approval of planned developments; see General Statutes (Rev. to 1985) § 8-13b et seq.; were, however, repealed because they were largely viewed as unnecessary and unduly burdensome. See D. Mandelker, "New Perspectives on Planned Unit Developments," 52 Real Prop. Tr. & Est. L. J. 229, 231 n.4 (2017); A. Martindale, "Replacing the Hardship Doctrine: A Workable, Equitable Test for Zoning Variances," 20 Conn. L. Rev. 669, 698 n.153 (1988). The legislature was well aware of the fact that many municipalities had enacted regulations providing for the use of such devices pursuant to their general zoning enabling authority, and the debate attendant to the 1985 repeal contains no support for the

[9] Although this conclusion is in accord with the law of other jurisdictions; see 5 A. Rathkopf & D. Rathkopf, The Law of Zoning and Planning (4th Ed. 2011) § 88:2, p. 88-12; see also 3 P. Salkin, American Law of Zoning (5th Ed. 2011) § 24:18, p. 24-40; we recognize that a Connecticut land use treatise suggests that *Campion* "seems limited on its facts to the provisions of the New Haven special act and should not be construed as allowing [planned development districts] to municipalities acting under the general statutes, which do not contain similar zoning authorization." 9 R. Fuller, supra, § 4:5, p. 73. In light of the striking similarities between the language of the 1925 special act and § 8-2, we decline to conclude that the holding of *Campion* is so limited.

proposition that the legislature intended a wholesale elimination of similar devices. See 28 S. Proc., Pt. 7, 1985 Sess., p. 2218, remarks of Senator John F. Consoli ("[C]urrently about sixty municipalities have adopted zoning regulations covering [similar] development[s] . . . . None of these have relied on [chapter 124a] for their authority. Instead, they have all relied on general zoning authority which is far less detailed. This bill would repeal specific statutory standards and procedures governing municipal zoning for [planned unit developments] leaving the municipalities to regulate them under the general zoning statutes . . . ."); see also T. Tondro, supra, pp. 81–82 n.168.

The second legislative action cited by the plaintiffs is the enactment of General Statutes § 8-2m.[10] That statute expressly allows for the use of various flexible zoning techniques, including floating zones, overlay zones, and planned development districts, in an exceedingly narrow class of municipalities exercising zoning authority pursuant to a special act. Public Acts 2006, No. 06-128, § 2 (P.A. 06-128). The class is so narrowly drawn, in fact, that the parties in the present case agree that only the city of New Haven falls within its confines. The

[10] General Statutes § 8-2m provides: "The zoning authority of any municipality that (1) was incorporated in 1784, (2) has a mayor and board of alderman form of government, and (3) exercises zoning power pursuant to a special act, may provide for floating and overlay zones and flexible zoning districts, including, but not limited to, planned development districts, planned development units, special design districts and planned area developments. The regulations shall establish standards for such zones and districts. Flexible zoning districts established under such regulations shall be designed for the betterment of the municipality and the floating and overlay zones and neighborhood in which they are located and shall not establish in a residential zone a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district. Such regulations shall not authorize the expansion of a pre-existing, nonconforming use. Notwithstanding the provisions of this section, no planned development district shall be approved which would permit a use or authorize the expansion of a pre-existing nonconforming use where the underlying zone is a residential zone."

plaintiffs invite us to infer from this express grant of authority that the legislature intended, by negative implication, to preclude the creation of planned development districts in every other municipality. We decline to accept this line of reasoning. The plaintiff's logic, if adopted, would compel the conclusion that New Haven is the only municipality with the authority to use other devices mentioned in § 8-2m, like floating zones, that are derived implicitly from generalized grants of zoning authority. Such an interpretation is not supported by either the text of § 8-2m or the legislative history preceding its enactment. See 49 S. Proc., Pt. 9, 2006 Sess., p. 2647, remarks of Senator Toni Nathaniel Harp (noting that bill was intended to "clarif[y] what the city of New Haven can do relative to planned development districts"); 49 H.R. Proc., Pt. 18, 2006 Sess., p. 5501, remarks of Representative Robert W. Megna (noting that bill "clarifies the use of overlay zones within the [c]ity of New Haven"). The better reading, we believe, is that § 8-2m constitutes a narrow legislative response to the Appellate Court's decision in *Campion*[11] that was not intended to preclude the generalized application of § 8-2 or to otherwise restrict the zoning devices that it allows. As noted previously; see footnote 1 of this opinion; the General Assembly has made several recent amendments to § 8-2. If, as the plaintiffs contend, the legislature intended the passage of § 8-2m to express a broader intent that the use of modern, flexible zoning techniques should be prohibited outside of New Haven,

[11] The bill giving rise to § 8-2m; see P.A. 06-128; was debated and passed shortly after the Appellate Court's decision in *Campion* was released, which had held that the city of New Haven lacked the authority to create planned development districts under the terms of its special act. *Campion* v. *Board of Alderman*, 85 Conn. App. 820, 822 n.3, 859 A.2d 586 (2004), rev'd, 278 Conn. 500, 899 A.2d 542 (2006). After P.A. 06-128 was enacted, but before it became effective, this court reversed the Appellate Court's conclusion. *Campion* v. *Board of Aldermen*, supra, 278 Conn. 502, 505. The following day, P.A. 06-128, § 2, was made effective retroactively to the date of its enactment. See Public Acts 2006, No. 06-196, § 290.

it has had multiple opportunities over the past fifteen years to address the continued use of such devices in other parts of the state. Its failure to do so provides further support for our interpretation of § 8-2m.

Finally, the plaintiffs contend, and we agree, that the developer driven, case-by-case approach inherent to modern zoning techniques such as planned development districts significantly heightens the risk of spot zoning and favoritism in the municipal land use process. See, e.g., *Blakeman* v. *Planning & Zoning Commission*, supra, 82 Conn. App. 637–38 n.7; cf. 9 R. Fuller, supra, § 3:9, pp. 43–44 (discussing same concerns in relation to floating zones). Even a cursory review of the appendix to the regulations demonstrates that an excessive use of that device in Shelton has led to the creation of dozens of entirely new, single owner zones that are as small as 0.3 acres. We take this opportunity to reiterate the fact that one of the essential goals of zoning is to encourage stability and predictability in land use. See, e.g., *Damick* v. *Planning & Zoning Commission*, 158 Conn. 78, 84, 256 A.2d 428 (1969). To that end, we emphasize that the traditional scope of judicial review applicable to claims of spot zoning remains unchanged in this context.

Nevertheless, we see no indication that the particular development at issue in the present case resulted from impermissible spot zoning. As this court has previously stated: "Two elements must be satisfied before spot zoning can be said to exist. First, the zone change must concern a small area of land. Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole." *Blaker* v. *Planning & Zoning Commission*, 212 Conn. 471, 483, 562 A.2d 1093 (1989). The proposed planned development district at issue in this case consists of approximately 121 acres. Previous claims of spot zoning have involved far smaller areas. *Campion*

v. *Board of Aldermen*, supra, 278 Conn. 506, 532 (4.04 acres); *Morningside Assn.* v. *Planning & Zoning Board*, 162 Conn. 154, 156, 161, 292 A.2d 893 (1972) (6.5 acres); *Kutcher* v. *Town Planning Commission*, 138 Conn. 705, 711, 88 A.2d 538 (1952) (2.5 acres) (*Brown*, *C. J.*, dissenting). There is also little reason to disagree with the commission's determination that the proposal at issue is consistent with Shelton's comprehensive plan for development. The majority of the subject parcel has been located in an industrial zone for more than fifty years, and the regulations specifically identify the area around Bridgeport Avenue as an appropriate location for planned development districts. In light of these facts, we do not believe that the commission's actions in the present case constituted impermissible spot zoning.

II

The plaintiffs' second claim is that the use of planned development districts in Shelton, generally, and the creation of this planned development district, in particular, violate the uniformity requirement contained in § 8-2. This claim is subject to plenary review. See, e.g., *MacKenzie* v. *Planning & Zoning Commission*, supra, 146 Conn. App. 420. For the reasons that follow, we conclude that it lacks merit.

General Statutes § 8-2 (a) provides in relevant part: "All . . . regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district . . . ."

This statutory provision requires that zoning regulations "are sufficiently precise so as to apprise both the zoning commission and an applicant of what is required, as well as to provide guidance to the zoning commission in applying the regulation, and to ensure equal treatment to each applicant subject to the regulation." *Harris* v. *Zoning Commission*, 259 Conn. 402, 434–35, 788

A.2d 1239 (2002). "The obvious purpose of [this requirement] . . . is to assure property owners that there shall be no improper discrimination, all owners of the same class and in the same district being treated alike with provision for relief in cases of exceptional difficulty or unusual hardship by action of the zoning board of appeals." *Veseskis* v. *Zoning Commission*, 168 Conn. 358, 360, 362 A.2d 538 (1975); see also *Kaufman* v. *Zoning Commission*, supra, 232 Conn. 147. Put simply, "[t]he thrust of the statutory requirement of uniformity is equal treatment." *Harris* v. *Zoning Commission*, supra, 431.

Cases in which courts have found a violation of the uniformity requirement have a singular, common element: they all involve a waiver or modification of a zoning regulation for some, but not all, parcels *within a particular zone*. For example, in *Langer* v. *Planning & Zoning Commission*, 163 Conn. 453, 313 A.2d 44 (1972), we concluded that a regulation permitting a municipal planning and zoning commission, rather than a board of zoning appeals, to "modify, vary, waive or accept other uses" on an "application-to-application basis" was invalid because it permitted the commission to treat some parcels in the district differently from others. (Internal quotation marks omitted.) Id., 457–58. Likewise, in *MacKenzie* v. *Planning & Zoning Commission*, supra, 146 Conn. App. 406, the Appellate Court concluded that a municipal planning and zoning commission violated the uniformity rule by waiving minimum setback and landscaped buffer requirements that were otherwise applicable to all other properties in the same district.[12] See id., 420, 431–33; see also, e.g., *Harris*

[12] In *MacKenzie*, the Appellate Court contrasted the facts before it, which involved altering requirements imposed on a particular parcel in a manner that distinguished it from other properties in the same zone, with other devices, such as floating zones and planned development districts, which involve a *legislative* decision relating to the creation or alteration of the underlying zones themselves. See *MacKenzie* v. *Planning & Zoning Commission*, supra, 146 Conn. App. 433–34. In so doing, the Appellate Court

v. *Zoning Commission*, supra, 259 Conn. 430–31 (there was no violation of uniformity requirement in case in which regulation excluding wetlands and slopes from minimum acreage was applied consistently throughout zone); *Veseskis* v. *Zoning Commission*, supra, 168 Conn. 360 ("[t]o require by zoning regulation a buffer strip between one zone of a particular classification and another zone of a different class in one specific instance and not in other instances when zones of these two zone classifications abut clearly violates the statutory uniformity requirement and is exactly the arbitrary and discriminatory use of the police power which the statute was designed to prevent"); *St. Joseph's High School, Inc.* v. *Planning & Zoning Commision*, 176 Conn. App. 570, 599, 170 A.3d 73 (2017) (granting special permit application that does not satisfy applicable regulatory standards "runs afoul of the uniformity requirement" (internal quotation marks omitted)).

Two particular points derived from these authorities warrant specific emphasis. First, the uniformity requirement does *not* require regulations governing adjacent zones to be consistent with one another. Indeed, the plain language of § 8-2 (a) indicates that "regulations in one district may differ from those in another district." See also, e.g., *Abel* v. *Planning & Zoning Commission*, 297 Conn. 414, 431, 998 A.2d 1149 (2010) ("[t]he statutory scheme assumes . . . uniformity within a zone"); *Simko* v. *Ervin*, 234 Conn. 498, 506, 661 A.2d 1018 (1995) ("[i]n accordance with § 8-2, a zoning regulation must be applied uniformly throughout each district"); *Pleasant Valley Neighborhood Assn.* v. *Planning & Zoning Commission*, 15 Conn. App. 110, 114, 543 A.2d 296 (1988) ("§ 8-2 . . . requires intradistrict uniformity, and not uniformity among all districts in a given town" (emphasis omitted)). As discussed previously in this opinion,

expressly noted that the devices named in the latter category "are recognized as legitimate land use tools" in this state. Id., 433.

the approval of a planned development district creates a new and independent zone. As a result, the plaintiffs' argument that the uniformity requirement contained in § 8-2 categorically prohibits the use of that device because the application-by-application process inherent in its nature results in inconsistences *with adjacent areas* must fail because that argument relates to interdistrict, rather than intradistrict, variations. See 9 R. Fuller, supra, § 4:5, p. 73 ("the [planned development district] only has to be uniform within itself regardless of the zoning of bordering districts"); T. Tondro, supra, p. 74 ("[a] zoning amendment carving a new zone out of a larger one, or which changes a zone's boundaries in any way, does not violate the uniformity rule because the rule only requires uniformity within a [particular] district, not between districts" (emphasis omitted)).

