L. LEE WHITNUM BAKER *v.* SECRETARY OF THE STATE
(SC 21049)

McDonald, Alexander and Dannehy, Js.

Syllabus

The plaintiff filed the present action with this court pursuant to statute (§ 9-323), challenging the decision of the defendant secretary of the state to reject the plaintiff's registration as a write-in candidate in connection with the November, 2024 election for the office of United States representative for the Third Congressional District of Connecticut on the ground that it was untimely filed in violation of the statute ((Supp. 2024) § 9-373a) governing the registration of write-in candidates. The plaintiff sought an order directing the defendant to accept her registration, claiming that her filing was untimely because she had followed certain purportedly erroneous guidance from the defendant's office that reflected the filing deadline contained in an outdated version of § 9-373a, rather than the deadline set forth in the current version of § 9-373a. *Held*:

This case was not moot because, even though it was not heard until after election day and the statutory filing deadline had passed, practical relief was still available, insofar as allowing the plaintiff to register as a write-in candidate would, at the very least, have the effect of validating those write-in votes that may already have been cast for her, and, in the event that there was a sufficient number of write-in votes to cast serious doubt on the election's reliability, a new election could serve as a potential remedy.

The plaintiff was aggrieved by "a ruling of an election official" for purposes of establishing this court's jurisdiction under § 9-323 when the defendant declined to accept the plaintiff's untimely registration form, there having

been a colorable claim that the plaintiff's untimely filing was the result of erroneous information communicated by the defendant's office.

This court assumed without deciding that Connecticut courts have the authority to exercise their equitable powers to excuse a candidate's failure to comply with a mandatory filing deadline, such as the one set forth in § 9-373a, when such a failure to comply has been caused by the action of an election official.

Nevertheless, the plaintiff failed to prove that she was entitled to relief under the doctrine of equitable estoppel because, although the defendant erroneously quoted an outdated version of § 9-373a in a cover letter that she provided to the plaintiff, both the cover letter and the write-in candidate registration form itself clearly and unambiguously provided the correct deadline, and the plaintiff failed to exercise due diligence in resolving the apparent discrepancy between the quote from the outdated version of the statute and correct deadline that was prominently stated in the cover letter and on the registration form.

Heard November 7—officially released November 18, 2024*

Procedural History

Action seeking an order directing the defendant to accept the plaintiff's registration as a write-in candidate for the office of United States representative for the Third Congressional District of Connecticut for the 2024 general election, brought, pursuant to General Statutes § 9-323, to a panel of this court, *McDonald*, *Alexander* and *Dannehy*, *Js.*, which conducted a hearing on the plaintiff's complaint. *Judgment for the defendant.*

L. Lee Whitnum Baker, self-represented, the plaintiff.

Benjamin Abrams, assistant attorney general, with whom was *Emily Adams Gait*, assistant attorney general, for the defendant.

Opinion

PER CURIAM. This is an original jurisdiction proceeding before a panel of this court pursuant to General

* November 18, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Statutes § 9-323,[1] in which the plaintiff, L. Lee Whitnum Baker, sought an emergency hearing to challenge a ruling of an election official, the defendant, the secretary of the state, in connection with an election for federal office. The plaintiff challenges the defendant's decision to reject her registration as a write-in candidate for the office of United States representative for the Third Congressional District of Connecticut on the ground that it was untimely filed in violation of General Statutes (Supp. 2024) § 9-373a,[2] which, in connection with General Statutes § 9-265, governs write-in candidacies. In this action, the plaintiff seeks an injunction directing the defendant to accept her registration as a write-in candidate under § 9-373a. She claims that her untimely filing was the result of following guidance from a form cover letter promulgated by the defendant's office that did not update its block quotation of § 9-373a to reflect the earlier filing deadlines contained in the current stat-

[1] This action, brought directly to a judge of the Supreme Court pursuant to § 9-323 to challenge the ruling of an election official in connection with a federal election, was heard by a panel of judges of the Supreme Court, rather than a single judge, notwithstanding the filing of the complaint prior to election day. The relevant statutory language provides that § 9-323 matters brought "prior to such election" are decided by a single judge, and complaints "made subsequent to the election" are decided by a panel of three judges. General Statutes § 9-323; see *Fay* v. *Merrill*, 336 Conn. 432, 442 n.14, 246 A.3d 970 (2020) (noting that this court dismissed motion for reconsideration en banc in § 9-323 matter because "plain language of § 9-323 . . . contemplates review by more than one [judge] of the Supreme Court only in postelection matters" and does not provide for further review en banc of single judge decision). Because § 9-323 does not specifically contemplate early voting, as recently implemented by General Statutes (Supp. 2024) § 9-163aa, we look to the statutory definition of "election," which is "any electors' meeting at which the electors choose public officials by use of voting tabulators or by paper ballots as provided in section 9-272 . . . ." General Statutes § 9-1 (d). In the absence of specific guidance from a statutory amendment that addresses early voting in this context, we construe the definition of the word "election" broadly and understand § 9-323 to require assignment to a panel of three judges when a complaint is made after the commencement of early voting.

[2] Hereinafter, unless otherwise indicated, all references to § 9-373a in this opinion are to the version in the 2024 supplement to the General Statutes.

utory revision, which was amended in 2023 to accommodate the new early voting program under General Statutes (Supp. 2024) § 9-163aa. In response, the defendant asks us to dismiss this action for lack of subject matter jurisdiction under § 9-323.

We held a hearing on the plaintiff's complaint on Thursday, November 7, 2024. After that hearing, we concluded that we have subject matter jurisdiction over this proceeding and reserved judgment on the merits. We now conclude that this case does not present the type of "extraordinary circumstance," as contemplated by *Butts* v. *Bysiewicz*, 298 Conn. 665, 676 n.7, 5 A.3d 932 (2010), that would warrant equitable relief from the operation of a mandatory statutory provision based on erroneous information given to the plaintiff by an election official. The plaintiff has failed to prove entitlement to relief under the doctrine of equitable estoppel because (1) notwithstanding the defendant's erroneous quotation of an outdated version of § 9-373a in the cover letter provided to the plaintiff, both the cover letter and the registration form itself clearly and unambiguously provided the correct deadline, and (2) the plaintiff failed to exercise any due diligence in resolving the apparent inconsistency. Accordingly, we deny the plaintiff's request for injunctive relief and render judgment for the defendant.

The record reveals the following undisputed facts.[3] In connection with her statutory role as the chief elections

[3] Representations made by the parties at the hearing on the plaintiff's complaint confirmed that the facts, which are revealed in documentary exhibits and the affidavit of Attorney Gabe Rosenberg, the defendant's general counsel and chief of staff, are indeed undisputed. Although a proceeding under § 9-323 contemplates a trial-like proceeding to find any disputed facts; see, e.g., *In re Election of the United States Representative for Second Congressional District*, 231 Conn. 602, 610–11, 653 A.2d 79 (1994); insofar as the operative facts in the present case are undisputed, we render judgment as a matter of law without the need for a trial. Cf. Practice Book § 17-45 (governing proceedings on motion for summary judgment).

officer for the state of Connecticut, the defendant collects registrations of write-in candidates that are filed pursuant to § 9-373a and publishes informational material on her website about how to become a write-in candidate, along with the necessary registration form, promulgated as form ED-622a (registration form). See General Statutes § 9-265 (a) (write-in vote will only be "counted and recorded" for candidate who has registered as write-in candidate). Once all registrations are received in accordance with the deadline set by § 9-373a, the defendant compiles the names of the eligible write-in candidates for offices in each town and submits them to the various town clerks; those lists are kept available at the polls for reference, upon request, if an elector has a question about which candidates are eligible to write in on a ballot.

In August, 2024, the plaintiff went to the defendant's office and requested a registration form for her write-in candidacy for the United States House of representatives for the Third Congressional District in the November 5, 2024 election. Violet Dussault, who is a staff attorney for the defendant, spoke with the plaintiff and provided her with the registration form, as revised in August, 2024. The registration form cited § 9-373a, documented the candidate's consent "to being a write-in candidate for the office indicated [on the form] to be contested at such election," and indicated that it "must be filed with the [defendant] not earlier than August 7, 2024 and not later than 4:00 p.m. on October 7, 2024, or the registration will be void." (Emphasis in original.)

The registration form was accompanied by a cover letter from the defendant's Elections Services Division, which stated: "It is imperative that you fill out this form completely and follow the instructions. *You should also carefully peruse . . . § 9-373a, below*, which is the section of the state statutes relating to write-in candidacies. You must file the enclosed form with this office

in order to register your write-in candidacy, and the form may not be filed with this office earlier than August 7, 2024 and *not later than 4:00 p.m. on October 7, 2024* or the registration will be *void*." (Emphasis altered.) The cover letter also reproduced § 9-373a in its entirety and stated with respect to the filing deadline: "The registration shall be filed with the [defendant] not more than ninety days prior to the election at which the office is to be filled *and not later than four o'clock p.m. on the fourteenth day preceding the election*, or the registration shall be void." (Emphasis added.) The quoted language in the cover letter does not reflect the current revision of § 9-373a, which the legislature amended in 2023 when it established the early voting program. See Public Acts 2023, No. 23-5, § 9. That section now provides in relevant part: "The registration shall be filed with the [defendant] not more than ninety days prior to the election at which the office is to be filled *and not later than four o'clock p.m. on the fourteenth day preceding the commencement of the period of early voting at the election*, or the registration shall be void." (Emphasis added.) General Statutes (Supp. 2024) § 9-373a. Nevertheless, the October 7, 2024 deadline is consistent with the commencement of the early voting period on October 21, 2024. See General Statutes (Supp. 2024) § 9-163aa (a).

On October 15, 2024, the plaintiff went to the defendant's office to file the registration form, which she believed was timely under the version of § 9-373a quoted in the cover letter, and of which she had made a "mental note" in believing that the deadline was October 23, 2024. The plaintiff had also handwritten "Oct 22" on her copy of the cover letter. Taffy Womack, one of the defendant's staff members, rejected the registration form as untimely, explaining that § 9-373a had been amended to reflect early voting, with a deadline for the 2024 election of October 7, 2024, and gave the plaintiff

a copy of the revised statute.[4] Womack informed the plaintiff that, if the defendant's office "made an exception for the plaintiff . . . the others who were also late would have to be included . . . ." Indeed, twenty-nine write-in candidates participated in the November, 2024 general election and sought a variety of offices, including president of the United States, United States senator, United States representative in three of the five congressional districts, and a variety of state legislative positions. The only write-in candidacy that was rejected as untimely was that of the plaintiff.