Second, the uniformity requirement in § 8-2 does not prohibit the commission from blending different types of uses within a particular planned development. Cf. 3 P. Salkin, American Law of Zoning (5th Ed. 2011) § 24:20, pp. 24–44 ("Planned unit development legislation has been challenged on the ground that it does not create districts but permits a mixture of uses in a single district. . . . Even in the states [that] lack specific planned unit development enabling statutes, the argument has been rejected."). The fact that the commission's decision contemplates a mixture of residential, commercial, and professional uses does not violate the uniformity requirement in § 8-2. Even a traditional approach to zoning does not mandate a complete monoculture of uses within a particular zone. See id.

The commission's decision in the present case created a new zone governed by a single set of regulations. Those regulations include both a specific, preapproved mixture of uses for the planned development district as a whole, and a detailed set of area, location, and bulk standards applicable to the various classes and

kinds of buildings and structures to be constructed therein. Cf. T. Tondro, supra, p. 75 ("Planned Area Developments (PAD[s]) specify different rules for properties within the PAD than for those outside, allowing the single owner of the PAD to create a district unique to his or her property. Since PADs are usually required to have a large minimum lot area, they are consistent with the uniformity rule because the PAD area can be viewed as the equivalent of a new zoning district . . . ."). We are not persuaded by the plaintiffs' claim that such regulations violate the intradistrict uniformity requirement in § 8-2.

III

The plaintiffs' final claim is that the delineation of separate "development areas" resulted in an unlawful subdivision. Only a brief analysis is necessary to reject this claim. "[I]n order to constitute a subdivision, the clear language of [§ 8-18] has two requirements: (1) [t]he division of a tract or parcel of land into three or more parts or lots, and (2) for the purpose, whether immediate or future, of sale or building development." (Internal quotation marks omitted.) *Cady* v. *Zoning Board of Appeals*, 330 Conn. 502, 510, 196 A.3d 315 (2018). The first prong of this test requires a division of land into three or more distinct "parts or lots . . . ." (Internal quotation marks omitted.) Id.; see also *500 North Avenue, LLC* v. *Planning Commission*, 199 Conn. App. 115, 131–32, 235 A.3d 526 (concluding that "the purpose of the inclusion of 'parts' is to elucidate the meaning of the word 'lots' " and that "the two words are meant to be read together"), cert. denied, 335 Conn. 959, 239 A.3d 320 (2020). We agree with the trial court's assessment that, notwithstanding the fact that the various "development areas" are occasionally referred to in the record as "parcels," there is no indication that the commission's approval of the proposed planned development district actually caused the alteration of

any previously existing property line. Cf. *Alvord Investment, LLC* v. *Zoning Board of Appeals*, 282 Conn. 393, 411, 920 A.2d 1000 (2007) ("a division of the land must take place in order to trigger subdivision review"). In fact, the statement of uses and standards ultimately approved by the commission expressly notes that any subdivision of the subject parcel would require separate approval. The defendant's claim that the commission's decision resulted in an unlawful subdivision must, therefore, fail.

The judgment is affirmed.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* JEFFREY K. WARD (SC 20427)

Robinson, C. J., and McDonald, D'Auria, Kahn, Ecker and Keller, Js.

Syllabus

The defendant, who had been convicted, on a plea of guilty, of manslaughter in the first degree and assault in the first degree, appealed from the trial court's dismissal of his motion to correct a sentence that was imposed in an illegal manner. The defendant had claimed in his motion that he was incompetent at the time of sentencing and that the sentencing court failed to order, sua sponte, a competency evaluation and hearing before imposing sentence. The defendant submitted with his motion to correct a police report, psychiatric evaluation and records from the Department of Correction that had become available after he was sentenced, all of which concerned his mental illness and psychiatric treatment prior to sentencing. The trial court dismissed the defendant's motion to correct for lack of subject matter jurisdiction, concluding that the motion challenged his competency at the time he pleaded guilty and, thus, constituted a collateral attack on his conviction. The Appellate Court upheld the trial court's dismissal of the defendant's motion, concluding that he had failed to raise a colorable claim that he was incompetent at the time of sentencing. On the granting of certification, the defendant appealed to this court, claiming that the Appellate Court incorrectly concluded that the trial court lacked subject matter jurisdiction to correct his sentence on the ground that he had failed to allege a colorable claim within the scope of the rule of practice (§ 43-22)

authorizing a judicial authority to correct an illegal sentence or a sentence imposed in an illegal manner. *Held* that the Appellate Court improperly upheld the trial court's dismissal of the defendant's motion to correct, as the factual allegations and evidence the defendant presented in connection with his motion made clear that he raised a colorable challenge to the character of the procedure that led to the imposition of his sentence, rather than the underlying conviction, and, thus, his claim nominally fell within the scope of § 43-22: although the prosecutor and defense counsel during the sentencing proceeding had discussed the defendant's psychiatric background and diagnosis of schizophrenia, the factual allegations and evidence the defendant offered in support of his claim demonstrated a possibility that a factual basis necessary to establish jurisdiction existed, as the police report and psychiatric evaluation showed that he previously had suffered from hallucinations, had attempted to commit suicide, and had not received treatment for his mental health for many years, and the department records showed that he had refused to take his prescribed medication and had suffered from auditory hallucinations approximately nine months before sentencing; moreover, contrary to the state's assertion that the trial court decided the merits of the defendant's claim and determined that the sentencing procedure complied with all constitutional and statutory requirements, that court's decision was limited to the issue of jurisdiction, as the court never explicitly ruled on the merits of the defendant's claim or made findings as to whether the proffered evidence overcame the presumption of competency.

Argued March 25—officially released October 21, 2021*

Procedural History

Substitute information charging the defendant with the crimes of manslaughter in the first degree and assault in the first degree, brought to the Superior Court in the judicial district of Hartford, where the defendant was presented to the court, *Alexander*, *J.*, on a plea of guilty; judgment of guilty; thereafter, the court, *Dewey*, *J.*, dismissed the defendant's motion to correct an illegal sentence, and the defendant appealed to the Appellate Court, *Alvord*, *Sheldon* and *Moll*, *Js.*, which affirmed the trial court's decision, and the defendant, on the granting of certification, appealed to this court. *Reversed*; *further proceedings*.

* October 21, 2021, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Temmy Ann Miller, for the appellant (defendant).

Sarah Hanna, senior assistant state's attorney, with whom, on the brief, was *Sharmese L. Walcott*, state's attorney, for the appellee (state).

Opinion

D'AURIA, J. The defendant, Jeffrey K. Ward, appeals from the judgment of the Appellate Court affirming the trial court's dismissal of his motion to correct a sentence imposed in an illegal manner. Specifically, he claims that the Appellate Court incorrectly concluded that the trial court lacked subject matter jurisdiction to correct his sentence because he failed to allege a colorable claim within the scope of Practice Book § 43-22.[1] We agree and, accordingly, reverse the judgment of the Appellate Court.

The following facts and procedural history are relevant to our resolution of this certified appeal. Pursuant to a plea agreement, the defendant pleaded guilty to manslaughter in the first degree in violation of General Statutes § 53a-55 (a) (1) and assault in the first degree in violation of General Statutes § 53a-59 (a) (1). After canvassing the defendant, the trial court, *Alexander*, *J.*, accepted the defendant's guilty plea. Following a hearing, and consistent with the plea agreement, the trial court sentenced the defendant to a total effective term of twenty-five years of incarceration. The defendant did not appeal from his conviction.

Approximately four years after sentencing, the defendant filed a motion to correct, accompanied by a memorandum of law and attached documents. The defendant claimed that the sentencing court had imposed his sen-

[1] 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."

tence in an illegal manner on the grounds that (1) he was incompetent at the time of sentencing and (2) the sentencing court had, before imposing sentence, failed to order, sua sponte, a competency evaluation and hearing pursuant to General Statutes § 54-56d.

According to the defendant's memorandum of law, at his sentencing hearing, both the prosecutor and defense counsel discussed his psychiatric background, including his diagnosis of paranoid schizophrenia. Although he conceded that, at the sentencing hearing, his attorney told the court that his symptoms had improved to the point that he was then "calm, rational, and understood and appreciated the seriousness of [the] situation," the defendant argued that, since the date of sentencing, substantial additional evidence had become available regarding his mental illness and psychiatric treatment prior to sentencing. This new information, he argued, demonstrated that he was not competent at his sentencing despite his counsel's reassurances to the contrary.

The defendant attached to his motion and supporting memorandum of law an extensive set of records and materials, including the transcript from the sentencing hearing, the police report regarding the underlying incident at issue, a psychiatric report, and clinical records from the Department of Correction (department). The record contains no evidence that the police report, psychiatric report, or clinical records had been provided to the sentencing judge, and, thus, the Appellate Court concluded that the sentencing judge "could not have relied on those documents to consider ordering" an evaluation and a hearing. *State* v. *Ward*, 193 Conn. App. 794, 812 n.10, 220 A.3d 68 (2019). Specifically, in his motion to correct, the defendant relied on the police report regarding the underlying crime, which indicated that, during an interview with the police, the defendant inserted a pencil approximately five to six inches into his right nostril and then attempted to stab himself in

the neck with the pencil, causing a minor laceration. Additionally, he relied on a psychiatric report dated approximately three and one-half months before sentencing, which stated that, even with continued treatment, the defendant had a significant risk of continuing to suffer symptoms of his schizophrenia.

Clinical records of the department dated before the defendant entered his guilty plea reported that he had missed several doses of his prescribed antipsychotic medication. These records also showed that, before sentencing, the defendant told department staff three different versions of the details of his plea deal: (1) he agreed to plead guilty to manslaughter in the first degree and assault in the first degree in exchange for a total effective sentence of twenty-five years of incarceration; (2) he agreed to plead guilty to murder in exchange for a twenty year sentence; and (3) he agreed to plead guilty to manslaughter in exchange for a twenty year sentence. The clinical records further showed that, after his guilty plea but before his sentencing, the defendant missed doses of his prescribed antipsychotic medication intermittently and at times reported experiencing auditory hallucinations. According to the clinical records, approximately one month after his sentencing, the defendant told department staff that he was confused about his sentence, stating that he was serving a thirty year sentence for manslaughter.

After oral argument on the defendant's motion to correct, the trial court reserved decision regarding its jurisdiction and heard the parties on the merits of the motion to correct. The court later issued a memorandum of decision dismissing the motion to correct for lack of subject matter jurisdiction on the ground that the motion challenged the defendant's competency at the time he pleaded guilty pursuant to the plea agreement and, thus, constituted a collateral attack on his conviction, not his sentence.

The defendant appealed to the Appellate Court, claiming that the trial court incorrectly had concluded that it lacked subject matter jurisdiction over his motion to correct.[2] The Appellate Court acknowledged that the trial court's analysis was flawed because it was clear from the pleadings that the defendant was challenging the sentencing proceedings and the legality of the manner in which his sentence was imposed. Id., 806. Nevertheless, after examining the pleadings and documents attached to the defendant's motion to correct, the Appellate Court concluded that the trial court properly dismissed the motion for lack of jurisdiction because the defendant failed to raise "a colorable claim" that he was incompetent at the time of his sentencing, or that the sentencing judge had information prior to sentencing that required her to order a competency evaluation and hearing. Id., 812–13 and n.10. The Appellate Court reasoned that nothing in the attached transcripts, police report, psychiatric report, or psychiatric records supported the conclusion that the defendant was incompetent at the time of sentencing. See id., 812–13.

Judge Sheldon issued a concurring and dissenting opinion. In his view, the defendant had pleaded sufficient facts to raise a colorable claim that he was incompetent at the time of his sentencing but not to raise a colorable claim that Judge Alexander should have sua sponte ordered a competency evaluation and hearing before sentencing. Id., 820 (*Sheldon*, *J.*, concurring in part and dissenting in part). Judge Sheldon contended that the majority improperly required the defendant to show that he was incompetent at the time of sentencing,

[2] The defendant also claimed that the trial court improperly adjudicated the motion to correct, rather than referring the motion to the sentencing court. The Appellate Court determined that this claim was unpreserved and failed under the third prong of *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). See *State* v. *Ward*, supra, 193 Conn. App. 797–800. The defendant did not request certification to appeal with respect to this issue.

thereby requiring him to prove that he would succeed on the merits. Id., 821–22 (*Sheldon*, *J.*, concurring in part and dissenting in part). In Judge Sheldon's view, the colorability standard required the defendant "to present sufficient facts to establish that his claim of incompetence is a possibility, rather than a certainty . . . and is superficially well founded but may ultimately be deemed invalid." (Citation omitted; internal quotation marks omitted.) Id., 822 n.3 (*Sheldon*, *J.*, concurring in part and dissenting in part). Applying this standard, Judge Sheldon concluded that the "well documented facts presented to the trial court in the motion to correct concerning the defendant's failure to take his prescribed antipsychotic medication in the weeks before he was sentenced, his contemporaneous experiencing of auditory hallucinations and his confusion, before and after he was sentenced, about the terms of his plea bargain and the length of his sentence, both as agreed to and as imposed, raise at least a genuine possibility that when he was sentenced he was incompetent because he lacked a rational and factual understanding of the proceedings against him due to his ongoing mental illness." Id., 821 (*Sheldon*, *J.*, concurring in part and dissenting in part). Thus, Judge Sheldon argued that the case should be remanded to the trial court for a hearing on the merits of the defendant's motion. See id., 823 (*Sheldon*, *J.*, concurring in part and dissenting in part).

The defendant then petitioned for certification to appeal to this court on whether he had raised colorable claims that his sentence was imposed in an illegal manner because (1) the sentencing judge was obligated to order a competency examination but failed to do so, and (2) he was incompetent at the time he was sentenced. We granted certification, limited to the issue of whether "the Appellate Court correctly determine[d] that the trial court did not have jurisdiction over the

defendant's motion to correct an illegal sentence on the ground that the motion, on its face, did not raise a colorable claim that the defendant was incompetent at the time of his sentencing . . . ."[3] *State* v. *Ward*, 334 Conn. 911, 221 A.3d 448 (2020).

Whether the trial court had subject matter jurisdiction over the defendant's motion to correct an illegal sentence is a question of law, and our review is plenary. See, e.g., *State* v. *McCleese*, 333 Conn. 378, 386, 215 A.3d 1154 (2019). We consistently have held "that under the common law a trial court has the discretionary power to modify or vacate a criminal judgment before the sentence has been executed. . . . [But] the court loses jurisdiction over the case when the defendant is committed to the custody of the [C]ommissioner of [C]orrection and begins serving the sentence." (Internal quotation marks omitted.) *State* v. *Evans*, 329 Conn. 770, 778, 189 A.3d 1184 (2018), cert. denied, U.S. , 139 S. Ct. 1304, 203 L. Ed. 2d 425 (2019). After this occurs, the trial court has jurisdiction to modify or vacate the criminal judgment if the legislature or the state constitution grants continuing jurisdiction. See id. Additionally, the trial court retains jurisdiction to modify or vacate a judgment to the extent provided at common law. See id. As one example, at common law, the trial court maintained jurisdiction to correct illegal sentences after the defendant has been committed to the custody of the Commissioner of Correction. See id., 778–79. Practice Book § 43-22 codifies this common-law exception. See id., 779. That section 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

[3] We did not grant certification on the issue of whether the sentencing judge was obligated to sua sponte order a competency examination. Accordingly, on remand, the defendant is entitled to an evidentiary hearing only on the merits of his claim that he was incompetent at the time he was sentenced.

disposition made in an illegal manner." Practice Book § 43-22.

Because the scope of Practice Book § 43-22 is limited to the court's common-law jurisdiction to consider a defendant's claim, the claim must challenge the legality of a sentence and may not challenge "what transpired during the trial or on the underlying conviction." (Internal quotation marks omitted.) *State* v. *Evans*, supra, 329 Conn. 779. "[F]or the court to have jurisdiction over a motion to correct an illegal sentence after the sentence has been executed, the sentencing proceeding, and not the trial leading to the conviction, must be the subject of the attack." (Emphasis omitted; internal quotation marks omitted.) Id.

In *State* v. *Parker*, 295 Conn. 825, 992 A.2d 1103 (2010), this court made clear that, because our rules of practice cannot expand the trial court's jurisdiction, and because Practice Book § 43-22 codifies common law, a trial court's authority to entertain a motion to correct either "an illegal sentence" or "a sentence imposed in an illegal manner" derives from the court's common-law authority to "substitute a valid sentence" for an "invalid sentence . . . ." Id., 835. In *Parker*, we "directly address[ed]" for the first time whether, in fact, the trial court had jurisdiction under our common law to entertain a defendant's motion to correct on the ground that "his sentence was imposed in an illegal manner." Id., 833. Our review of that issue, in light of a split among the lower courts, led us to clarify that the common law authorized the court to correct both illegal sentences and sentences imposed in an illegal manner. Id., 837. "Sentences imposed in an illegal manner have been defined as being within the relevant statutory limits but . . . imposed in a way which violates [a] defendant's right . . . to be addressed personally at sentencing and to speak in mitigation of punishment . . . or his right to be sentenced by a judge relying on

accurate information or considerations solely in the record, or his right that the government keep its plea agreement promises . . . . This . . . category reflects the fundamental proposition that [t]he defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result of the sentencing process." (Citation omitted; internal quotation marks omitted.) Id., 839.[4]

Because of the limited nature of the court's jurisdiction, we more recently have explained that the trial

[4] We noted in *Parker*, however, that the category of sentences imposed in an illegal manner does "not encompass rights or procedures subsequently recognized as mandated by federal due process . . . [or] procedures mandated by state law that are intended to ensure fundamental fairness in sentencing, which, if not followed, could render a sentence invalid." (Citations omitted.) *State* v. *Parker*, supra, 295 Conn. 839–40.

The state argues that we decided *Parker* incorrectly because the common law did not provide the trial court with jurisdiction to correct sentences imposed in an illegal manner after the defendant began serving his or her sentence, and, thus, the defendant's claim falls outside the scope of Practice Book § 43-22. Although the state does not explicitly ask us to overrule *Parker*, that is, in essence, its argument. "Our determination of whether we should overrule a prior decision is guided by the doctrine of stare decisis, which counsels that a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it." (Internal quotation marks omitted.) *State* v. *Bischoff*, 337 Conn. 739, 762, A.3d (2021). "While stare decisis is not an inexorable command . . . the doctrine carries such persuasive force that we have always required a departure from precedent to be supported by some special justification. . . . Such justifications include the advent of subsequent changes or development in the law that undermine[s] a decision's rationale . . . the need to bring [a decision] into agreement with experience and with facts newly ascertained . . . and a showing that a particular precedent has become a detriment to coherence and consistency in the law . . . ." (Citation omitted; internal quotation marks omitted.) *Sepega* v. *DeLaura*, 326 Conn. 788, 798–99 n.5, 167 A.3d 916 (2017). Although we appreciate the state's comprehensive treatment of this question in its brief, because *Parker* is of relatively recent vintage, and because the state has not identified cogent reasons why permitting our trial courts, postsentencing, to entertain a defendant's claim that his sentence was imposed in an illegal manner will result in an unworkable scheme or one that will unduly prejudice the state, we decline the state's implicit request that we overrule this precedent.

court has jurisdiction over a motion to correct only if the defendant raises "a *colorable claim* within the scope of Practice Book § 43-22 that would, if the merits of the claim were reached and decided in the defendant's favor, require correction of a sentence." (Emphasis added; internal quotation marks omitted.) *State* v. *Evans*, supra, 329 Conn. 783. In deciding whether the trial court in the present case had jurisdiction to entertain the defendant's motion, it is useful to survey our case law regarding what constitutes a "colorable claim" as it concerns a challenge to the validity or legality of a sentence. The parties take different views.

The defendant argues that "the colorable claim" requirement can be interpreted in three ways, which he claims this court has applied inconsistently: (1) the claim plausibly challenges the sentence or sentencing proceedings but not the conviction; see id., 784; (2) the claim plausibly will be decided on the merits in the movant's favor; see *State* v. *McCleese*, supra, 333 Conn. 378; or (3) assuming the merits are reached and decided in the movant's favor, it is plausible that a sentence correction will be required. See *State* v. *Delgado*, 323 Conn. 801, 810, 151 A.3d 345 (2016). The defendant contends that only the first interpretation is correct, requiring the court to consider only the legal claim alleged and not the factual allegations or evidence attached in support of the motion to correct. The state disagrees, arguing that, to determine whether a claim is colorable, a court must examine whether the defendant has alleged sufficient facts to create a possibility that a factual basis exists to establish the merits of the defendant's claim, not whether the defendant has merely raised a claim that possibly challenges the sentence.[5]

[5] Alternatively, the state argues that, because the current state of the law is " 'muddied,' " we should adopt a "novel" and stricter jurisdictional framework. Because a court has jurisdiction over a motion to correct only when a sentence is actually illegal, the state suggests that the motion itself must demonstrate the illegality of the sentence on the merits to invoke the

A review of this court's jurisprudence on this issue belies the defendant's contention that this court inconsistently has interpreted and applied this "colorable claim" requirement. Rather, our case law holds that to raise a colorable claim within the scope of Practice Book § 43-22, the legal claim and factual allegations must demonstrate a possibility that the defendant's claim challenges his or her sentence or sentencing proceedings, not the underlying conviction. The ultimate legal correctness of the claim is not relevant to our jurisdictional analysis. This is consistent with the well established rule that "[t]he jurisdictional and merits inquiries are separate . . . ." *State* v. *Evans*, supra, 329 Conn. 784.

It was our Appellate Court, in an en banc ruling, that first employed the phrase "colorable claim" to measure the boundaries of a trial court's jurisdiction to decide a motion to correct. In *State* v. *Taylor*, 91 Conn. App. 788, 882 A.2d 682, cert. denied, 276 Conn. 928, 889 A.2d 819 (2005), the court explained that "[t]he relief of sentence correction is warranted when, for example, (1) the defendant's claim either raises issues relating to the legality of the sentence itself or to the legality of the sentencing procedure and (2) the allegations of the claim are in fact substantiated on a review of the merits of the claim." Id., 793. The court in *Taylor* held that the "first requisite, namely, raising a *colorable claim* within the scope of Practice Book § 43-22, for the relief afforded by that section," had not been met, and, therefore, "jurisdiction [was] lacking." (Emphasis added.) Id. The court emphasized that "[w]hether jurisdiction

trial court's jurisdiction. Under the state's proposed standard, the motion would serve as an offer of proof. If the proffer is insufficient to establish illegality, the motion must be dismissed; but if the proffer is sufficient to show illegality, the movant then must support the proffer with evidence. If illegality is established, then the trial court must correct the sentence. Because, as explained, our prior case law can be harmonized, we decline to create such a new framework.

to review the merits of a claim exists is not defined by the odds of victory on the merits of a case." Id. After examining the legal claim raised and the allegations asserted in support of it, the court in *Taylor* held that the trial court lacked jurisdiction because the defendant had not raised any claim challenging his sentence but, instead, had sought a new or amended presentence investigation report for use in his postjudgment application to the sentence review division of the Superior Court. See id., 793–94. As a result, the Appellate Court did not proceed to the second requisite, which involves the merits of the claim raised. Thus, in determining jurisdiction, the court did not mention the plausibility of the claim's merits.