After her attempts to obtain relief in federal court and the Superior Court were dismissed for lack of jurisdiction, the plaintiff brought this action pursuant to § 9-323, seeking an order directing the defendant to accept her registration form. She argues that she is entitled to relief from the October 7, 2024 deadline because of the "confusion" occasioned when she was "given wrong information by someone on the [defendant's] staff . . . ." In response, the state argues otherwise and contends that we lack subject matter jurisdiction under § 9-323.

I

Because subject matter jurisdiction is a threshold matter; see, e.g., *In re Ava W.*, 336 Conn. 545, 558, 248 A.3d 675 (2020); we turn first to the defendant's arguments that we lack jurisdiction because (1) this case is moot given that election day has passed, and (2) the plaintiff is not "aggrieved by [a] ruling of [an] election official" for purposes of § 9-323. In considering the defendant's jurisdictional arguments, we are guided by the "strong presumption in favor of jurisdiction,"

[4] After the error in this case was discovered, the defendant subsequently removed the outdated materials from her website so that they could be corrected. At the hearing before this court, the defendant's counsel candidly expressed regret for the confusion and eventual litigation sown by this unfortunate error.

which is "founded on this state's clearly and repeatedly . . . expressed . . . policy preference to bring about a [resolution] on the merits of a dispute whenever possible and to secure for the litigant his or her day in court." (Internal quotation marks omitted.) *Markley* v. *State Elections Enforcement Commission*, 339 Conn. 96, 111, 259 A.3d 1064 (2021). In considering whether facts alleged establish a predicate for the exercise of our jurisdiction, as in other contexts, we look only to whether the claim is "colorable," namely, "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 . . . court that he necessarily will prevail; he must demonstrate simply that he *might* prevail." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Sena* v. *American Medical Response of Connecticut, Inc.*, 333 Conn. 30, 45, 213 A.3d 1110 (2019). "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 . . . ." (Internal quotation marks omitted.) *State* v. *Ward*, 341 Conn. 142, 153, 266 A.3d 807 (2021).

With respect to mootness, the defendant argues that no practical relief is available because this case was not heard until after election day, and after the October 7, 2024 deadline for the defendant to compile names of registered write-in candidates and to provide them to town clerks for the information of electors. We disagree.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction." (Internal quotation marks omitted.) *In re Ava W.*, supra, 336 Conn. 558. "A case is considered moot if [the trial] court cannot grant the appellant any practical relief through its disposition of the merits. . . . Mootness presents a cir-

cumstance [in which] the issue before the court has been resolved or had lost its significance because [of] a change in the condition of affairs between the parties." (Citation omitted; internal quotation marks omitted.) Id. "[T]he proper inquiry with regard to mootness is not whether some change in circumstances has occurred after the claim or cause of action is asserted that forecloses any chance of success on the merits but, rather, whether that change would prevent the court from granting any and all practical relief *even assuming that the proponent is able to prevail on the merits, no matter how unlikely.*" (Emphasis in original; internal quotation marks omitted.) *M&T Bank* v. *Lewis*, 349 Conn. 9, 23–24, 312 A.3d 1040 (2024).

We are not persuaded by the defendant's mootness argument. Allowing the plaintiff to register as a write-in candidate would, at the very least, have the effect of validating those write-in votes that may already have been cast for her, which only "shall be counted and recorded" for "a person who has registered as a write-in candidate for the office pursuant to . . . [§] 9-373a . . . ." General Statutes § 9-265 (a). Furthermore, in the event that there was a sufficient number of write-in votes to put the election's reliability into serious doubt, a new election is an available—albeit sparingly and cautiously ordered—remedy under § 9-323. See *Keeley* v. *Ayala*, 328 Conn. 393, 405–406, 179 A.3d 1249 (2018).

We next turn to whether the plaintiff is "aggrieved by a ruling of an election official." The phrase "ruling of [an] election official," as used in § 9-323 and in numerous other election statutes; see, e.g., General Statutes § 9-328; General Statutes § 9-329a; has been construed "to mean some act or conduct by the [election] official that . . . interprets some statute, regulation or other authoritative legal requirement, applicable to the election process. . . . [This court] has held that this test is broad enough to include conduct that comes within

the scope of a *mandatory statute* governing the election process, even if the election official has not issued a ruling in any formal sense. . . . Thus, [w]hen an election statute mandates certain procedures, and the election official has failed to apply or to follow those procedures, such conduct implicitly constitutes an incorrect interpretation of the requirements of the statute and, therefore, is a ruling." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Wrotnowski* v. *Bysiewicz*, 289 Conn. 522, 526–27, 958 A.2d 709 (2008); see also *Caruso* v. *Bridgeport*, 285 Conn. 618, 647, 941 A.2d 266 (2008); *Bortner* v. *Woodbridge*, 250 Conn. 241, 268, 736 A.2d 104 (1999).

We disagree with the defendant's argument that the plaintiff is not aggrieved under the statute because the defendant followed the law in refusing to accept the untimely registration form. That argument is circular in the factual context of this case, namely, that the plaintiff's claim is that the untimely filing was the result of her receiving incorrect information about the write-in process that was promulgated by the defendant's office. Although § 9-323 may not be used to challenge the underlying election laws and merely considers whether the election official's ruling complied with those laws; see *Fay* v. *Merrill*, 336 Conn. 432, 449 n.19, 246 A.3d 970 (2020); see also *Wrinn* v. *Dunleavy*, 186 Conn. 125, 134 n.10, 440 A.2d 261 (1982); the gravamen of the plaintiff's complaint is that the defendant misapplied existing law by providing an erroneous quotation of the statute in the cover letter and, then, by refusing to accept the registration form in light of the confusion sown by that erroneous quotation. By way of illustration, in a challenge to expanded absentee balloting during the COVID-19 pandemic, Chief Justice Robinson recently observed that "the election contest statutes, including § 9-323, do not confer jurisdiction over . . . fundamental constitutional challenges to Executive

Order No. 7QQ, which the defendant—acting as an elections official—implemented via the application" but that "the court would . . . have had jurisdiction over the plaintiffs' claim that the application is not itself faithful to Executive Order No. 7QQ." *Fay* v. *Merrill*, supra, 450 n.19; cf. *Arciniega* v. *Feliciano*, 329 Conn. 293, 309–10, 184 A.3d 1202 (2018) (acceptance of allegedly defective candidate consent forms was not ruling of election official when statutory scheme did not require registrar to consider accuracy or validity of their content). The plaintiff's allegations in this case squarely concern the application of § 9-373a. Thus, guided by the strong presumption in favor of jurisdiction, and given that a colorable claim that the plaintiff's untimely filing of the registration form was the result of erroneous information communicated by the defendant's office, we conclude that the defendant's refusal to accept the untimely registration form rendered the plaintiff aggrieved by a ruling of an election official for purposes of establishing this court's jurisdiction under § 9-323.

II

We now turn to the merits of the plaintiff's claim. The core issue in this case is whether a court has equitable discretion to provide a prospective write-in candidate with relief from a mandatory statutory provision, when her noncompliance resulted from erroneous guidance given by the election official charged with the administration of the statutory scheme. The governing statutory provision in this case is § 9-373a, which provides in relevant part: "*The registration shall be filed with the* [*secretary*] not more than ninety days prior to the election at which the office is to be filled and not later than four o'clock p.m. on the fourteenth day preceding the commencement of the period of early voting at the election, *or the registration shall be void.* . . ." (Emphasis added.)

There is no dispute that the language of § 9-373a is mandatory in nature and plainly and unambiguously affords the defendant no discretion to accept an untimely filed registration form, given that it contains the hallmark of negative words that expressly invalidate untimely registrations. See, e.g., *Airey* v. *Feliciano*, 350 Conn. 162, 180, A.3d (2024); *State* v. *Banks*, 321 Conn. 821, 840, 146 A.3d 1 (2016); *Butts* v. *Bysiewicz*, supra, 298 Conn. 676–77. This raises the question of whether we can exercise our equitable powers to provide the plaintiff with relief from the operation of the mandatory statute voiding her untimely filed registration form.

This court's decision in *Butts* v. *Bysiewicz*, supra, 298 Conn. 665, is instructive. In *Butts*, a candidate for probate judge sought judicial relief after he filed his certificate of party endorsement by the Democratic Party with the defendant after the deadline set by General Statutes § 9-388, which contained mandatory language invalidating late filings. See id., 667–68, 678–79. This court held that it has no authority to direct the defendant to afford a candidate relief from a mandatory statutory requirement, despite any "harsh consequences" that may ensue. Id., 689; see id., 688 (concluding that statutory language made it "clear that the legislature has barred the defendant from accepting an untimely filed certificate of endorsement and . . . from giving effect to the endorsement"). This court further held that, despite "competent evidence" establishing that the candidate was indeed the Democratic Party's endorsed candidate; id., 682; "[b]ecause the legislature required strict compliance with the deadline of § 9-388, the court [could not] invoke its equitable authority to compel the defendant to act in direct contravention to this clear legislative mandate." Id., 688–89; see also id., 689 and n.23 (deeming "inapposite" those "election cases hold-

ing that substantial compliance may satisfy a mandatory requirement").

Footnote 7 of this court's decision in *Butts*, however, left open the possibility that certain conduct by an election official might permit the court to exercise its equitable powers to provide relief from a mandatory statute. See id., 676 n.7. This court observed that "[s]ome jurisdictions have concluded that, in *extraordinary circumstances*, courts can excuse a failure to comply with mandatory filing deadlines for declarations of candidacy due to (1) an action by the state, particularly election officials, causing the late filing, or (2) the impossibility of compliance." (Emphasis added.) Id. Holding that "[n]o such circumstance [was] implicated in [*Butts*]," this court "express[ed] no opinion as to whether courts would have authority to extend filing deadlines under such extraordinary circumstances." Id., 677 n.7.