Although the Appellate Court in *Taylor* injected the phrase "colorable claim" into its jurisprudence in considering motions to correct, the phrase is common to other measures of a trial court's jurisdiction, albeit the analysis of whether a "colorable claim" exists is necessarily unique to each context.[6] Importantly, in the con-

[6] For example, we have held that, under General Statutes § 22a-16, "standing . . . is conferred only to protect the natural resources of the state from pollution or destruction. . . . Accordingly, all that is required to invoke the jurisdiction of the Superior Court under § 22a-16 is a colorable claim, by any person [or entity] against any person [or entity], of conduct resulting in harm to one or more of the natural resources of this state. . . . Although it is true, of course, that the plaintiff need not prove its case at this stage of the proceedings . . . the plaintiff nevertheless must articulate a colorable claim of unreasonable pollution, impairment or destruction of the environment." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *New London*, 265 Conn. 423, 432, 829 A.2d 801 (2003). In *Fort Trumbull Conservancy, LLC*, this court held that the plaintiff failed to raise a colorable claim under § 22a-16 because, although the complaint expressly challenged both the legality of the process pursuant to which the defendants adopted the development plan and the necessity of the demolition component of the plan, there were no allegations that these errors likely caused unreasonable harm to the environment "because it [was] not evident how the defendants' failure to follow certain procedural requirements in adopting the development plan or to consider alternatives to the demolition of buildings in the Fort Trumbull area [was] likely to cause such harm. Nor [was] it apparent what the nature of any such harm might be." Id., 433. In so holding, we did not consider the merits

text of motions to correct an illegal sentence, the Appellate Court's analysis of a "colorable claim" in *Taylor* was in line with the standard this court previously had applied to this point in *Parker* and is consistent with our more recent holding in *Evans*, both of which did not consider the merits in determining the existence of a colorable claim. Specifically, in *Parker*, in determining whether the trial court retained jurisdiction over the defendant's motion to correct, we began with the premise that, "if a court imposes an invalid sentence, it retains jurisdiction to substitute a valid sentence." *State* v. *Parker*, supra, 295 Conn. 835. Although we did not clearly articulate a detailed standard to apply in determining jurisdiction, we considered both the motion's legal claim and its factual allegations. See id., 837, 840–41. We first looked to whether the defendant had raised a legal claim that fell within the scope of the common-law rule. In his motion to correct, the defendant in *Parker* claimed that his sentence had been imposed in an illegal manner because "he had been deprived of an opportunity to review his presentence report and to address inaccuracies therein; and [his attorney] had failed to review the presentence report with him or to bring any inaccuracies in the report to the court's attention." Id., 840. We recognized that "due process precludes a sentencing court from relying on

of the claim but only whether the plaintiff claimed that the challenged conduct likely resulted in harm to the environment. Id., 432–33; see *Wrotnowski* v. *Bysiewicz*, 289 Conn. 522, 528, 958 A.2d 709 (2008) (holding that plaintiff lacked standing under General Statutes § 9-323 when he did not challenge "any act or conduct by the [defendant] that . . . interprets some statute, regulation or other authoritative legal requirement, applicable to the election process . . . or . . . any mandatory statute that the defendant has failed to apply or follow," regardless of merits of that claim (citation omitted; internal quotation marks omitted)); see also *Connecticut Assn. of Boards of Education, Inc.* v. *Shedd*, 197 Conn. 554, 557 n.1, 499 A.2d 797 (1985) ("We emphasize that the question of standing is not an inquiry into the merits. A plaintiff may have standing and nevertheless lose his suit. Standing requires no more than a colorable claim of injury; a plaintiff ordinarily establishes his standing by allegations of injury.").

materially untrue or unreliable information in imposing a sentence." Id., 843. Thus, at face value, the defendant's legal claim—that the presentence report included inaccurate information—appeared to fit within the scope of Practice Book § 43-22. See id., 837.

Our analysis did not end there, however. We then considered the defendant's factual allegations to ensure that he was in fact challenging the legality of his sentence. See id., 847–52. The defendant in *Parker* did not advance any factual allegations that any specific information contained in the presentence report was false or that the trial court relied on any false information in determining his sentence. Id., 850. The factual allegations showed that the defendant was not challenging the trial court's reliance on false information in determining the sentence but, instead, focused on his counsel's failure to review the presentence report with him. See id., 847–48. We explained that these factual allegations, challenging his counsel's conduct at sentencing, were akin to a claim of ineffective assistance of counsel, which falls outside the scope of Practice Book § 43-22. See id., 850–52. This holding was not premised on the merits of the defendant's claim but on whether it raised a challenge to the sentencing proceeding itself. Even though we did not use the phrase "colorable claim," the standard we applied in *Parker* is essentially the same as the standard the Appellate Court had applied previously in *Taylor*: Based on the legal claim itself and on the allegations supporting it, did the defendant challenge his or her sentence or the sentencing procedure, and not the underlying conviction?

It was therefore no accident that this court in *Delgado* used the phrase "colorable claim," citing to *Taylor*. *State* v. *Delgado*, supra, 323 Conn. 810. *Delgado* involved a motion to correct a sentence imposed in an illegal manner, and, for the first time, we articulated the jurisdictional standard as requiring "the defendant [to raise]

a colorable claim within the scope of Practice Book § 43-22 that would, if the merits of the claim were reached and decided in the defendant's favor, require correction of a sentence." (Internal quotation marks omitted.) Id.

Not until *Evans* did we provide greater guidance on what constitutes a colorable claim within the scope of Practice Book § 43-22: "A colorable claim is one that is superficially well founded but that may ultimately be deemed invalid . . . . For a claim to be colorable, the defendant need not convince the trial court that he necessarily will prevail; he must demonstrate simply that he might prevail. . . . The jurisdictional and merits inquiries are separate; whether the defendant ultimately succeeds on the merits of his claim does not affect the trial court's jurisdiction to hear it. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged. . . . We emphasize, however, that this general principle that there is a strong presumption in favor of jurisdiction . . . in criminal cases . . . is considered in light of the common-law rule that, once a defendant's sentence has begun [the] court may no longer take any action affecting a defendant's sentence unless it expressly has been authorized to act. . . . Thus, the presumption in favor of jurisdiction does not itself broaden the nature of the postsentencing claims over which the court may exercise jurisdiction in criminal cases . . . ." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Evans*, supra, 329 Conn. 784. We then clarified that our jurisdictional analysis focuses on "whether it is plausible that the defendant's motion challenged the sentence, rather than the underlying trial or conviction . . . ." Id., 784–85. In doing so, "we consider the nature of the specific legal claim raised therein." Id., 785. Thus, it is not the possibility of success

on the merits of the claim raised that creates jurisdiction but the possibility that the claim challenges the sentence and not the underlying conviction.

Our application of these legal principles in *Evans* supports our interpretation of this case law. In *Evans*, the defendant claimed in his motion to correct that his sentence was imposed in an illegal manner because it exceeded the relevant statutory limits under General Statutes (Rev. to 2011) §§ 21a-278 (b) and 21a-277 (a),[7] and "the fact triggering the mandatory minimum [sentence] was not found by a proper [fact finder] or admitted by the defendant . . . ." (Internal quotation marks omitted.) Id., 775. Looking at the specific legal claim raised, including the allegations offered in support, this court determined that the defendant was not challenging his conviction under § 21a-278 (b) but, rather, was "seek[ing] resentencing, claiming that § 21a-278 (b) merely enhances the penalty available under § 21a-277 (a) . . . ." Id., 785. Although we noted that, given the lack of case law regarding these statutes, "the defendant's interpretation of the narcotics statutory scheme [was] sufficiently plausible to render it colorable for the purpose of jurisdiction over his motion," we concluded that "the fact that the defendant does not ask us to disturb his conviction under § 21a-278 (b), but merely seeks remand for resentencing, renders [the] case distinguishable from [cases challenging the conviction] . . . ." (Citation omitted.) Id., 786. "Because this claim [was] colorably directed to the validity of the sentence rather than the underlying conviction, we conclude[d] that the trial court properly exercised jurisdiction over the defendant's motion to correct." Id., 787–88. Thus, in *Evans*, our determination of colorability was based on the possibility that the defendant's claim fell within the scope of Practice Book § 43-22—in other words,

[7] Hereafter, all references to §§ 21a-277 and 21a-278 are to the 2011 revision of the General Statutes.

whether the claim possibly challenged the defendant's sentence or sentencing procedure. Contrary to the defendant's contention, in so concluding,[8] we examined the factual allegations to verify that the defendant in fact was challenging his sentence and not his conviction, consistent with our analysis in both *Parker* and *Taylor*. Although this court only recently began using the phrase "colorable claim," our use of that phrase in no way alters the applicable standard for determining jurisdiction on a motion to correct.

The state does not dispute our interpretation of *Evans*. Both parties, however, argue that *Evans* is inconsistent with *Delgado*, as well as with our more recent analysis

[8] In *Evans*, we acknowledged that the dissent in *State* v. *McGee*, 175 Conn. App. 566, 586, 168 A.3d 495 (*Bishop*, *J.*, dissenting), cert. denied, 327 Conn. 970, 173 A.3d 953 (2017), thoughtfully noted that our case law lacks clarity regarding when a motion to correct an illegal sentence challenges a sentence rather than a conviction, especially when the claim involves double jeopardy violations for multiple punishments. *State* v. *Evans*, supra, 329 Conn. 781 n.13. To address this lack of clarity, Judge Bishop "suggested revisions to the case law governing motions to correct, including the imposition of time limitation[s] and limiting vacation of convictions to cases in which 'it is obvious from the criminal information and verdict that convictions violate the protection against double jeopardy,' and 'that such remedial action can only be taken before a defendant has commenced serving his or her sentence.' " Id., quoting *State* v. *McGee*, supra, 595–98 (*Bishop*, *J.*, dissenting). In *Evans*, however, we decided to "leave the specific issues identified by Judge Bishop [for] another day . . . [but] acknowledge[d] that the demarcation between conviction and sentence may not always be crystal clear, particularly in cases presenting [double jeopardy] issues, and may invoke the presumption in favor of jurisdiction in cases in which the defendant has made a colorable—however doubtful—claim of illegality affecting the sentence, rather than the underlying conviction." (Emphasis omitted.) *State* v. *Evans*, supra, 781 n.13.

Both the defendant and the state in the present case rely on Judge Bishop's dissent in *McGee* to support their respective arguments that we should clarify or overhaul our case law regarding motions to correct. Judge Bishop's dissent, however, involved the blurred lines between sentencing proceedings and trial proceedings, especially in relation to double jeopardy issues. He did not identify any confusion regarding this court's analysis of whether a defendant has raised a colorable claim under Practice Book § 43-22. Thus, we need not address the specific issues Judge Bishop identified.

in *McCleese*. According to the defendant, our holding in *Delgado* conflicts with *Evans* because, although we did not analyze the effect of our adoption of the phrase "colorable claim" in *Delgado*, our analysis made clear that, to be colorable, the defendant had to show it was possible that his sentence would be corrected. In contrast, according to the state, *Delgado* conflicts with *Evans* because, in applying the "colorable claim" standard, this court considered not only whether the claim was challenging the legality of the sentence, and not the validity of the conviction, but also whether there was a possibility that the defendant could succeed on the merits of the claim. *Delgado* and *Evans*, however, can be harmonized.

In *Delgado*, the defendant filed a motion to correct, claiming that his sentence of sixty-five years of imprisonment without parole was illegal under the United States Supreme Court's juvenile sentencing cases; see *State* v. *Delgado*, supra, 323 Conn. 802–805; including *Miller* v. *Alabama*, 567 U.S. 460, 465, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), which requires "(1) that a lesser sentence than life without parole must be available for a juvenile offender; and (2) that the sentencer must consider age related evidence as mitigation when deciding whether to irrevocably sentence juvenile offenders to a [term of life imprisonment, or its equivalent, without parole]." (Internal quotation marks omitted.) *State* v. *Delgado*, supra, 806. In *Delgado*, the trial court dismissed the motion for lack of jurisdiction on the ground that "the defendant was not sentenced pursuant to a mandatory sentencing scheme . . . ." Id., 809 n.6. After the trial court's judgment, the legislature enacted Public Acts 2015, No. 15-84 (P.A. 15-84), codified as amended at General Statutes § 54-125a, which provided the defendant with the possibility of parole. Id., 807.

In *Delgado*, we explained that, at the time the trial court ruled on the defendant's motion to correct, the

trial court "incorrectly concluded that it lacked jurisdiction over the defendant's motion to correct at that time. The motion, at that point, raised a viable claim by alleging that a sentence of life imprisonment without parole had been imposed without consideration of youth related mitigating factors." Id., 809 n.6. Nevertheless, we ultimately upheld the trial court's dismissal of the motion to correct on the alternative ground that, because of the change in the law, the defendant's sentence no longer was illegal under *Miller*, and, thus, the claim fell outside the scope of Practice Book § 43-22. Id., 816.

Specifically, we explained: "Because [federal law does] not require a trial court to consider any particular mitigating factors associated with a juvenile's young age before imposing a sentence that includes an opportunity for parole, the defendant can no longer allege, after the passage of P.A. 15-84, that his sentence was imposed in an illegal manner on the ground that the trial court failed to take these factors into account. Such an allegation is an essential predicate to the trial court's jurisdiction to correct the sentence. An allegation that the court failed to consider youth related factors before imposing a sentence of life with parole is not sufficient to establish a jurisdictional basis for correcting a sentence. . . . We therefore conclude that the defendant has not raised a colorable claim of invalidity that, if decided in his favor, would require resentencing." (Citations omitted; emphasis omitted.) Id., 812–13. "In view of the . . . established rule that a sentencing court's jurisdiction to correct a sentence is limited to sentences that are invalid . . . we conclude that the trial court no longer possesses jurisdiction over the defendant's motion to correct." (Citations omitted.) Id., 813.

Subsequently, in *Evans*, we addressed our holding in *Delgado*: "[O]ur recent decision in [*Delgado*] appeared to analyze a motion to correct an illegal sentence in

jurisdictional terms when subsequent legal developments affected its merits. . . . We emphasize that *Delgado* does not stand for the proposition that the merits of a motion to correct . . . are inextricably intertwined with the court's jurisdiction over the motion. Rather, we understand *Delgado* to be, in essence, a mootness decision, insofar as the subsequent statutory changes afforded the defendant all of the relief to which he was entitled from his pending motion to correct." (Citations omitted.) *State* v. *Evans*, supra, 329 Conn. 787–88 n.16. Thus, in *Evans*, we explained that the statutory amendment at issue negated the defendant's challenge to the sentence, and, thus, the defendant was no longer challenging an illegal sentence. See *State* v. *McCleese*, supra, 333 Conn. 414. We explained that, if a change in the law renders an illegal sentence legal, then the jurisdictional prerequisite for correcting an illegal sentence—that the claim challenges the sentence, not the conviction—is missing, and, thus, the claim falls outside the scope of Practice Book § 43-22. See *State* v. *Boyd*, 323 Conn. 816, 820–21, 151 A.3d 355 (2016) (relying on *Delgado* to hold that court lacked jurisdiction because "the defendant [could] no longer allege, after the enactment of P.A. 15-84, that his sentence was imposed in an illegal manner on the ground that the trial court failed to take [the *Miller*] factors into account"). As a result, the defendant's claim in *Delgado* did not fall within the scope of § 43-22, rendering the *outcome* akin to mootness. We did not consider the possibility of success on the merits of the defendant's claim. Rather, we considered the specific legal claim and allegations and held that there no longer was a possibility that the defendant could challenge the legality or validity of his sentence. See *State* v. *Delgado*, supra, 323 Conn. 812.

Neither does our subsequent holding in *McCleese* conflict with *Evans* or *Delgado*. In *McCleese*, the defendant sought to overturn our holding in *Delgado* by raising

various constitutional challenges to P.A. 15-84 that, if successful, would have required this court to hold that P.A. 15-84 did not replace the defendant's illegal sentence with a legal sentence. See *State* v. *McCleese*, supra, 333 Conn. 387, 409. This would have created a possibility that the defendant could challenge the legality of his sentence. See id., 386–87. Because of the unique nature of the defendant's claim, we had to consider the merits of the defendant's constitutional challenges to P.A. 15-84 to determine whether a colorable claim falling under the scope of Practice Book § 43-22 existed. Because the claim raised in the present case is distinguishable from the unique claims raised in *McCleese*, we do not consider our analysis in *McCleese* to depart from the standard applied in *Evans*.

Our most recent case on this issue supports our conclusion that *Delgado* and *McCleese* do not alter or conflict with the test for colorability established in *Parker* and *Evans*. In *State* v. *Smith*, 338 Conn. 54, 256 A.3d 615 (2021), the defendant's motion to correct involved a claim regarding cumulative convictions that violate the double jeopardy clause, thereby arguably affecting the defendant's sentence. See id., 58. We held that, "under *Evans*, when cumulative convictions affect a sentence in any manner, the trial court has jurisdiction to entertain a motion to correct an illegal sentence."[9] (Emphasis omitted.) Id., 63. Relevant to the issue of colorability, we explained, in reaching this conclusion, that this court may rely on the presumption in favor of jurisdiction when "the defendant has made a colorable—*however doubtful*—claim of illegality affecting the sentence, rather than the underlying conviction." (Emphasis altered; internal quotation marks omitted.)

[9] In *Smith*, we questioned the validity of our holding in *Evans* that a challenge to cumulative convictions constitutes a challenge to the sentence, not the conviction, but we did not question the validity of the colorability test applied in *Evans*. See *State* v. *Smith*, supra, 338 Conn. 62–63.

Id., 62–63. The emphasized language demonstrates that jurisdiction is not based on the possibility of success on the merits of the defendant's claim; rather, what must be colorable is that the claim challenges the legality of the sentence, not the conviction. In *Smith*, however, the defendant sought only to modify his conviction, not his sentence. See id., 58. Specifically, he claimed that his sentence was illegal because the court merged his convictions of felony murder and manslaughter instead of vacating his conviction on the manslaughter charge. Id. Thus, we held that the trial court lacked jurisdiction. Id., 64.

Decisions of our Appellate Court consistently have applied this analysis. See *State* v. *Boyd*, 204 Conn. App. 446, 455, 253 A.3d 988 (considering both legal claim and factual allegations in determining that jurisdiction was lacking and holding that, although "the motion to correct an illegal sentence nominally challenges the sentencing proceedings," factual allegations showed that defendant was challenging his conviction), cert. denied, 336 Conn 951, 251 A.3d 617 (2021); *State* v. *Battle*, 192 Conn. App. 128, 134–35, 217 A.3d 637 (2019) (considering legal claim and factual allegations in concluding that defendant brought colorable claim challenging his sentence but not addressing possibility of success on merits), aff'd, 338 Conn. 523, A.3d (2021); *State* v. *Mukhtaar*, 189 Conn. App. 144, 149–51, 207 A.3d 29 (2019) (looking at factual allegations in holding that trial court lacked jurisdiction because defendant was challenging his conviction, not his sentence); *State* v. *Walker*, 187 Conn. App. 776, 788, 204 A.3d 38 (2019) ("[i]n determining whether it is plausible that the defendant's motion challenged the sentence, rather than the underlying trial or conviction, we consider the nature of the specific legal claim raised therein" (internal quotation marks omitted)), cert. denied, 331 Conn. 914, 204 A.3d 703 (2019); *State* v.

Antwon W., 179 Conn. App. 668, 675–76, 181 A.3d 144 (concluding, after looking at both legal claim and allegations, that "[t]he defendant's motion did not merely raise a collateral attack on the judgment of conviction but, on its face, attacked the manner in which his sentence was imposed"), cert. denied, 328 Conn. 924, 180 A.3d 965 (2018). Notwithstanding all of this recent authority, a majority of the Appellate Court panel in the present case relied on the older decision of *State* v. *Jason B.*, 176 Conn. App. 236, 244–45, 170 A.3d 139 (2017), in holding that, for a trial court to have jurisdiction, a defendant must establish the possibility that he could succeed on the merits of his claim. See *State* v. *Ward*, supra, 193 Conn. App. 807.

In *Jason B.*, the Appellate Court summarized our holding in *Delgado* as requiring that, "for the trial court to have jurisdiction over a defendant's motion to correct a sentence that was imposed in an illegal manner, the defendant must put forth a *colorable claim that his sentence, in fact, was imposed in an illegal manner*. A colorable claim is '[a] claim that is legitimate and that may reasonably be asserted, given the facts presented and the current law (or a reasonable and logical extension or modification of the current law).' Black's Law Dictionary (10th Ed. 2014) p. 302. For jurisdictional purposes, to establish a colorable claim, a party must demonstrate that there is a possibility, rather than a certainty, that a factual basis necessary to establish jurisdiction exists . . . such as, in the present context, *that the sentencing court relied on inaccurate information or considerations that were outside of the record*." (Citation omitted; emphasis added.) *State* v. *Jason B.*, supra, 176 Conn. App. 244–45. In other words, the court in *Jason B.* required that the defendant establish the possibility that he could succeed on the merits of his claim, rather than the possibility that he was challenging his sentence or sentencing procedure.

Although the court in *Jason B.* was correct as to the definition of a colorable claim, as explained, our holding in *Delgado* does not require the defendant to show that he raised a claim that possibly could succeed on the merits. Rather, he must raise a claim that possibly falls within the scope of Practice Book § 43-22—that is, that it challenges the sentence or sentencing procedure, not the conviction. In determining if the defendant raised such a claim, we consider both the legal claim raised and the factual allegations, but, as Judge Sheldon indicated, the defendant is required to show only "that there is a possibility, rather than a certainty" that the defendant challenges the sentence or sentencing procedure. (Internal quotation marks omitted.) *State* v. *Ward*, supra, 193 Conn. App. 817 (*Sheldon*, *J.*, concurring in part and dissenting in part).

In the present case, the defendant claimed in his motion to correct that the trial court imposed his sentence in an illegal manner because he was incompetent at the time of sentencing. It is well established that the defendant had both a statutory and constitutional right to be tried and sentenced while he was competent. See, e.g., *State* v. *Ross*, 269 Conn. 213, 270, 849 A.2d 648 (2004); *State* v. *DeAngelis*, 200 Conn. 224, 242, 511 A.2d 310 (1986); see also General Statutes § 54-56d (a). A claim that he was incompetent at the time of sentencing clearly challenges "the character of the procedure which [led] to the imposition of [the] sentence," not his underlying criminal conviction. (Internal quotation marks omitted.) *State* v. *Parker*, supra, 295 Conn. 839. Thus, at least nominally, the defendant raised a claim that falls within the scope of Practice Book § 43-22. See *State* v. *Mukhtaar*, supra, 189 Conn. App. 150 n.6 ("[w]e note that a claim regarding a defendant's competency at the sentencing proceeding . . . would fall within the jurisdiction of the trial court for the purpose of a motion

to correct an illegal sentence filed pursuant to Practice Book § 43-22" (citations omitted)).

Additionally, the factual allegations and evidence the defendant attached in support of his motion make clear that his motion raised a colorable claim challenging his sentencing. At the time of sentencing, both the prosecutor and defense counsel referred to his psychiatric background, including his diagnosis of schizophrenia. The defendant alleged that the police report, psychiatric evaluation, and his records from the department, although not part of the record at sentencing,[10] established his lack of competence. The police report and psychiatric evaluation show that the defendant previously had suffered from hallucinations and had attempted suicide on multiple occasions. The report also stated that the defendant had not received treatment for his mental health for many years, contributing "to an increased likelihood of worse symptoms, more chronic symptoms and/or more frequent exacerbation of symptoms." The records from the department show that the defendant refused to take his medication and suffered from auditory hallucinations approximately nine months before sentencing. Once he started taking his medication again, he continued to report having paranoid thought processes and ideas. The defendant

[10] We note that, before the Appellate Court, the state argued that "the defendant's claim that he was incompetent when he was sentenced, as evidenced by information that was never before the sentencing court, does not fall within the purview of Practice Book § 43-22 because the claim does not relate to any alleged error on the part of the sentencing court. . . . [Specifically], the state argues that without evidence that the sentencing court knew of the information in the department's records at the time of sentencing, the defendant could not have been sentenced in an illegal manner." *State* v. *Ward*, supra, 193 Conn. App. 820 n.2 (*Sheldon*, *J.*, concurring in part and dissenting in part). The majority did not address this argument, and Judge Sheldon specifically rejected it. The state has not advanced this argument before this court. Additionally, this argument relates to the merits of the defendant's claim, not to the colorability of that claim. Thus, we do not address it.

again missed several doses of his medication in the two months leading up to his sentencing. Less than two weeks before his sentencing, the defendant alleged and the records show that he did not take his medication and was hearing voices. The records also show that the defendant misstated his sentence multiple times in various ways both before and after his sentencing.

Relying on these facts, the defendant argued in his motion to correct: "[T]he defendant's mental health history, his repeated failure to maintain his medication regimen, his continued auditory hallucinations and paranoia, and his mistaken belief regarding his actual sentence throughout the plea and sentencing processes [demonstrated] that he did not understand his plea or sentencing proceedings and was incompetent at both. The issue here, however, is his sentencing, and, given his incompetence at the time, it was imposed in an illegal manner."

Although the defendant alleged that he was incompetent at the plea proceedings and relied on records regarding his mental health from before the plea proceedings, the allegations and evidence make clear that the defendant was raising a challenge to the sentencing procedure, not his conviction. The defendant merely relied on his lengthy and ongoing mental health problems to support his claim that he was incompetent at the time of sentencing. He has provided evidence that he suffered from mental health problems in the weeks leading up to and following his sentencing. Whether such evidence is sufficient to establish the merits of the defendant's claim that he was incompetent at the time of sentencing is a different question and not relevant to our analysis. The factual allegations and evidence offered in support of the defendant's claim suffice to show a possibility that a factual basis necessary to establish jurisdiction exists—that he challenges the

legality of his sentence, not his conviction.[11] Accordingly, we conclude that the Appellate Court improperly affirmed the trial court's dismissal of the defendant's motion to correct.