We assume without deciding that Connecticut courts have the authority identified in footnote 7 of *Butts* to excuse a candidate's failure to comply with a mandatory filing deadline when that noncompliance was caused by the action of an election official. See id., 676 n.7. In the present case, the plaintiff argues that she used the erroneously included, outdated statutory language in the cover letter in determining the date by which she had to file her registration form, rather than the October 7, 2024 deadline clearly and prominently stated both in the cover letter and on the registration form. This is a reliance based argument that implicates the doctrine of equitable estoppel, which is grounded in "[s]trong public policies," and is intended "to show what equity and good conscience require, under the particular circumstances of the case, irrespective of what might otherwise be the legal rights of the parties. . . . No one is ever estopped from asserting what would otherwise be his right, unless to allow its assertion would enable him to do a wrong. . . .

"There are two essential elements to an estoppel: the party [against whom it is asserted] must do or say *something* [*that*] *is intended or calculated to induce another to believe in the existence of certain facts and to act* [*on*] *that belief*; and the other party, influenced thereby, *must actually change his position or do something to his injury* [that] he otherwise would not have done. Estoppel rests on the misleading conduct of one party to the prejudice of the other. In the absence of prejudice, estoppel does not exist." (Emphasis added; internal quotation marks omitted.) *Fischer* v. *Zollino*, 303 Conn. 661, 668, 35 A.3d 270 (2012). Whether an equitable estoppel exists is a question of fact; see, e.g., id.; and the "party claiming estoppel . . . has the burden of proof." Id., 667.

Moreover, "estoppel against a public agency is limited and may be invoked: (1) only with great caution; (2) only when the action in question has been induced by an agent having authority in such matters; and (3) only when special circumstances make it highly inequitable or oppressive not to estop the agency." (Internal quotation marks omitted.) *Fadner* v. *Commissioner of Revenue Services*, 281 Conn. 719, 726, 917 A.2d 540 (2007). "A party seeking to justify the application of the estoppel doctrine by establishing that a public agency has induced his actions carries a significant burden of proof." Id., 727; see id., 728 (trial court did not commit clear error in concluding that equitable estoppel did not bar commissioner of revenue services from assessing deficiencies against taxpayers who claimed to have relied on incorrect advice from taxpayer helpline when taxpayers could not establish when they had called helpline or to whom they had spoken).

In determining whether equitable estoppel allows us to remedy the plaintiff's noncompliance with a mandatory election statute, we find instructive the Superior Court's decision in *Nardello* v. *Merrill*, Superior Court,

judicial district of Waterbury, Docket No. CV-18-5022319-S (July 10, 2018) (66 Conn. L. Rptr. 711). In *Nardello*, a party endorsed candidate sought injunctive relief directing the defendant to place the candidate's name on the ballot for the Democratic primary for the sixteenth state senate district. Id., 712. The candidate timely filed her certificate of party endorsement pursuant to General Statutes § 9-400 (b) prior to the deadline but omitted the necessary district number; a representative of the Connecticut Democratic Party later completed the form with an erroneous district number. Id. When the candidate learned of the error, she contacted a senior staff member from the defendant's office, who advised her that she would " 'fix' " the issue. Id. The error was then corrected by a representative of the Democratic Party after the deadline, and the defendant rejected the corrected filing as untimely. Id., 713. Considering the "mandatory language" of § 9-400 (b), the court determined that the extraordinary circumstances contemplated in footnote 7 of *Butts* existed and that the candidate "ha[d] demonstrated the factual basis for a finding of equitable estoppel." Id., 713; see id., 716. The court distinguished *Butts*, in which the necessary filing was never made at all, and observed that, in *Nardello*, the filing was made on time initially, and the candidate acted with due diligence when she learned of the mistake by contacting a senior staff member from the defendant's office, who then advised her that she would " 'fix' " the error, but delayed in doing so out of her own inadvertence as to the filing deadline. Id., 716. The court found that, although "different interpretations could be made as to who ultimately should have borne responsibility for correcting the error on [the candidate's] certificate," she had "made appropriate efforts to resolve the error by notifying the defendant of the problem. [The candidate] relied on the response she received from the [defendant's] office that the mat-

ter would be corrected." Id. The court further found that the candidate's "change of position . . . was to her detriment" and that she had proven that she "exercised due diligence" because "she lacked any knowledge of the original omission, the initial correction made to the form and of any involvement by the Democratic Party." Id. Thus, the court concluded that the candidate "relied on not taking any further action to correct her certificate of endorsement by a representative of the [defendant] and that extraordinary circumstances [made] it highly inequitable and oppressive not to estop the [defendant]," and ordered the defendant to place the candidate on the primary ballot. (Internal quotation marks omitted.) Id.; see, e.g., *Ryshpan* v. *Cashman*, 132 Vt. 628, 629–30, 326 A.2d 169 (1974) (affording candidate equitable relief from untimely filing that was result of incorrect deadline on election calendar published by Vermont secretary of state); cf. *Camillo* v. *Thomas*, Superior Court, judicial district of Middlesex, Docket No. CV-24-6042022-S (August 28, 2024) (distinguishing *Nardello* and declining to order defendant to place candidate's name on ballot because of his "noticeable lack of action to correct the deficiency [in the certificate of endorsement form] once it was brought to his attention," and his lack of a "role" in preparing or filing his paperwork, or ensuring that it was filed correctly with defendant); *In re Guzzardi*, 627 Pa. 1, 8–10, 14, 99 A.3d 381 (2014) (equitable relief was not warranted when candidate's failure to file timely statement of financial interests with Pennsylvania ethics commission was result of candidate's inadvertence).

The present case is squarely distinguishable from *Nardello*, rendering it not an extraordinary circumstance under which the equities support providing the plaintiff with relief from the mandatory statutory deadline. First, this case does not concern the correction of

a timely, albeit erroneous, filing but, rather, concerns a failure to file timely at all. Second, the defendant clearly communicated a correct deadline of October 7, 2024, on the registration form and in the cover letter, with which twenty-nine other write-in candidates complied; the only write-in candidacy that was rejected as untimely was that of the plaintiff. Consistent with the plaintiff's own representations at the hearing before this court that she had simply failed to read that deadline, there is no evidence that the plaintiff exercised any due diligence by questioning the defendant or her staff about the potential inconsistency of the outdated statutory provision with the prominently stated October 7, 2024 deadline. This lack of due diligence is particularly striking because the defendant provides ample opportunity for candidates and voters to ask questions about ballot access and voting procedures, both through generally available material on her website and a staffed email address, phone line, and public front desk. In this case specifically, the record indicates that the defendant's staff members had been solicitous of and helpful to the plaintiff, as she had both written and oral communications with Dussault, one of the defendant's staff attorneys, about where she should register as a write-in candidate, and whether she could do so for multiple offices simultaneously. Thus, to the extent that the defendant did provide some erroneous guidance in this case through her quotation of the outdated statutory provision in the cover letter, she nevertheless clearly stated the correct deadline in multiple places, and the plaintiff's lack of due diligence as a prospective write-in candidate does not establish her entitlement to equitable relief from the mandatory deadline set by § 9-373a.

The plaintiff's request for an injunction directing the defendant to accept her registration as a write-in candidate is denied. Judgment is rendered for the defendant.

STATE OF CONNECTICUT *v.* MARCUS HURDLE (SC 20827)

McDonald, D'Auria, Mullins, Ecker, Alexander and Dannehy, Js.*

Syllabus

The defendant appealed, on the granting of certification, from the judgment of the Appellate Court, which had affirmed his conviction, following a guilty plea, of robbery in the first degree and conspiracy to commit robbery in the first degree. The defendant claimed, inter alia, that the Appellate Court had incorrectly upheld the trial court's conclusion that it lacked authority under the statute (§ 18-98d) governing presentence confinement credit to direct the commissioner of correction to apply such credit to the defendant's sentence. *Held*:

This court concluded that § 18-98d does not confer exclusive authority on the commissioner to calculate and apply presentence confinement credit and that a trial court has discretionary authority to include on a judgment mittimus an order directing the commissioner to apply presentence confinement credit, in accordance with § 18-98d (a) (1), to a sentence that the court has imposed.

This court reversed the judgment of the Appellate Court insofar as that court upheld the trial court's conclusion that it did not have discretion to direct the commissioner to apply certain presentence confinement credit to the defendant's sentence and ordered the Appellate Court to remand the case to the trial court so that it could exercise its discretion, in the first instance, with respect to the presentence confinement credit issue.

The Appellate Court correctly concluded that the defendant's plea agreement did not include an agreement that he would receive presentence confinement credit for the time that he was incarcerated and serving sentences in connection with two criminal cases unrelated to the present case, as the record contained no evidence that would support such a finding.

There was no merit to the defendant's claim that the plea agreement was void on the ground that there was no meeting of the minds on the issue of presentence confinement credit, because, although the record supported the conclusion that the defendant subjectively believed that he would receive

* This case originally was argued before a panel of this court consisting of Chief Justice Robinson and Justices McDonald, D'Auria, Mullins, Ecker, Alexander, and Dannehy. Thereafter, Chief Justice Robinson retired from this court and did not participate in the consideration of this case.

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

such credit under that agreement, that subjective belief was wholly unreasonable.

Argued April 25—officially released December 10, 2024

Procedural History

Two part substitute information charging the defendant, in the first part, with the crimes of home invasion, robbery in the first degree, conspiracy to commit robbery in the first degree and criminal possession of a firearm, and, in the second part, with being a persistent dangerous felony offender and with committing an offense while on release, brought to the Superior Court in the judicial district of Ansonia-Milford, where the defendant was presented to the court, *Brown*, *J.*, on pleas of guilty to robbery in the first degree and conspiracy to commit robbery in the first degree; thereafter, the court, *Brown*, *J.*, denied the defendant's request for presentence confinement credit and the defendant's motion for reconsideration or to withdraw the pleas, and rendered judgment in accordance with the pleas, and the defendant appealed to the Appellate Court, *Alvord*, *Prescott* and *Moll*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Reversed in part*; *further proceedings*.

James B. Streeto, senior assistant public defender, for the appellant (defendant).

Linda F. Rubertone, senior assistant state's attorney, with whom, on the brief, were *Margaret E. Kelley*, state's attorney, and *Howard S. Stein*, supervisory assistant state's attorney, for the appellee (state).

Opinion

ALEXANDER, J. The principal issue in this certified appeal is whether a trial court has the authority under

General Statutes § 18-98d[1] to direct the commissioner of correction (commissioner) to apply presentence confinement credit, also known as jail credit, for specific dates to a defendant's sentence on the judgment mittimus.[2] Upon our grant of his petition for certification,[3] the defendant, Marcus Hurdle, appeals from the judgment of the Appellate Court affirming his conviction, rendered in accordance with a plea agreement, of robbery in the first degree in violation of General Statutes § 53a-134 (a) (4) and conspiracy to commit robbery in the first degree in violation of General Statutes §§ 53a-48 and 53a-134 (a). *State* v. *Hurdle*, 217 Conn. App. 453, 476, 288 A.3d 675 (2023). On appeal, the defendant claims that the Appellate Court incorrectly concluded that (1) under subsection (c) of § 18-98d, the trial court lacked authority to direct the commissioner to apply presentence confinement credit, and (2) there was no basis for allowing the defendant to withdraw his guilty

[1] We note that the legislature amended subdivision (1) of § 18-98d (a) in 2021 to divide it into subparagraphs (A) and (B), with the existing language of subsection (a) (1) contained in subparagraph (A), applicable to offenses "committed on or after July 1, 1981, and prior to October 1, 2021," and the new subparagraph (B) applicable to offenses "committed on or after October 1, 2021 . . . ." Public Acts 2021, No. 21-102, § 21. See footnote 19 of this opinion for further discussion of this statutory change. The 2021 amendment to § 18-98d does not affect the principal issue in this appeal, which turns on our interpretation of subsection (c) of that statute. In the interest of simplicity, all references in this opinion to § 18-98d are to the current revision of the statute.

[2] The mittimus is "a clerical document by virtue of which a person is transported to and rightly held in prison. . . . [A] mittimus after conviction in a criminal case is similar to an execution after judgment in a civil case; it is final process and carries into effect the judgment of the court." (Citations omitted; internal quotation marks omitted.) *Commissioner of Correction* v. *Gordon*, 228 Conn. 384, 392, 636 A.2d 799 (1994).

[3] We granted the defendant's petition for certification to appeal, limited to the following issues: (1) "Did the Appellate Court correctly conclude that the trial court lacked authority to award the defendant presentence confinement credit at the time of sentencing?" And (2) "[d]id the Appellate Court correctly conclude that the plea agreement did not include presentence confinement credit?" *State* v. *Hurdle*, 346 Conn. 923, 295 A.3d 420 (2023).

pleas because the plea agreement did not include some of the presentence confinement credit that the defendant had sought from the trial court. We conclude that the trial court has the discretionary authority under § 18-98d to include on the mittimus an order directing the commissioner to award presentence confinement credit in accordance with subsection (a) (1) of that statute for specific dates when the defendant was confined because he was unable to obtain bail or because bail was denied. We further conclude that the Appellate Court correctly determined that the plea agreement did not include an agreement that the defendant would receive presentence confinement credit for the time he spent serving sentences in connection with different files, and, for that reason, the defendant was not entitled to withdraw his plea. Accordingly, we reverse in part the judgment of the Appellate Court.

The record reveals the following undisputed facts and procedural history. In January, 2016, the defendant was sentenced in the judicial district of Ansonia-Milford to a total effective sentence of five years of incarceration, execution suspended after nine months, and three years of probation, in two criminal cases unrelated to the present case (Ansonia-Milford cases). In July, 2018, the trial court, *McShane*, *J.*, in the Ansonia-Milford case accepted the defendant's admission that he had violated his probation under a *Garvin* agreement[4] and released him so that he could attend a substance abuse treatment program.

While awaiting sentencing for violation of probation in the Ansonia-Milford cases, the defendant participated

[4] "A *Garvin* agreement is a conditional plea agreement that has two possible binding outcomes, one that results from the defendant's compliance with the conditions of the plea agreement and one that is triggered by the defendant's violation of a condition of the agreement." (Internal quotation marks omitted.) *State* v. *Stevens*, 278 Conn. 1, 3 n.1, 895 A.2d 771 (2006); see *State* v. *Garvin*, 242 Conn. 296, 299–302, 699 A.2d 921 (1997).

in a robbery in West Haven, which formed the basis for the charges in the present case. When the police encountered the defendant and his three coconspirators several hours later, the defendant engaged the officers in a car chase in New Haven. Later that same day, New Haven police saw the defendant disposing of a firearm matching the description of the gun used in the West Haven robbery and arrested him. As a result of the events in New Haven, the defendant was charged in the judicial district of New Haven with interfering with a police officer and criminal possession of a pistol or revolver (New Haven case). He was arraigned in the New Haven case the next day, August 17, 2018, and was detained because he was unable to post bond.

While detained in connection with the New Haven case, the defendant was served with an arrest warrant in the present case. Because the robbery giving rise to the charges in the present case took place in West Haven, the state charged the defendant in the judicial district of Ansonia-Milford with multiple offenses, including home invasion and robbery in the first degree; the state also filed a part B information charging the defendant with being a persistent dangerous felony offender and with committing an offense while on release. The trial court, *Wilkerson Brillant, J.*, set a $300,000 bond at arraignment in the present case and raised the bond for the earlier violation of probation charges in the Ansonia-Milford cases, so that the defendant would receive "credit for any time that he [had been] incarcerated at [that] point."

On October 26, 2018, the trial court appointed a special public defender for the defendant and confirmed that bonds had been set in all of his cases. The defendant pleaded not guilty to the charges in the present case and elected a jury trial. On December 19, 2018, the defendant was released from the custody of the commissioner after posting bond.

On February 13, 2019, the defendant returned to court for sentencing on his violation of probation charges in the Ansonia-Milford cases. Judge McShane advised the defendant that he would *not* be earning presentence confinement credit toward any sentence in the present case or the New Haven case while he was incarcerated and serving a sentence on his violation of probation in the Ansonia-Milford cases. The defendant twice affirmed that he understood, and his sentencing was continued to February 20, 2019. On that date, the defendant arrived at court late and appeared to be intoxicated, prompting the court to raise his bond, to detain him, and to continue that matter to the following week. On February 26, 2019, the court terminated the defendant's probation in the Ansonia-Milford cases and sentenced him to concurrent terms of three and one-half years of incarceration. Thereafter, the state and the defendant attempted to negotiate a global resolution of the remaining charges but failed to reach an agreement.

On May 15, 2019, the defendant pleaded guilty under the *Alford* doctrine[5] to the charge of criminal possession of a pistol or revolver in the New Haven case. He was sentenced to ten years of incarceration, execution suspended after three and one-half years, followed by a three year conditional discharge. When the defendant asked whether he would receive credit in the New Haven case for his presentence confinement on those charges, the trial court, *Cradle, J.*, stated that he would receive credit "for the time that [he had] been confined on bond [in] this matter," specifically, from August 17 through December 19, 2018, and from February 20 through May 15, 2019—roughly seven months in total.[6]

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

[6] The defendant was serving the sentence for violation of probation in the Ansonia-Milford cases from February 26 through May 15, 2019, and, therefore, his confinement for that period of time was not the result of his inability to post bond in the New Haven case.

The court's order for specific jail credit was noted on the judgment mittimus.

In November, 2019, the defendant hired a private attorney, James R. Hardy II, to represent him in the present case. The proceedings in the present case were subsequently delayed by Hardy's multiple requests for continuances. On March 10, 2020, the trial court, *Brown, J.*,[7] marked over a hearing on the defendant's motion for bond reduction. Later that same day, Governor Ned Lamont declared a state of emergency throughout the state in response to the COVID-19 pandemic. On March 19, 2020, the governor ordered all noncritical court operations to be suspended. See Executive Order No. 7G (March 19, 2020).

On September 10, 2020, the trial court held a virtual hearing on the defendant's motion for bond reduction in the present case.[8] By that time, the defendant had hired Attorney Michael Brown to represent him in place of Hardy. The trial court granted the motion for bond reduction and then reminded the parties that, despite wanting to proceed to trial, "we can't do that right now," because of the ongoing suspension of noncritical court proceedings.

On October 29, 2020, the parties reached a plea agreement in the present case. Pursuant to that agreement, the defendant entered guilty pleas under the *Alford* doctrine to robbery in the first degree and conspiracy to commit robbery in the first degree. In exchange, the state agreed to enter a nolle prosequi on the remaining charges. The agreement was for a sentence of twelve years of incarceration, execution suspended after seven and one-half years, and five years of probation. The

[7] All subsequent references to the trial court in this opinion are to Judge Brown.

[8] The defendant was serving his sentence for violation of probation in the Ansonia-Milford cases and sought a reduction in the bond in the present case so that he could attend a veterans treatment program in prison.

plea deal included an agreement that the sentence in the present case would run concurrently with the sentences in the Ansonia-Milford and New Haven cases. The trial court accepted the pleas following a thorough canvass during which the defendant affirmed that he understood the terms of the agreement.

At the sentencing hearing on January 28, 2021, Brown raised the question of jail credit in the present case, stating: "[T]here was discussion of making the sentence run with the other sentences. And I contacted records at [the Department of Correction (department)], and they instructed me that you can order a jail credit going back to those dates. And I have those dates for the court, if so inclined. The arrest date of [August 17, 2018] through December 19, 2018, at which time [the defendant] bonded out. And then he was readmitted on February 20, 2019, and the jail credit can be ordered from then to here."

The prosecutor objected on the ground that presentence confinement credit had not been part of the plea agreement in the present case and that the court's practice had been to "always [defer] to the [commissioner] with regard to the calculation of jail credit." The prosecutor further argued that, if the defendant's time served were to become "dead time,"[9] namely, time that would not be credited toward his sentence for robbery in the present case—it was his own fault. The prosecutor stated: "It was a calculated decision by [the defendant] and each and every one of his previous attorneys to dispose of the violation of probation [charges in Ansonia-Milford], [and] to dispose of the gun charge in New Haven where he began serving dead time instead of

[9] "[D]ead time is [informal] parlance for presentence confinement time that cannot be credited because the inmate is a sentenced prisoner serving time [in connection with] another sentence." (Internal quotation marks omitted.) *Smith* v. *Commissioner of Correction*, 179 Conn. App. 160, 163 n.2, 178 A.3d 1079 (2018).

trying to resolve these things in a global fashion. He was warned by the court. He was warned by the state that these were all bad decisions."