Nevertheless, the state argues in the alternative that, even if the trial court had jurisdiction, we should affirm the Appellate Court's judgment because the trial court correctly determined the merits of the defendant's claim. Specifically, the state argues that the trial court decided the merits because it stated in its memorandum of decision that the "sentencing procedure . . . complied with all constitutional and statutory requirements," and that the defendant was presumed competent.

Contrary to the state's contention, the trial court never explicitly ruled on the merits of the defendant's claim and made no findings as to whether the proffered evidence overcame the presumption of competency. The trial court's memorandum of decision was limited to the issue of jurisdiction. Thus, we agree with Judge Sheldon that the defendant is entitled to a hearing on

[11] The Appellate Court majority concluded that the defendant did not establish a sufficient factual basis necessary to establish that jurisdiction exists because these facts did not raise the possibility that the defendant was incompetent at the time of sentencing. *State* v. *Ward*, supra, 193 Conn. App. 812. More specifically, the majority determined that the defendant did not allege sufficient facts to overcome the presumption of competency under § 54-56d, reasoning that the reports from the department were dated from before and after sentencing and, thus, did not show the defendant's mental state at the time of sentencing. See id., 812–13. Additionally, the majority determined that the defendant's misunderstanding of the details of his plea was not sufficient to overcome the presumption of competency. See id., 813. We need not address whether the alleged facts are sufficient to overcome the presumption of competency, which goes to the merits of the defendant's claim. For the same reason, we need not address the state's argument that the defendant failed to raise a colorable claim because he did not allege or establish that his failure to take medication could be linked to his competence at the time of sentencing. These are merits issues that, presumably, will be decided on remand.

the merits of his motion, and the case must be remanded for such a hearing. See *State* v. *Bozelko*, 154 Conn. App. 750, 765–66, 108 A.3d 262 (2015).

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the judgment of the trial court and to remand the case to that court with direction to conduct a hearing on the merits of the defendant's motion to correct.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* DANIEL RICHARD STREIT
(SC 20336)

Robinson, C. J., and McDonald, D'Auria, Kahn, Ecker and Keller, Js.

Syllabus

Convicted of manslaughter in the first degree in connection with the stabbing death of the victim, the defendant appealed, claiming that the trial court abused its discretion by precluding him from introducing evidence, in support of his self-defense claim, that the victim had searched a retail website for weapons in the days preceding the stabbing. The defendant and the victim had been involved in two fights the week before the stabbing, and, after each altercation, the victim threatened to kill the defendant. The stabbing at issue occurred a few days later, after the victim approached the defendant. The defendant filed a motion in limine, seeking to introduce into evidence a forensic analysis of data extracted from the victim's cell phone showing that the phone had been used to conduct certain online searches for weapons between the first fight and the stabbing. The court denied the motion in limine, concluding that, because there was no evidence that the victim had purchased any of the items he searched for or that the defendant was aware of the victim's search activity at the time of the stabbing, the search history was not relevant to prove the defendant's state of mind with respect to whether his fear of the victim was subjectively and objectively reasonable under the provisions (§ 4-4 (a) (2) and (b)) of the Connecticut Code of Evidence permitting an accused in a homicide case to introduce evidence of the victim's violent character under certain circumstances. The court further concluded that the search history was not admissible to prove that the victim was the initial aggressor because the victim's act of searching for weapons did not result in a criminal conviction. On the defendant's

appeal from the judgment of conviction, *held* that the trial court did not abuse its discretion in denying the defendant's motion seeking to introduce evidence of the victim's online searches for weapons: a defendant in a homicide case, after laying a proper foundation that he acted in self-defense, may introduce evidence of the victim's violent character to prove that the victim was the aggressor, regardless of whether such character evidence had been communicated to the accused prior to the homicide, and such violent character can be proven by opinion or reputation testimony, or evidence of the victim's conviction of violent crimes, but not by specific violent acts not resulting in a criminal conviction; in the present case, the defendant's lack of awareness of the victim's online searches rendered them irrelevant for purposes of establishing the defendant's state of mind because they could not have impacted the defendant's subjective belief that he needed to resort to deadly physical force, and the defendant did not claim that the searches themselves constituted violent crimes; moreover, the defendant could not prevail on his claim that the search history was admissible as a prior act of misconduct under the relevant provision (§ 4-5 (c)) of the Connecticut Code of Evidence, because, even if the searches were evidence of prior misconduct admissible to prove the victim's state of mind, § 4-5 (c) does not apply to evidence of the victim's violent character in homicide cases, which is specifically covered by § 4-4 (b), and § 4-4 trumps the more general rules set forth in § 4-5 regarding the admissibility of specific act evidence.

Argued April 29—officially released October 22, 2021*

Procedural History

Two part substitute information charging the defendant, in the first part, with manslaughter in the first degree and, in the second part, with being a persistent dangerous felony offender, brought to the Superior Court in the judicial district of New Haven, where the first part of the information was tried to the jury before *Vitale*, *J.*; verdict of guilty; thereafter, the defendant was presented to the court, *Clifford*, *J.*, on a plea of guilty as to the second part of the information; judgment of guilty in accordance with the verdict and plea, from which the defendant appealed to this court. *Affirmed.*

Gary A. Mastronardi, for the appellant (defendant).

* October 22, 2021, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Robert J. Scheinblum, senior assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, state's attorney, and *Karen Roberg*, senior assistant state's attorney, for the appellee (state).

Opinion

ROBINSON, C. J. In this appeal, we consider whether evidence that the victim had conducted Internet searches for dangerous weapons in the days preceding the altercation at issue is admissible in support of a criminal defendant's claim of self-defense. The defendant, Daniel Richard Streit, appeals[1] from the judgment of conviction, rendered after a jury trial, of manslaughter in the first degree in violation of General Statutes § 53a-55 (a) (1). On appeal, the defendant claims that the trial court abused its discretion in determining that evidence that the victim had searched an Internet shopping site for weapons in the days leading up to the altercation in which the defendant fatally stabbed the victim was both irrelevant and not admissible as uncharged misconduct evidence under § 4-5 (c) of the Connecticut Code of Evidence.[2] We disagree and, accordingly, affirm the judgment of the trial court.

The record reveals the following facts, which the jury reasonably could have found, and procedural history. At all relevant times, the defendant lived in New Haven

[1] The defendant appeals directly to this court pursuant to General Statutes § 51-199 (b) (3).

[2] Section 4-5 of the Connecticut Code of Evidence provides in relevant part: "(a) General rule. Evidence of other crimes, wrongs or acts of a person is inadmissible to prove the bad character, propensity, or criminal tendencies of that person except as provided in subsection (b).

* * *

"(c) When evidence of other crimes, wrongs or acts is admissible. Evidence of other crimes, wrongs or acts of a person is admissible for purposes other than those specified in subsection (a), such as to prove intent, identity, malice, motive, common plan or scheme, absence of mistake or accident, knowledge, a system of criminal activity, or an element of the crime, or to corroborate crucial prosecution testimony. . . ."

with his girlfriend, Kathleen O'Dwyer. The defendant was also dating Kathryn Wallace, who was the "on-again, off-again" girlfriend of Keith Wylie, the victim. After the victim broke into Wallace's home in September, 2017, which resulted in the issuance of a protective order and second degree breach of peace charges against him, Wallace no longer felt safe at her home and moved in with O'Dwyer and the defendant.

On the morning of October 3, 2017, the defendant and the victim engaged in a fistfight near the APT Foundation (clinic), a methadone clinic on Congress Avenue in New Haven where Wallace was participating in a treatment program. After the fight was broken up, the victim threatened to kill the defendant. The defendant and Wallace, who was also involved in the fight, returned to their residence, where O'Dwyer photographed their injuries—the defendant had cuts and scrapes, and Wallace had a black eye. Several days later, the victim and the defendant fought again in front of the clinic. After this second fight was broken up, the victim, who had a reputation among the participants in the treatment program as a violent and aggressive person, once again threatened to kill the defendant. The defendant previously had expressed animosity toward and a desire to "get" the victim, or to "kick his ass," because of the victim's physically abusive behavior toward Wallace when they were dating.

Several days later, on Saturday, October 7, 2017, the defendant and Wallace walked to the clinic. While Wallace went inside, the defendant, who was wearing latex gloves on both hands and carrying a Smith & Wesson "special ops" knife, waited in front of the clinic. The victim arrived approximately thirty minutes later, parked his car, exited his vehicle, and walked directly toward the defendant. According to the defendant's statement to the police, the victim told him that they were " 'going to finish this right now.' " The defendant

then lunged at the victim, and a fight ensued between them on the sidewalk in front of the clinic; during the fight, there was a struggle over the knife, and the defendant stabbed the victim seventeen times, causing nine significant wounds to the victim's neck, torso, and right arm that resulted in his death. During the altercation, the defendant was yelling for someone to pull the victim off of him. Once the defendant was able to, he and Wallace ran from the scene, with the defendant ripping off his gloves and the blood-stained Spiderman sweatshirt that he had been wearing and discarding them while running. A few minutes later, New Haven police officers responded to a call about the fight and apprehended the defendant and Wallace nearby on York Street. The police arrested the defendant, who had visible facial and hand injuries at that time. When arrested, the defendant stated that he had no regret for what had happened and that the victim "got what he deserved."

Subsequently, the state charged the defendant with manslaughter in the first degree, to which he pleaded not guilty, and the case was tried to a jury. At trial, the defendant sought to establish that he had acted in self-defense.[3] In support of his claim of self-defense, the defendant filed a motion in limine seeking permission to offer into evidence an "[e]xtraction [r]eport," generated using forensic software called Cellebrite, that a forensic examiner had used to examine the victim's cell phone, which had been seized by the police. The extraction report indicated that, between October 3 and the fatal altercation on October 7, the victim's cell phone had been used to search a shopping website, eBay, for weapons, including stun guns, mace guns, and brass knuckle gloves. The defendant argued that these searches, conducted after the victim had threatened to kill the defen-

[3] At trial, the state's theory of the case was that the defendant had "a bruised ego" from losing the fights earlier in the week that had led him to "attack" the victim.

dant on October 3, were relevant to his claim of self-defense—even though he was not personally aware of them—as evidence (1) of the state of mind of both the victim and the defendant with respect to the subjective and objective reasonableness of the defendant's fear of the victim, and (2) that the victim was the initial aggressor.[4] As a basis for admitting the extraction report, the defendant cited §§ 4-1, 4-2 and 4-4 (a) (2) of the Connecticut Code of Evidence[5] and the Massa-

[4] The defendant argued that, although he had not been aware of the victim's Internet search for weapons, the evidence could be "highly relevant in helping the jury to determine whether the defendant's story of self-defense [was] truthful. The jury's knowledge that [the victim] was conducting searches for various types of weapons adds significant credence to the claim that his escalating and focused hostility toward the defendant culminated in his aggressive conduct on [October 7, 2017]." The defendant also argued that, not only was the search evidence relevant to the victim's intent and state of mind, but it would also corroborate the testimony of a defense witness, who was anticipated to—and did—reveal that the victim had threatened to kill the defendant.

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

* * *

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

* * *

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

"(c) Specific instances of conduct on cross-examination of a character witness. A character witness may be asked, in good faith, on cross-examination about specific instances of conduct relevant to the trait of character to which the witness testified to test the basis of the witness' opinion." (Emphasis added.)

chusetts Supreme Judicial Court's decision in *Commonwealth* v. *Carey*, 463 Mass. 378, 974 N.E.2d 624 (2012). The defendant also sought an "extension" of this court's decision in *State* v. *Miranda*, 176 Conn. 107, 405 A.2d 622 (1978). He further relied on his federal and state constitutional rights to present a defense. The state objected to the defendant's motion in limine.