The trial court then ruled: "I am going to impose [the] agreed on sentence. I am also going to allow the [commissioner] to impose whatever presentence credit [he] feels is appropriate. *You're obviously entitled to presentence credit. I'm going to let* [*the commissioner*] *make that determination.* . . . I'm not going to do that on the record." (Emphasis added.) Following additional discussions about the defendant's claimed understanding that jail credit was integral to his decision to accept the plea agreement, the trial court granted Brown's request for a continuance to allow him to consult with the defendant and to review the file in greater depth.

Thereafter, the defendant filed a motion requesting the court to direct the commissioner to apply specific presentence confinement dates for jail credit on the judgment mittimus or, in the alternative, that he be allowed to withdraw his guilty pleas on the ground that he did not understand that he was not receiving presentence confinement credit as part of his plea agreement. When the sentencing hearing resumed on February 18, 2021, the court denied the defendant's motion regarding presentence confinement credit, stating that the court had no discretion under § 18-98d to grant it. The court also denied the defendant's request to withdraw his pleas, stating that the court had no reason to believe that the defendant did not understand the terms of the plea agreement. The court then sentenced the defendant in accordance with the plea agreement, and his sentence in the present case commenced on February 18, 2021.

The defendant appealed from the judgment of conviction to the Appellate Court, claiming, among other things, that the trial court incorrectly determined that it lacked

the authority to award him presentence confinement credit at sentencing; *State* v. *Hurdle*, supra, 217 Conn. App. 461; and that the court improperly denied his motion to withdraw his guilty pleas because there was never a meeting of the minds regarding the terms of the plea agreement. Id., 469. The Appellate Court rejected those claims; id., 469, 471; and affirmed the trial court's judgment. Id., 476. This certified appeal followed. Additional facts will be set forth as necessary.

I

We first address the defendant's claim that the Appellate Court incorrectly determined that the commissioner has the exclusive authority to calculate and apply presentence confinement credit under § 18-98d (c). The defendant contends that the statute does not deprive the Superior Court of its inherent power as a court of general jurisdiction to set the parameters of a criminal sentence, which extends to the specific presentence confinement credit that the commissioner can apply to the sentence. See, e.g., *State* v. *Angel M.*, 337 Conn. 655, 668, 255 A.3d 801 (2020) ("[A] trial court possesses, within statutorily prescribed limits, broad discretion in sentencing matters. . . . In exercising its discretion, the trial court may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information [it] may consider, or the source from which it may come." (Citation omitted; internal quotation marks omitted.)); see also General Statutes § 53a-37;[10] General

[10] General Statutes § 53a-37 provides in relevant part: "When multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms *in such manner as the court directs at the time of sentence*. The court shall state whether the respective maxima and minima shall run concurrently or consecutively with respect to each other, and shall state in conclusion the effective sentence imposed. . . ." (Emphasis added.)

Statutes § 53a-38 (b) (1).[11] Guided in part by case law establishing the statutory nature of presentence confinement credit, we agree and conclude that § 18-98d (c) does not deprive trial courts of the authority to direct the commissioner on a judgment mittimus to apply specific presentence confinement dates.

Whether § 18-98d (c) confers exclusive authority on the commissioner to calculate and apply a defendant's presentence confinement credit is a question of statutory interpretation subject to plenary review. See, e.g., *Jobe* v. *Commissioner of Correction*, 334 Conn. 636, 647, 224 A.3d 147 (2020).

In accordance with General Statutes § 1-2z, we begin our analysis with the applicable text of § 18-98d. Section 18-98d (a) (1) (A) provides in relevant part: "Any person who is confined to a community correctional center or a correctional institution for an offense committed on or after July 1, 1981, and prior to October 1, 2021, under a mittimus or because such person is unable to obtain bail or is denied bail shall, if subsequently imprisoned, earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed; provided (i) each day of presentence confinement shall be counted only once for the purpose of reducing all sentences imposed after such presentence confinement; and (ii) the provisions of this section shall only apply to a person for whom the existence of a mittimus, an inability to obtain bail or the denial of bail is the sole reason for such person's

[11] General Statutes § 53a-38 (b) provides in relevant part: "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 . . . ."

presentence confinement . . . .” Subsection (c) of § 18-98d provides that the commissioner “shall be responsible for ensuring that each person to whom the provisions of this section apply receives the correct reduction in such person’s sentence; provided in no event shall credit be allowed under subsection (a) of this section in excess of the sentence actually imposed.”

Subsections (a) and (c) of § 18-98d are silent as to whether trial courts have any role in determining whether a particular period of presentence confinement credit should be applied to a sentence. “It is well settled, however, that silence does not necessarily equate to ambiguity.” (Internal quotation marks omitted.) *State* v. *Ramos*, 306 Conn. 125, 136, 49 A.3d 197 (2012). “Rather, [i]n determining whether legislative silence renders a statute ambiguous, we read the statute in context to determine whether the language is susceptible to more than one reasonable interpretation.” (Internal quotation marks omitted.) Id.

We conclude that the language of § 18-98d (c) providing that the commissioner “shall be *responsible* for *ensuring* that each person to whom the provisions of this section apply receives the *correct* reduction in such person’s sentence”; (emphasis added); contains an inherent tension, revealed by dictionary definitions contemporaneous with the enactment of the statute, that renders the statute ambiguous as to whether the commissioner has exclusive authority to calculate and apply presentence confinement credit. Specifically, the definition of the word “responsible” suggests that the commissioner’s authority in this area is, at the very least, primary. See Webster’s Ninth New Collegiate Dictionary (1987) p. 1005 (defining “responsible” in relevant part as “liable to be called to account as the primary cause, motive, or agent”); see also The American Heritage Dictionary of the English Language (New College Ed. 1978) p. 1108 (defining “responsible” in relevant part

as "[i]nvolving personal accountability or ability to act without guidance or superior authority," or "[b]eing the source or cause of something"). The definition of the operative verb "ensure" suggests, however, that the commissioner's role is, in fact, not exclusive. The verb "ensure" indicates that the legislature intended that the commissioner's role would be to *guarantee* that a defendant receives the presentence confinement credit to which he is entitled. See Webster's Ninth New Collegiate Dictionary, supra, p. 414 (defining "ensure" as "to make sure, certain, or safe: guarantee"). The related word "guarantee" strongly suggests that the commissioner's role and authority in the calculation and application of such credit is not necessarily exclusive, because service as a guarantor encompasses the "[assumption of] responsibility for the quality or execution of" that task by another party. The American Heritage Dictionary of the English Language, supra, p. 584. Further, the adjective "correct," in relation to the presentence credit awarded, suggests that the commissioner has a role in vetting credit initially awarded by a different party. See id., p. 299 (defining "correct" as "[f]ree from error or fault," or "[c]onforming to standards; proper"); see also Webster's Ninth New Collegiate Dictionary, supra, p. 293 (defining "correct" in relevant part as "conforming to an approved or conventional standard"). In this context, that other party reasonably could be understood to be the trial court, which would in turn be expected to provide accurate presentence confinement dates to the commissioner. Because this language reasonably may be understood to create uncertainty as to whether § 18-98d confers exclusive authority on the commissioner to determine the specific dates of presentence confinement for which the defendant should receive credit, we may consider extratextual sources, including the statute's legislative history. See General Statutes § 1-2z.

We first consider the legislative history of § 18-98d, beginning with its predecessor provisions, General Statutes §§ 18-97 and 18-98. See *James* v. *Commissioner of Correction*, 327 Conn. 24, 33–34, 170 A.3d 662 (2017) (concluding that §§ 18-97 and 18-98, "although not operative in [*James*], are still persuasive authority in determining the overall intent of granting presentence confinement credit"). In its 1967 report to the legislature, the Commission to Revise the Criminal Statutes recommended that, "[i]n imposing sentence of imprisonment, the court may provide that the term imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence." Report of the Commission to Revise the Criminal Statutes (1967) p. 14. Later that year, the legislature enacted No. 549, § 15, of the 1967 Public Acts, codified at General Statutes (Rev. to 1968) § 18-97, and No. 869 of the 1967 Public Acts, codified at General Statutes (Rev. to 1968) § 18-98, which governed the application of presentence confinement credit before the enactment of § 18-98d in 1980 and required the commissioner to grant such credit.[12] The

[12] General Statutes (Rev. to 1968) § 18-97 provides in relevant part: "Any person receiving a fine or prison or jail sentence shall receive credit towards any portion of such fine as is not remitted or any portion of such sentence as to which execution is not suspended for any days spent in custody under a mittimus as a result of any court proceeding for the offense or acts for which such fine or sentence is imposed. The clerk of the court shall enter such credit upon the order in the case of a fine, and upon the mittimus in the case of a sentence and it shall be the duty of the agency or person that held such person under such mittimus to inform the clerk of the court of the proper amount of such credit. . . ."

General Statutes (Rev. to 1968) § 18-98 provides: "Any person who has been denied bail or who has been unable to obtain bail and who is subsequently imprisoned is entitled to commutation of his sentence by the number of days which he spent in jail from the time he was denied or was unable to obtain bail to the time he was so imprisoned. The commissioner of correction shall credit such person with the number of days to which the deputy jailer of the jail where such person was confined while awaiting trial certifies such person was confined between the denial of bail to him or his inability to obtain bail and his imprisonment."

legislative history of § 18-98, which is the statutory progenitor of § 18-98d (c), indicates that the legislature authorized the commissioner to grant presentence confinement credit because trial courts were not consistently doing so at that time. Testifying in favor of the proposed legislation, Harold Hegstrom, the state jail administrator, stated: "There are a large number of inmates who are [not] released on bond and may wait for months before they come up to trial. . . . Now I understand that there are a number of [j]udges [who] do give consideration to the time that [a] man has spent in jail prior to sentencing, but it is usually the other way around, that no consideration is given to the time [he] is awaiting trial." Conn. Joint Standing Committee Hearings, Corrections, 1967 Sess., p. 55. Indeed, the floor debates on the bill ultimately enacted as § 18-98 indicate the remedial nature of the statutory progenitor of § 18-98d, which was intended to address inequities in sentencing arising from the effects of the bail bond system. See 12 S. Proc., Pt. 5, 1967 Sess., p. 2126, remarks of Senator George Gunther ("I rise in support of this bill. I was amazed in visiting our jails throughout this state, that we have cases of [holdovers] sitting in jail as long as a year, and then to find out that they could be brought into court, sentenced and have to serve an additional [five] or [ten], [fifteen] or [twenty] days. I think this is long overdue, it is another asset in our entire corrections program in the state of Connecticut."); 12 H.R. Proc., Pt. 7, 1967 Sess., p. 3096, remarks of Representative Norris L. O'Neill ("[O]ur bail bond laws have long discriminated against the poor. I think that this bill helps to make up for some of the inequities that have taken place for so long.").

When § 18-98d was enacted in 1980, §§ 18-97 and 18-98 were amended to apply only to persons who were confined for an offense committed prior to July 1, 1981. See Public Acts 1980, No. 80-442, §§ 5 and 6. All subsequent references to §§ 18-97 and 18-98 in this opinion are to the 1968 revisions of those statutes.

Subsequently, in 1980, the legislature enacted § 18-98d in connection with No. 80-442 of the 1980 Public Acts (P.A. 80-442), which provided for comprehensive sentencing reform, including the elimination of indeterminate sentencing in favor of definite sentencing and certain changes to good time credit. Section 2 of P.A. 80-442 was codified in part as § 18-98d and replaced §§ 18-97 and 18-98 with respect to any person who was confined to a community correctional center or a correctional institution for an offense committed on or after July 1, 1981. Public Act 80-442 also added subsection (c) of § 18-98d, which provides in relevant part that the commissioner "shall be responsible for ensuring that each person to whom the provisions of this section apply receives the correct reduction in such person's sentence . . . ."

On the basis of the statutory text, read in light of this legislative history, we conclude that trial courts have discretionary authority to direct the commissioner to apply specific presentence confinement credit to the sentence that the court has imposed in accordance with § 18-98d (a) (1) (A). See, e.g., *Clark* v. *Waterford, Cohanzie Fire Dept.*, 346 Conn. 711, 728–29, 295 A.3d 889 (2023) (text remains primary consideration in construction of statute, even when it is ambiguous for purposes of § 1-2z). The legislative history of § 18-98, the progenitor of § 18-98d (c), demonstrates that the legislature was aware in 1967 that some courts had been granting credit for presentence confinement before that time, despite the absence of any specific statutory authority. Nothing in the legislative history or the language of that statute or of § 18-97 indicates that the legislature intended to deprive courts of that authority. To the contrary, the legislative history of § 18-98 indicates that the legislature was concerned that some trial courts were *not* exercising their authority to grant presentence confinement credit in cases in which credit

should have been granted. As a result, persons who were held in presentence confinement for lengthy periods—a disproportionate number of whom were poor and unable to post bond—were spending more time in confinement than intended by the legislature.

Our conclusion that trial courts have the inherent authority to determine presentence confinement credit is consistent with case law from other states. At least one other state supreme court has held that, "as long as any particular confinement credit does not lessen the penalty intended by the [l]egislature, or otherwise frustrate the [l]egislature's constitutional function of establishing criminal penalties . . . the judiciary possesses inherent discretionary authority to grant presentence confinement credit." *State* v. *Martinez*, 126 N.M. 39, 42–43, 966 P.2d 747 (1998); see also *Kronz* v. *State*, 462 So. 2d 450, 451 (Fla. 1985) (trial courts possess "inherent discretionary authority to award credit for time served in other jurisdictions while awaiting transfer to Florida"). In support of this conclusion, the New Mexico Supreme Court reasoned in *Martinez*: "Presentence confinement credit represents a court's recognition that a defendant, in fact, has satisfied a portion of the penalty mandated by the [l]egislature. See *State* v. *Trudeau*, 487 N.W.2d 11, 15 (N.D. 1992) ('[t]ime spent in custody that has been credited toward a sentence is effectively the same thing as time served pursuant to a sentence'). It is the duty of the judiciary, in implementing the directives of the [l]egislature, to exercise reason and ensure that the ends of justice are met." *State* v. *Martinez*, supra, 42.

That reasoning is persuasive. As we explained, trial courts in this state applied credit for presentence confinement to sentences prior to the enactment of §§ 18-97 and 18-98 in 1967, and they have continued to do so

up to the present time.[13] The legislature has never evinced any intent to deprive courts of such authority, and the phrasing of the statutory text strongly suggests that the commissioner's role is indeed one that is shared with the trial court. See, e.g., *William W. Backus Hospital* v. *Stonington*, 349 Conn. 713, 726, 321 A.3d 1117 (2024); *Clark* v. *Waterford, Cohanzie Fire Dept.*, supra, 346 Conn. 728–29. Because the language of § 18-98d, especially when read in light of its predecessor statutes and the legislative history, reflects an intention that trial courts will continue to exercise their inherent authority to issue orders directing that presentence confinement credit be applied to a particular sentence, we conclude that trial courts have such authority.

In support of its contention that trial courts do not have the inherent authority to apply credit for presentence confinement, the state points out that this court has indicated in a number of cases that "presentence credit is a creature of statute and that, as a general rule, such credit is not constitutionally required." (Internal quotation marks omitted.) *Harris* v. *Commissioner of Correction*, 271 Conn. 808, 833, 860 A.2d 715 (2004); see *Hammond* v. *Commissioner of Correction*, 259 Conn. 855, 879, 792 A.2d 774 (2002); *Johnson* v. *Manson*, 196 Conn. 309, 321 n.12, 493 A.2d 846 (1985), cert. denied, 474 U.S. 1063, 106 S. Ct. 813, 88 L. Ed. 2d 787 (1986). On the basis of this language, the state argues that, in the absence of a statute affirmatively conferring authority on trial courts to order credit for presentence confinement, courts have no such authority. We disagree. Those cases are distinguishable because none

[13] As the Appellate Court noted, it has not been a universal position among the judges of the Superior Court that they lack the authority to place orders on judgment mittimuses directing the commissioner to apply specific presentence confinement credit to a defendant's sentence. See *State* v. *Hurdle*, supra, 217 Conn. App. 467–68. This division is evident in the procedural history of the present case, which indicates that Judge Cradle awarded such credit when she sentenced the defendant in the New Haven case.

addressed the specific question at issue in the present case, which is whether a trial court has the inherent authority to order the application of presentence confinement credit or, instead, has such authority *only* if conferred by statute. *Harris*, *Hammond*, and *Johnson* by contrast, addressed the different question of whether a construction of the statute that did not provide jail credit in a given situation violated a prisoner's *constitutional* rights to equal protection.

Instead, this court's description of presentence confinement credit as a creature of statute must be understood within the context of our cases holding that courts do not have exclusive control over sentencing matters generally. It is well settled that, "[w]hatever views may be entertained regarding severity of punishment, whether one believes in its efficacy or its futility . . . these are peculiarly questions of legislative policy. . . . Thus, although the rule of separation of governmental powers cannot always be rigidly applied . . . it must be remembered that the constitution assigns to the legislature the power to enact laws defining crimes and fixing the degree and method of punishment and to the judiciary the power to try offenses under these laws and [to] impose punishment within the limits and according to the methods . . . provided." (Internal quotation marks omitted.) *State* v. *Bischoff*, 337 Conn. 739, 764, 258 A.3d 14 (2021). Credit for presentence confinement in particular is a matter over which all three branches of government have a part. See *Washington* v. *Commissioner of Correction*, 287 Conn. 792, 829, 950 A.2d 1220 (2008) (concluding that § 18-98d is not unconstitutional delegation of judicial sentencing power because it "properly designates to the executive branch the duty to manage a prisoner's sentence once it has been imposed by, for example, calculating applicable credit to reduce time spent in prison"). Thus, we disagree with the state insofar as it contends that, in the absence of a statute

affirmatively conferring authority on trial courts to order credit for presentence confinement, courts have no such authority. Rather, § 18-98d and its predecessors reflect legislative action implementing, supplementing, and limiting that nonexclusive authority.

We also disagree with the state's reliance on this court's decision in *Washington* v. *Commissioner of Correction*, supra, 287 Conn. 792, in support of its "inferential" argument that trial courts do not have the inherent authority to determine credit for presentence confinement pursuant to § 18-98d. In *Washington*, the trial court had sentenced the petitioner to a total effective term of seven years of incarceration in accordance with a plea agreement and declined to direct the commissioner to apply presentence confinement credit under § 18-98d, apparently on the basis of the court's view that it was up to the commissioner to determine the petitioner's entitlement to such credit. Id., 825–26. In a subsequent habeas challenge, this court rejected the petitioner's claim that the trial court had violated the separation of powers by "delegat[ing] a 'strictly judicial function' of sentencing to the executive branch when it deferred to the [commissioner] for the proper calculation and application of the petitioner's presentence confinement credit." Id., 827; see id., 827–29. In rejecting the delegation claim, this court disagreed with the petitioner's reliance "on a footnote in *Hammond* v. *Commissioner of Correction*, [supra, 259 Conn. 855], for the proposition that the [commissioner] must apply presentence confinement credit, 'as ordered by the trial court *even if the detainee has no constitutional or statutory entitlement to such credit.*' " (Emphasis added.) *Washington* v. *Commissioner of Correction*, supra, 829 n.19; see *Hammond* v. *Commissioner of Correction*, supra, 881 n.24. The court held in *Washington* that this observation in *Hammond* "merely indicates that when a petitioner is not statutorily entitled to receive a reduc-

tion in his sentence for presentence incarceration, the court may consider such incarceration, among all other discretionary factors, in determining the appropriate length of the sentence."[14] *Washington* v. *Commissioner of Correction*, supra, 830 n.19. Although both *Washington* and *Hammond* relate to the trial court's authority to order the commissioner to apply presentence confinement credit under § 18-98d, they do not squarely address the issue before this court in the present case, which concerns the distinct question of whether a trial court has the authority to direct the commissioner to award credit for specific dates of confinement under § 18-98d.[15]

Finally, the state argues that "[p]ublic policy and practical considerations do not favor a dual system of awarding presentence confinement credit." Specifically,

[14] It is not entirely clear whether, in *Washington*, this court intended to hold that a trial court has no authority to order presentence confinement credit that is not authorized by statute, or whether it intended to hold that a trial court has no authority to order presentence confinement credit *at all*. To the extent that *Washington* may be read to support the latter proposition, we disavow that interpretation.