After a hearing, the trial court agreed with the state's objection and denied the defendant's motion in limine. Considering the defendant's claims of relevance in the context of the well established subjective-objective standard that governs claims of self-defense under General Statutes § 53a-19 (a);[6] see, e.g., *State* v. *O'Bryan*, 318 Conn. 621, 632–33, 123 A.3d 398 (2015); the trial court concluded that the proffered evidence was outside the "parameters specific to issues regarding self-defense and the defense of others with regard to past conduct related to the complainant or decedent, vis-à-vis the defendant in such a case." Assuming the authenticity of the searches and that the victim was the person who had conducted them, the trial court first observed that there was no evidence "that indicated anything was actually purchased" as a result of the Internet searches. Emphasizing that there was no evidence that the defendant was aware of the Internet searches or that any of the weapons he searched for were found on the victim's

[6] When a defendant raises a claim of self-defense, § 53a-19 (a) requires the state to disprove beyond a reasonable doubt that the defendant "reasonably believes both that (1) his attacker is using or about to use deadly physical force against him, or is inflicting or about to inflict great bodily harm, and (2) that deadly physical force is necessary to repel such attack. . . . We repeatedly have indicated that the test a jury must apply in analyzing the second requirement, i.e., that the defendant reasonably believed that deadly force, as opposed to some lesser degree of force, was necessary to repel the victim's alleged attack, is a subjective-objective one. The jury must view the situation from the perspective of the defendant. Section 53a-19 (a) requires, however, that the defendant's belief ultimately must be found to be reasonable." (Internal quotation marks omitted.) *State* v. *O'Bryan*, 318 Conn. 621, 632, 123 A.3d 398 (2015).

person or at the crime scene, the court reasoned that the evidence of the searches had a "clear" prejudicial effect insofar as they were not relevant to the defendant's state of mind for purposes of admissibility under § 4-4 (b) of the Connecticut Code of Evidence. The trial court further determined that the searches were not admissible to prove that the victim was the initial aggressor because, under the line of cases following *State* v. *Miranda*, supra, 176 Conn. 107, such as *State* v. *Whitford*, 260 Conn. 610, 799 A.2d 1034 (2002), evidence of specific acts of violence not resulting in a criminal conviction may not be used to establish a victim's violent character.[7] Ultimately, the trial court determined that the "jury ha[d] . . . ample evidence to consider as to the nature of the relationship between the defendant and [the victim] sufficient to [allow the defendant to] make the argument with regard to his subjective state of mind and his fear of [the victim]. The court conclude[d] that [the Internet search evidence was] not admissible or relevant or material to any issue the jury must decide, and, even if [the evidence had] some slight relevancy, it ha[d] the potential to confuse or arouse the jury [such] that any probative value [was] outweighed by its prejudicial effect."[8]

Thereafter, the jury returned a guilty verdict on the manslaughter charge; the defendant subsequently pleaded guilty to part B of the information seeking an enhanced penalty pursuant to General Statutes § 53a-40 (a) on the ground that he was a persistent dangerous felony

[7] Citing the Appellate Court's decision in *State* v. *Byrd*, 136 Conn. App. 391, 397, 44 A.3d 897, cert. denied, 306 Conn. 906, 52 A.3d 732 (2012), which held that a victim's conviction of criminal possession of a firearm by itself is not a crime of violence, the trial court further stated: "It's hard to say, under these circumstances, [that] a search on eBay, [which is] not even a conviction, would be relevant to the [victim's] state of mind when the defendant was not even aware of it."

[8] The trial court subsequently denied the defendant's motion to reconsider the denial of the motion in limine.

offender.[9] After denying the defendant's motions for a new trial and a judgment of acquittal notwithstanding the verdict, the trial court rendered judgment of conviction in accordance with the verdict and plea and sentenced the defendant to a total effective sentence of thirty-eight years' imprisonment. This appeal followed.

On appeal, the defendant claims that the trial court improperly denied his motion in limine because the victim's Internet searches were relevant to prove the state of mind of both the victim and the defendant under the principles discussed in *State* v. *Miranda*, supra, 176 Conn. 107, and were not, contrary to the trial court's conclusion, offered to establish the victim's violent character. The defendant renews his reliance on *Commonwealth* v. *Carey*, supra, 463 Mass. 379–80, 392, in which the court upheld the admission of a criminal defendant's Internet searches about strangulation as probative evidence of his intent in a sexual assault and attempted murder case, in support of his argument that the victim's repeated Internet searches for weapons, made within the week before the fatal altercation and after their fights, " 'corroborat[e] and validat[e]' " the legitimacy of the victim's threat to the defendant, along with the defendant's fear of the victim. The defendant also contends that the trial court abused its discretion in declining to admit evidence of the searches as evidence of prior misconduct under § 4-5 (c) of the Connecticut Code of Evidence. The defendant argues that the timing and voluminous nature of the searches establish the victim's intent to arm and prepare himself for a confrontation with the defendant. The defendant further contends that these improper evidentiary rulings require reversal because they substantially swayed the jury's verdict.

[9] We note the trial court, *Clifford, J.*, accepted the defendant's guilty plea to part B of the information. All other references in this opinion to the trial court are to Judge Vitale, who presided over the defendant's trial and sentencing, and made the evidentiary ruling at issue in this appeal.

In response, the state contends that the trial court properly exercised its discretion to exclude the evidence because the victim's Internet searches were not admissible evidence of his violent character for either of the two purposes permitted by § 4-4 (a) (2) of the Connecticut Code of Evidence, namely, to establish (1) the defendant's state of mind or apprehensions about the victim's violent character, or (2) that the victim was the initial aggressor. Specifically, the state contends that the evidence was not admissible for the first purpose because the defendant was not aware of the searches at the time of the altercation, which renders *Commonwealth* v. *Carey*, supra, 463 Mass. 378, distinguishable, and it was not admissible for the second purpose because our precedent allows only the admission of specific violent acts that result in criminal convictions. See, e.g., *State* v. *Osimanti*, 299 Conn. 1, 14, 6 A.3d 790 (2010). Citing *State* v. *Byrd*, 136 Conn. App. 391, 397, 44 A.3d 897, cert. denied, 306 Conn. 906, 52 A.3d 732 (2012), which held that a conviction for criminal possession of a firearm was not a crime of violence admissible to show a murder victim's violent character, the state posits, "a fortiori, that a mere search for weapons on eBay could not have had any meaningful bearing on the victim's state of mind at the time of the fatal altercation, let alone the reasonableness of the defendant's fear of the victim when the defendant, who was ignorant of the victim's Internet activity, approached him." (Emphasis omitted.) The state also argues that, even if the evidence were relevant, including as uncharged misconduct under § 4-5 (c) of the Connecticut Code of Evidence, the trial court reasonably determined that any probative value was outweighed by the danger of unfair prejudice. We agree with the state and conclude that the trial court did not abuse its discretion in declining to admit evidence of the victim's Internet searches for weapons.

"Relevant evidence is evidence that has a logical tendency to aid the trier in the determination of an issue. . . . Evidence is relevant if it tends to make the existence or nonexistence of any other fact more probable or less probable than it would be without such evidence. . . . The trial court has wide discretion to determine the relevancy of evidence and [e]very reasonable presumption should be made in favor of the correctness of the court's ruling in determining whether there has been an abuse of discretion." (Citations omitted; internal quotation marks omitted.) *State* v. *Best*, 337 Conn. 312, 317–18, 253 A.3d 458 (2020); see Conn. Code Evid. § 4-1. This discretion extends to the trial court's application of §§ 4-4 and 4-5 of the Connecticut Code of Evidence. See, e.g., *State* v. *Jordan*, 329 Conn. 272, 279–80, 186 A.3d 1 (2018); *State* v. *Osimanti*, supra, 299 Conn. 13; see also *State* v. *Saucier*, 283 Conn. 207, 218–20, 926 A.2d 633 (2007) (considering function of trial court's discretion and contrasting standards of review applicable to interpreting and applying Code of Evidence).

We begin with the defendant's reliance on the Massachusetts' Supreme Judicial Court's decision in *Commonwealth* v. *Carey*, supra, 463 Mass. 378, in support of his argument that the trial court improperly cabined its analysis to the strictures of § 4-4 (a) of the Connecticut Code of Evidence as they pertain to proving a victim's violent character, rather than focusing on the relevance of the Internet search histories to proving the victim's state of mind at the time of the fatal altercation. In *Carey*, the Massachusetts court held that, despite "scant evidence establishing a temporal connection between the defendant's consumption of these materials and the incident at issue," photographs and videos of strangulations, as well as search histories of strangulation murders, found on the defendant's computer were "highly probative of his intent and motive, as well as the victim's alleged consent" in an attempted murder case in which the defendant's specific intent to

kill was "the principal issue at trial" when he "alleged that he . . . strangled the victim [only] as a means toward sexual gratification and without any intent to do her harm."[10] Id., 388. The defendant contends that the search history evidence at issue in this case is even more probative than that in *Carey*, given its temporal relationship to the altercations at issue. We disagree.

The defendant's reliance on *Carey* is an attempt to thread the eye of a needle created by well established principles of Connecticut case law, particularly our leading decision in *State* v. *Miranda*, supra, 176 Conn. 109–11, which are now embodied in § 4-4 (a) (2) and (b) of the Connecticut Code of Evidence. "In a homicide or criminal assault case, an accused may introduce evidence of the violent, dangerous or turbulent character of the victim to show that the accused had reason to fear serious harm, after laying a proper foundation by adducing evidence that he acted in self-defense and that he was aware of the victim's violent character.[11]

[10] Our research has revealed other decisions, consistent with *Carey*, holding that Internet search histories may furnish relevant circumstantial evidence of an actor's state of mind. See, e.g., *Commonwealth* v. *Keown*, 478 Mass. 232, 245–47, 84 N.E.3d 820 (2017) (concluding that trial court properly admitted searches on defendant's computer for information about poison and antifreeze, as well as victim's Internet history, including research about her kidney illness and doll-making hobby and her e-mails to friends and acquaintances, to show her "positive outlook" on her health in week prior her final hospitalization, as relevant to disprove defendant's theory at murder trial that victim had committed suicide), cert. denied, U.S. , 138 S. Ct. 1038, 200 L. Ed. 2d 292 (2018); *Julio Garcia* v. *State*, 300 So. 3d 945, 974 (Miss. 2020) (Internet searches on defendant's video game console for sexually explicit and violent phrases, some of which pertained to young females, conducted "just days" before sexual battery and murder of young child were relevant to show motive, opportunity, or intent and were not unduly prejudicial in case involving sexual battery and murder of young child), cert. denied, U.S. , 141 S. Ct. 2706, 210 L. Ed. 2d 874 (2021).

[11] Case law from other jurisdictions highlights that the key to the introduction of evidence of the specific bad acts of a victim in a self-defense case is the defendant's knowledge of those acts. See, e.g., *Richardson* v. *United States*, 98 A.3d 178, 187–89 (D.C. 2014) (trial court improperly excluded evidence of defendant's belief that drug dealer victim knew that defendant had talked to police, which resulted in raid of victim's apartment, because

. . . [W]e joined a majority of courts when we expanded this rule to allow the accused to introduce evidence of the victim's violent character to prove that the victim was the aggressor, regardless of whether such character evidence had been communicated to the accused prior to the homicide. . . . In *Miranda*, we determined that the victim's violent character could be proved by reputation testimony, by opinion testimony, or by evidence of the [victim's] convictions for crimes of violence, irrespective of whether the accused knew of the [victim's] violent character or of the particular evidence adduced at the time of the death-dealing encounter. . . . This court has not, however, departed from [its] precedent that specific violent acts not resulting in a criminal conviction may not be introduced to prove the victim's violent character. . . . This is because the admission of such evidence, other than convictions, has the potential to surprise, to arouse prejudice, to multiply the issues and confuse the jury, and to prolong the trial."[12] (Citations omitted; footnote

evidence was relevant to claim of self-defense and to prove that victim was first aggressor); *State* v. *Williams*, 303 Kan. 585, 595, 363 P.3d 1101 (2016) (evidence that victim had attempted to rape woman was not relevant to defendant's claim at murder trial that he killed victim in defense of his wife because there was no evidence that defendant knew of that attempted rape, meaning "the record lack[ed] any evidence establishing a nexus between the alleged prior bad act of the victim . . . and the defendant's state of mind at the time the defendant claims to have acted in self-defense or defense of another").

[12] In *Miranda*, this court rejected the approach taken in its earlier decision in *State* v. *Padula*, 106 Conn. 454, 138 A. 456 (1927), which did not permit the admission of character evidence to prove that the decedent was the aggressor on the ground that "the result of an unlimited application of such a rule would be to interject the character of the deceased with the resulting temptation 'to measure the guilt of the accused by the deserts of the victim' into all such cases." Id., 459; see *State* v. *Miranda*, supra, 176 Conn. 110. While acknowledging in *Miranda* that "[t]here is always the risk that the jury may be unduly diverted and confused by collateral matters such as character," the court observed that "the sound discretion of the court is relied [on] to focus the jury's attention on the material issues in the trial." *State* v. *Miranda*, supra, 110–11.

added; footnotes omitted; internal quotation marks omitted.) *State* v. *Osimanti*, supra, 299 Conn. 13–14; see *State* v. *Jordan*, supra, 329 Conn. 283 (trial court has discretion to admit convictions arising from "a subsequent act that is close in time and highly similar to the charged incident" to prove that victim was initial aggressor but not to prove defendant's state of mind); *State* v. *Whitford*, supra, 260 Conn. 636–40 (trial court properly declined to admit testimony that victim, when intoxicated, had attempted to strangle two people but properly admitted reputation testimony that victim was violent person when intoxicated); *State* v. *Carter*, 228 Conn. 412, 425–26, 636 A.2d 821 (1994) (trial court abused its discretion in not permitting defendant to reopen evidence to introduce evidence that victim had assault and narcotics trafficking convictions "close in time to the deadly encounter between the victim and the defendant" because they "would have provided objective corroboration of the defendant's claim that the victim was a person of violent character who had acted as the initial aggressor"); *State* v. *Smith*, 222 Conn. 1, 19–20, 608 A.2d 63 (The trial court properly declined to admit evidence of the information or arrest warrant charging the deceased victim with assault because "[a] conviction is indisputable evidence of the commission of a violent crime. On the contrary, a charging document is a mere accusation, not a settled disposition, and, as such, would invite dispute over collateral issues at trial."), cert. denied, 506 U.S. 942, 113 S. Ct. 383, 121 L. Ed. 2d 293 (1992); *State* v. *Collins*, 68 Conn. App. 828, 838, 793 A.2d 1160 ("in the case of self-defense, eyewitness testimony of prior specific acts of violence perpetrated on a defendant by his or her victim is admissible to show the state of mind of the defendant at the time of the killing"), cert. denied, 260 Conn. 941, 835 A.2d 58 (2002); *State* v. *Carter*, 48 Conn. App. 755, 762–64, 713 A.2d 255 (trial court properly precluded defen-

dant's mother from testifying about whether she had seen victim selling drugs outside her home or with weapon, while permitting defendant to testify about violent acts that victim had committed against him personally but not against others), cert. denied, 247 Conn. 901, 719 A.2d 905 (1998); *State* v. *Knighton*, 7 Conn. App. 223, 228–29, 508 A.2d 772 (1986) (following *Miranda* and concluding that police officer or defendant could not testify about specific acts of violence allegedly committed by victim "to show the victim's propensity for violence, and [the defendant's] own testimony should have been admitted to show his state of mind when he confronted [the victim]").

"[N]otwithstanding this general rule of admissibility," under § 4-4 (b) of the Connecticut Code of Evidence, "we have held that the defendant is not authorized to introduce any and all convictions of crimes involving violence, no matter how petty, how remote in time, or how dissimilar in their nature to the facts of the alleged aggression. In each case the probative value of the evidence of certain convictions rests in the sound discretion of the trial court." (Internal quotation marks omitted.) *State* v. *Osimanti*, supra, 299 Conn. 15; see *State* v. *Byrd*, supra, 136 Conn. App. 397 (trial court did not abuse its discretion in excluding evidence of victim's conviction for criminal possession of firearm because it showed that "the victim possessed the gun solely as collateral [for a loan of money] and . . . did not intend to use the gun in a violent manner").

Although the defendant contends that he did not offer the Internet search evidence to establish the victim's character pursuant to § 4-4 of the Connecticut Code of Evidence, the case law embodied in that provision nevertheless continues to inform the extent to which that evidence is admissible under the more general principles of relevance relied on by the defendant. These cases reflect a "narrow" exception to the rule followed

by the "vast majority" of jurisdictions and the Federal Rules of Evidence, which "prohibit the use of specific acts to prove character in this context. . . . Courts have cited the same concerns about inquiry into potentially confusing collateral matters . . . unfair surprise to the party against whom the evidence is offered . . . and prejudice to the prosecution if the deceased is shown to have been a detestable person . . . ." (Citations omitted.) *State* v. *Smith*, supra, 222 Conn. 18–19. This is particularly so given that the Connecticut Code of Evidence is, in essence, a codification of the common-law standards that "was not intended to displace, supplant or supersede common-law evidentiary rules or their development via common-law adjudication . . . ." *State* v. *DeJesus*, 288 Conn. 418, 455, 953 A.2d 45 (2008); see T. Bishop, "Evidence Rulemaking: Balancing the Separation of Powers," 43 Conn. L. Rev. 265, 298–301 (2010). Put differently, the overall relevance determination remains the same, regardless of a party's claim that it is not attempting to shoehorn evidence into or beyond the strictures of a particular rule of evidence, such as the restrictions embodied in § 4-4 (b) of the Connecticut Code of Evidence. Cf. *State* v. *Whitford*, supra, 260 Conn. 640 (rejecting argument that would admit victim's prior bad acts under § 4-5 (c) of Connecticut Code of Evidence in manner that would "nullify" or evade "limitation" of § 4-4 (b), which "reflects a conscious choice by the code's drafters to exclude specific acts evidence as permissible proof, consonant with [Connecticut] case law").

Accordingly, we agree with the trial court's determination in the present case that the defendant's lack of awareness of the victim's Internet searches for weapons rendered them irrelevant for purposes of establishing the defendant's state of mind during the encounter. This is because the well established subjective-objective standard that governs self-defense involving the use of

deadly physical force under § 53a-19 (a) requires the jury to consider the reasonableness of the force used while "view[ing] the situation from the perspective of the defendant." (Internal quotation marks omitted.) *State* v. *O'Bryan*, supra, 318 Conn. 632; see footnote 6 of this opinion. The searches are rendered even less relevant, given that the defendant does not claim that they, in and of themselves, amounted to a crime of violence for purposes of § 4-4 (a).

The defendant argues further that the Internet searches constituted a prior act of misconduct relevant to establish the victim's state of mind under § 4-5 (c)[13] of the Connecticut Code of Evidence.[14] We disagree. Even if

[13] "We have developed a two part test to determine the admissibility of such evidence. First, the evidence must be relevant and material to at least one of the circumstances encompassed by the exceptions [set forth in § 4-5 (c) of the Connecticut Code of Evidence]. . . . Second, the probative value of the evidence must outweigh its prejudicial effect. . . . Because of the difficulties inherent in this balancing process, the trial court's decision will be reversed only whe[n] abuse of discretion is manifest or whe[n] an injustice appears to have been done. . . . On review by this court, therefore, every reasonable presumption should be given in favor of the trial court's ruling. . . .

"In determining whether the prejudicial effect of otherwise relevant evidence outweighs its probative value, we consider whether: (1) . . . the facts offered may unduly arouse the [jurors'] emotions, hostility or sympathy, (2) . . . the proof and answering evidence it provokes may create a side issue that will unduly distract the jury from the main issues, (3) . . . the evidence offered and the counterproof will consume an undue amount of time, and (4) . . . the defendant, having no reasonable ground to anticipate the evidence, is unfairly surprised and unprepared to meet it." (Citation omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Raynor*, 337 Conn. 527, 562, 254 A.3d 874 (2020); see footnote 2 of this opinion (text of § 4-5 of Connecticut Code of Evidence).

[14] The state argues that the defendant did not preserve his claim that the victim's Internet searches were not acts of prior misconduct relevant to prove the victim's state of mind for purposes of § 4-5 of the Connecticut Code of Evidence. In response, the defendant contends in his reply brief that he properly preserved his uncharged misconduct claim, despite the lack of an "express" citation to § 4-5 (a) in his motion in limine, given his citations therein to common-law uncharged misconduct case law, such as *State* v. *Mooney*, 218 Conn. 85, 126–27, 588 A.2d 145, cert. denied, 502 U.S. 919, 112 S. Ct. 330, 116 L. Ed. 2d 270 (1991). The defendant emphasizes that

we assume, without deciding, that the victim's otherwise legal Internet searches were themselves evidence of prior misconduct admissible to prove his state of mind pursuant to § 4-5 (c), this court's decision in *State* v. *Whitford*, supra, 260 Conn. 610, squarely forecloses the defendant's efforts to use prior misconduct evidence under § 4-5 (c) to evade the strictures of § 4-4 and the well established case law that it embodies. In *Whitford*, the defendant invoked § 4-5 (c) and "sought to introduce the testimony of three witnesses that the victim, when drunk, had violently attacked and attempted to strangle them" in support of his claim of self-defense, as "relevant to his assertion that the victim was the aggressor in their altercation because it would tend to prove both the victim's character for violence and his specific habit of strangling people while he was intoxicated." Id., 635. The trial court declined to admit evidence of the specific acts and limited the testimony to only "knowledge and opinion of the victim's violent character." Id. After reviewing the body of case law governing the admission of evidence of victims' violent acts in self-defense cases; see id., 636–37; this court concluded in *Whitford* that the "defendant's assertion that the proffered testimony was admissible pursuant to § 4-5 (c) . . . fail[ed] because it effectively would read § 4-4 (b) out of the code. . . . [Section] 4-4 (b) specifically limits the methods of proving the victim's

the record demonstrates that the prosecutor, in responding to the motion, understood that the defendant was advancing a claim that the searches were admissible as uncharged misconduct, rather than "pigeonholing" it as a character claim under § 4-4.

Although the defendant did not specifically cite § 4-5 of the Connecticut Code of Evidence before the trial court, our review of the record indicates that the defendant's arguments repeatedly emphasized the use of the searches to prove the victim's state of mind in juxtaposition with the limitations imposed by existing case law reflected in § 4-4. We conclude, therefore, that these arguments "functionally preserved" this uncharged misconduct claim for purposes of appeal, eliminating any concerns that the trial court was not on notice of the argument. *State* v. *Best*, supra, 337 Conn. 317 n.1.

character in a homicide or criminal assault prosecution to reputation or opinion testimony, or evidence of prior convictions for violent crimes. This limitation reflects a conscious choice by the code's drafters to exclude specific acts evidence as permissible proof, consonant with our case law. Were we to adopt the defendant's argument and read § 4-5 (c) to permit what § 4-4 (b) forbids, we would nullify this intentional exclusion of specific acts evidence . . . ."[15] Id., 640. The court emphasized in *Whitford* that § 4-4 embodies our case law on this point, notably *State* v. *Miranda*, supra, 176 Conn. 107. See *State* v. *Whitford*, supra, 638–39. Accordingly, the court determined that, "[b]ecause § 4-4 of the

[15] This court also observed in *Whitford* that the defendant's claim that the specific acts evidence was admissible pursuant to § 4-5 (c) of the Connecticut Code of Evidence "ignores that portion of § 1-2 of the code and its commentary . . . [that] indicates that the code was intended only to codify the common law. If, as the defendant suggests, we were to read § 4-5 (c) as permitting introduction of evidence regarding a victim's specific violent acts, we would be interpreting the code in a manner that would effectuate a substantive change in the law. Because such a result would be contrary to the express intention of the code's drafters, we reject it." *State* v. *Whitford*, supra, 260 Conn. 639–40. We note that this limited understanding of this court's authority vis-à-vis the code was later overruled in *State* v. *DeJesus*, supra, 288 Conn. 418, in which we concluded that the Connecticut Code of Evidence "was not intended to displace, supplant or supersede common-law evidentiary rules or their development via common-law adjudication, but, rather, simply was intended to function as a comprehensive and authoritative restatement of evidentiary law for the ease and convenience of the legal community." Id., 455; see id. ("the judges of the Superior Court did not intend for the [Code of Evidence Oversight] [C]ommittee to recommend substantive changes to the common-law evidentiary rules codified in the code, but, rather, intended for the committee simply to recommend revisions reflecting common-law developments in evidentiary law, clarifications of the code to resolve ambiguities and additions to the code in the absence of governing common-law rules"); see also id., 460 ("[T]he evidentiary rules articulated [in the code] are subject to change, modification, alteration or amendment by this court in the exercise of its constitutional and common-law adjudicative authority. To reiterate, we conclude that the code neither is, nor was intended to be, anything more than a concise, authoritative and, as the commentary to § 1-2 (a) of the code describes it, 'readily accessible body of rules to which the legal profession conveniently may refer.' " (Footnote omitted.)).

code explicitly provides for the admissibility of evidence concerning the victim's violent character under certain specified circumstances, it trumps the more general rules set forth in § 4-5 regarding the admissibility of specific acts. Thus, § 4-5 (c) does not apply to evidence of the victim's violent character in homicide or criminal assault cases, which is specifically covered by § 4-4, but rather applies to evidence admitted to prove the issues enumerated in § 4-5 (b)." Id., 641; see id., 642–43 (rejecting defendant's claim that specific acts preclusion does not apply to habit evidence offered pursuant to § 4-6 of Connecticut Code of Evidence). We therefore conclude that the trial court did not abuse its discretion in declining to admit into evidence the victim's Internet searches for weapons.

The judgment is affirmed.

In this opinion the other justices concurred.