[15] The defendant argues that, under this court's decision in *James* v. *Commissioner of Correction*, supra, 327 Conn. 24, the trial court's inherent authority to award presentence confinement credit is not limited by § 18-98d. The defendant posits that §§ 53a-37 and 53a-38, which govern when sentences commence, also influence the trial court's authority to award presentence credit. We disagree. *James* involved the scope of the commissioner's authority under § 18-98d and is entirely silent as to the trial court's inherent authority to award credit beyond that authorized by the statute.

To the extent that the trial court's authority to direct the commissioner to apply presentence credit is limited by § 18-98d, in sentencing a criminal defendant, the trial court has other options available in determining the time that the defendant should be incarcerated after sentencing. For example, it retains the discretion to adjust the overall period of incarceration imposed to address the time that does not qualify for credit under § 18-98d. See *Hammond* v. *Commissioner of Correction*, supra, 259 Conn. 881 n.24 (noting that, in determining sentence, even if defendant has no right to credit for presentence confinement under § 18-98d for time incarcerated in different state, it is within trial court's discretion to consider such presentence confinement *in its sentencing determination*).

the state argues that (1) the commissioner, rather than the trial court, is in the best position to access the information required to make an accurate calculation, and (2) public policy demands consistency and uniformity in the application of presentence confinement credit, and the amount of credit applied should not depend on the discretion of an individual sentencing judge. We disagree. With respect to the state's practicality argument, the defendant makes the unchallenged representation that the commissioner will comply with such court orders, as long as they are sufficiently specific.[16] See *Aviles* v. *Commissioner of Correction*, Docket No. TSR-CV-19-5000129-S, 2020 WL 4815872 (Conn. Super. July 23, 2020). In *Aviles*, the habeas court credited testimony by a records specialist for the department that the commissioner honored orders by trial courts to incorporate presentence confinement credit in a particular manner. Id., *2; see id. (records specialist testified that, "*absent a specific order from the court* noted on the mittimus at sentencing, [the commissioner] is constrained by the statutes governing the calculation and application of sentence credits" (emphasis added)). The records specialist further testified that trial courts, "based on information obtained from defense counsel, easily supplied through the [department's] records section and/or supplemented by computerized records to which counsel may have access, should specify to the [department] the exact date range for the application of such credit." Id. Accordingly, we conclude that trial courts have the ability to obtain accurate presentence confinement information for purposes of directing an award of credit in connection with determining an appropriate sentence.

[16] The state does not challenge the accuracy of this contention by the defendant or his reliance on the record in *Aviles* v. *Commissioner of Correction*, Docket No. TSR-CV-19-5000129-S, 2020 WL 4815872 (Conn. Super. July 23, 2020), for this assertion.

Turning to the state's concern about disparity in the award of presentence confinement credit, that concern is mitigated by the limits on the trial court's discretion to award such credit that are imposed by clauses (i) and (ii) of § 18-98d (a) (1) (A), which require the court to count "each day of presentence confinement . . . only once for the purpose of reducing all sentences imposed after such presentence confinement"; General Statutes § 18-98d (a) (1) (A) (i); and only when "the existence of a mittimus, an inability to obtain bail or the denial of bail is the sole reason for such person's presentence confinement . . . ."[17] General Statutes § 18-98d (a) (1) (A) (ii). We will not presume that trial courts will misconstrue those statutory provisions and direct the commissioner to apply less or more credit than that to which the defendant is statutorily entitled.

In summary, we conclude that the trial court has the discretionary authority to direct the commissioner to apply specific presentence confinement dates to a sentence.[18] Trial courts should not hesitate to exercise that authority, consistent with § 18-98d (a) (1) (A), in ensuring that the duration of incarceration reflects the intent of the court in fashioning a sentence.[19] Because the

[17] Clause (ii) of § 18-98d (a) (1) (A) provides an exception, not applicable in the present case, allowing presentence confinement credit for imprisonment served, or a fine paid, for a conviction later reversed on appeal.

[18] We emphasize that the trial court has only the discretionary authority to include on the judgment mittimus the specific dates of presentence confinement credit that the commissioner should apply. The commissioner has the ultimate and exclusive responsibility to apply that credit, and any additional presentence credit if applicable, as well as to calculate the defendant's release date.

[19] The calculation of presentence confinement credit becomes more complicated in cases like the present one, in which a defendant receives multiple concurrent sentences in files originating in numerous judicial districts. The defendant also seeks credit for a period (February 26, 2019, through February 18, 2021) during which it appears that he was not confined for inability to post bond or because bail was denied but, instead, was confined because he was serving sentences in other cases. Credit during this period would appear to be foreclosed by this court's construction of § 18-98d in *Harris*, which relied on this court's decision in *Payton* v. *Albert*, 209 Conn. 23, 547

Appellate Court improperly upheld the trial court's

A.2d 1 (1988), overruled in part on other grounds by *Rivera* v. *Commissioner of Correction*, 254 Conn. 214, 756 A.2d 1264 (2000). In *Harris*, this court held that, "[w]hen concurrent sentences are imposed on the same date, as in *Payton*, the available presentence confinement days have not yet been utilized," but that, "when concurrent sentences are imposed on different dates, the presentence confinement days accrued simultaneously on more than one docket are utilized fully on the date that they are applied to the first sentence. Hence, they cannot be counted a second time to accelerate the discharge date of any subsequent sentence without violating the language of § 18-98d (a) (1) (A)." *Harris* v. *Commissioner of Correction*, supra, 271 Conn. 823. The present case presents two potential additional issues arising from this application of § 18-98d in accordance with this court's construction of the statute in *Harris*.

First, the defendant summarily contends that, even though § 18-98d (a) (1) (A) expressly precludes awarding presentence confinement credit for time spent serving a sentence, denying credit for this period would violate his constitutional right to due process by unduly burdening his constitutional right to a jury trial. We decline to address this contention because it is inadequately briefed. See, e.g., *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 804–805, 256 A.3d 655 (2021).

Second, as we noted previously; see footnote 1 of this opinion; the legislature amended § 18-98d (a) (1) in 2021 to add a new subparagraph (B), which addresses the calculation of presentence confinement credit in the case of multiple concurrent sentences pending at the time that the sentence was imposed. See Public Acts 2021, No. 21-102, § 21 (P.A. 21-102). That provision provides in relevant part: "Any person who is confined to a community correctional center or a correctional institution for an offense committed on or after October 1, 2021, under a mittimus or because such person is unable to obtain bail or is denied bail shall, if subsequently imprisoned, earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed; provided (i) each day of presentence confinement shall be counted equally in reduction of any concurrent sentence imposed for any offense pending at the time such sentence was imposed; [and] (ii) each day of presentence confinement shall be counted only once in reduction of any consecutive sentence so imposed . . . ." General Statutes § 18-98d (a) (1) (B).

The legislative history of that provision indicates that it was enacted in response to this court's decision in *Harris*. See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 5, 2021 Sess., p. 3070, remarks of Frank J. Riccio II, president of the Connecticut Criminal Defense Lawyers Association (explaining that result of *Harris* was that "[d]efendants with files in multiple court locations could inadvertently lose earned pretrial credits if they are sentenced on different dates" and that "[P.A. 21-102] would remedy that

determination that it had no discretion to direct the commissioner to apply specific presentence confinement dates, the case must be remanded to the trial court so that it may exercise that discretion in the first instance. See, e.g., *State* v. *Ayala*, 324 Conn. 571, 588–89, 153 A.3d 588 (2017) ("the failure to exercise discretion is an abuse in and of itself").

II

We next address the defendant's claims that the Appellate Court incorrectly determined that (1) the plea agreement did not include an agreement that the defendant would receive presentence confinement credit, and (2) the plea agreement is not void on the ground that there was no meeting of the minds on the issue of presentence confinement credit. We disagree with both claims.

"It is well settled that [p]rinciples of contract law and special due process concerns for fairness govern our interpretation of plea agreements." (Internal quotation marks omitted.) *State* v. *Kallberg*, 326 Conn. 1, 14–15, 160 A.3d 1034 (2017); see also *Santobello* v. *New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) ("the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances"). "[I]n the context of plea agreements, [t]he primary goal of contract interpretation is to effec-

problem"). The legislature's enactment of subparagraph (B) of § 18-98d (a) (1) strongly suggests that it did not agree with the result of this court's decision in *Harris* and intended to overrule it prospectively. See General Statutes § 18-98d (a) (1) (B) (provision applies only to persons who committed offense on or after October 1, 2021). Because the trial court declined to order any presentence confinement dates on the judgment mittimus in the present case, the continuing vitality of *Harris* and our other § 18-98d case law in the wake of the 2021 amendment to the statute is not before us. Accordingly, we leave to another day any questions concerning the proper calculation of presentence confinement in cases subject to its terms.

tuate the intent of the parties . . . . In ascertaining that intent, we employ an objective standard and look to what the parties reasonably understood to be the terms of the plea agreement on the basis of their words and conduct, and in light of the circumstances surrounding the making of the agreement and the purposes they sought to accomplish." (Citation omitted; internal quotation marks omitted.) *State* v. *Kallberg*, supra, 15; see also *United States* v. *Davis*, Docket No. 91-30430, 1994 WL 1712, *1 (9th Cir. January 4, 1994) (decision without published opinion, 15 F.3d 1091) ("the formation of a plea agreement is measured by objective manifestations of assent to specific terms").

Moreover, "[i]t is well settled that the threshold determination as to whether a plea agreement is ambiguous as to the parties' intent is a question of law subject to plenary review. . . . If the reviewing court deems the agreement ambiguous and extrinsic evidence has been offered to dispel that ambiguity, such as testimony regarding the facts surrounding the making of the agreement, then intent is a question of fact for the trial court, reversible only if clearly erroneous. . . . If, however, the agreement is ambiguous and no extrinsic evidence has been offered, resolution of the dispute as to the parties' intent necessarily hinges on what inferences can be drawn solely from the four corners of the agreement. Under such circumstances, the intention of the parties presents a question of law over which we exercise plenary review. . . . In the absence of extrinsic evidence, determining the intent of the parties does not require resolution of disputed facts or credibility assessments." (Citations omitted.) *State* v. *Kallberg*, supra, 326 Conn. 16–17.

In the present case, the sole evidence before the trial court, in determining the terms of the plea agreement, consisted of the representations of counsel and the canvass of the defendant. Applying plenary review to

the defendant's claim that the plea agreement included an agreement that the defendant would receive presentence confinement credit for the time that he spent serving the sentences in connection with the Ansonia-Milford and the New Haven cases, we agree with the Appellate Court that the record contains no evidence that would support such a finding. See *State* v. *Hurdle*, supra, 217 Conn. App. 470–71. To the contrary, the record shows that Brown represented to the trial court at the February 18, 2021 sentencing hearing that, although he told the defendant that he would seek presentence confinement credit, "[he] did not tell him there was an agreement for jail credit" and that "[t]here was not [such an agreement], and [he could not] represent that there was." In addition, the prosecutor represented to the court that, in his view, he had no authority to enter into an agreement for presentence confinement credit. We therefore conclude that the trial court correctly determined that the plea agreement did not include an agreement concerning the award of presentence confinement credit.

With respect to the defendant's alternative claim that the plea agreement is void because there was no meeting of the minds on the issue of presentence confinement credit, we conclude that, although the record might support the conclusion that the defendant *subjectively* believed that he would receive jail credit in the present case for the time that he had spent serving the sentences in connection with the Ansonia-Milford and New Haven cases, that subjective belief was wholly unreasonable, and the evidence supports a finding that the plea agreement with the state did not include any such credit. At the January 28, 2021 hearing, the prosecutor represented that Judge McShane had expressly warned the defendant at the February 13, 2019 hearing—at which the prosecutor was present—that, if he started serving his sentence for violating his probation

in the Ansonia-Milford cases, he would not receive credit for that time in the New Haven case or in the present case, and that the defendant confirmed twice that he understood that fact. Indeed, the prosecutor stated that, in his view, he had no authority to enter into such an agreement. In light of these representations, we conclude that Appellate Court correctly determined that the trial court's rejection of the defendant's claim that the plea agreement was void because there was no meeting of the minds was not clearly erroneous.

In support of his claim to the contrary, the defendant contends that Brown stated at the February 18, 2021 hearing that "the state represented in a pretrial negotiation that the seven and one-half year sentence would result in the [defendant's] serving four more years than he was currently serving," and the prosecutor did not dispute this claim. This contention rests on an inaccurate factual premise. Brown told the court at the February 18, 2021 hearing that he had found a note in his case file indicating that *he* "[believe[*d*]" that, under the state's plea offer, the seven and one-half year sentence would result in the defendant's serving only an additional four years in prison, but he acknowledged that his personal understanding of the offer may have been inaccurate. He also suggested that his discussion with the defendant regarding what he believed to have been the state's offer may have been the basis for the defendant's misunderstanding. As we indicated, Brown candidly acknowledged at the hearing that he had not made any such agreement with the state concerning credit for presentence confinement. We therefore reject this claim.

The judgment of the Appellate Court with respect to its conclusion regarding the trial court's authority to order the commissioner to apply presentence confinement credit to the defendant's sentence is reversed and the case is remanded to that court with direction to

reverse the trial court's judgment with respect to the presentence confinement credit issue and to remand the case to the trial court for further proceedings according to law; the judgment of the Appellate Court is affirmed in all other respects.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* ERIC L.*
(SC 20834)

McDonald, D'Auria, Mullins, Ecker, Alexander and Dannehy, Js.**

Syllabus

The defendant appealed from the judgment of the Appellate Court, which had affirmed the trial court's judgment revoking his probation. He claimed that the Appellate Court improperly upheld the trial court's conclusion that it lacked authority under the statute (§ 18-98d) governing presentence confinement credit to direct the commissioner of correction to apply such credit to his sentence. *Held*:

The issue of whether the trial court has authority to direct the commissioner to apply specific presentence confinement credit to a sentence was resolved in the companion case of *State* v. *Hurdle* (350 Conn. 770), in which this court held that trial courts do have authority to direct the commissioner to apply such credit to a sentence on a judgment mittimus.

Insofar as the Appellate Court improperly upheld the trial court's incorrect determination that it had no such authority, this court reversed the Appellate

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* In accordance with our policy of protecting the privacy interests of victims of family violence, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

** This case originally was argued before a panel of this court consisting of Chief Justice Robinson and Justices McDonald, D'Auria, Mullins, Ecker, Alexander, and Dannehy. Thereafter, Chief Justice Robinson retired from this court and did not participate in the consideration of this case.

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

Court's judgment in part, and the case was remanded so that the trial court could exercise its discretion to direct the commissioner to apply presentence confinement credit to the defendant's sentence.

Argued April 25—officially released December 10, 2024

Procedural History

Substitute information charging the defendant with violation of probation, brought to the Superior Court in the judicial district of Litchfield, geographical area number eighteen, and tried to the court, *Shaban*, *J.*; judgment revoking the defendant's probation; thereafter, the court denied the defendant's request for presentence confinement credit, and the defendant appealed to the Appellate Court, *Prescott*, *Moll* and *Cradle*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Reversed in part*; *further proceedings*.

Lisa J. Steele, assigned counsel, for the appellant (defendant).

Laurie N. Feldman, assistant state's attorney, with whom, on the brief, was *David Shannon*, state's attorney, for the appellee (state).

Opinion

PER CURIAM. The defendant, Eric L., appeals[1] from the judgment of the Appellate Court, which affirmed the trial court's judgment revoking his probation. The defendant claims that the Appellate Court incorrectly concluded that the trial court lacked authority under

[1] We granted the defendant's petition for certification to appeal, limited to the following issue: "Did the Appellate Court correctly conclude that the trial court lacked authority to award the defendant presentence confinement credit in view of that court's decision in *State* v. *Hurdle*, [217 Conn. App. 453, 288 A.3d 675] (2023)?" *State* v. *Eric L.*, 346 Conn. 927, 291 A.3d 1041 (2023).

General Statutes § 18-98d[2] to direct the commissioner of correction (commissioner) to apply specific presentence confinement credit to his sentence. We agree and, accordingly, reverse in part the judgment of the Appellate Court.

The following facts are relevant to our resolution of this appeal. On January 17, 2019, the defendant pleaded guilty to one count of violation of a protective order based on text messages that he had sent to his former girlfriend and the mother of his child. After accepting the defendant's plea, the trial court sentenced the defendant to five years of incarceration, execution suspended, followed by five years of probation. On May 2, 2020, the defendant was admitted to Danbury Hospital, suffering from auditory and visual hallucinations and suicidal ideation. While there, he disclosed to a social worker his plan to inflict serious bodily injury on his former girlfriend's boyfriend. Believing that the boyfriend was in danger, the social worker contacted the defendant's probation officer, who advised the social worker to call the police. On May 6, 2020, the defendant was arrested for threatening in the second degree on the basis of his statements to the social worker and

[2] General Statutes § 18-98d provides in relevant part: "(a) (1) (A) Any person who is confined to a community correctional center or a correctional institution for an offense committed on or after July 1, 1981, and prior to October 1, 2021, under a mittimus or because such person is unable to obtain bail or is denied bail shall, if subsequently imprisoned, earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed; provided (i) each day of presentence confinement shall be counted only once for the purpose of reducing all sentences imposed after such presentence confinement; and (ii) the provisions of this section shall only apply to a person for whom the existence of a mittimus, an inability to obtain bail or the denial of bail is the sole reason for such person's presentence confinement . . . ."

Although § 18-98d (a) (1) was amended by No. 21-102, § 21, of the 2021 Public Acts, those amendments have no bearing on this appeal. In the interest of simplicity, we refer to the current revision of the statute.

was placed in the custody of the commissioner. Due to that arrest, on May 14, 2020, the defendant was charged with violating the terms of his probation. Because of COVID-19 related restrictions and delays in court operations, the violation of probation arrest warrant was not served on the defendant until October 22, 2020, at which time the defendant was arraigned and bond was set. The defendant remained in custody until December 28, 2020, when he posted bond and was released.

On October 1, 2021, the trial court found the defendant in violation of his probation, revoked his probation, and sentenced him to 5 years of incarceration, execution suspended after 6 months, followed by 3 years and 250 days of probation. After the court imposed the sentence, defense counsel requested that the court state on the mittimus that the defendant should receive presentence confinement credit from May 6 to December 28, 2020, or, in the alternative, from the date the violation of probation arrest warrant was signed, May 14, 2020. Defense counsel explained that, although the arrest warrant was signed on May 14, 2020, because of the COVID-19 pandemic, it was not served until October 22, 2020. Defense counsel argued that, without a notation on the mittimus stating that the defendant was entitled to presentence confinement credit from May 6 to December 28, 2020, the commissioner would give him credit only from the date of his arraignment, October 22, 2020. The state did not dispute defense counsel's assertion that the defendant was entitled to approximately seven months of presentence confinement credit. The state argued, however, that only the commissioner has the authority to assign such credit.

The trial court agreed with the state, reasoning that "[the commissioner] typically discerns what [presentence confinement] credit is available to a particular individual," and, "[o]nce [the court] sentence[s] him,

the determination of credits is within the context and confines of [the Department of Correction (department)]." Accordingly, the court noted on the mittimus the following: "The [d]efendant is entitled to sentence credit of AS DEEMED APPROPRIATE BY [THE DEPARTMENT]." Defense counsel then asked the court to stay execution of the defendant's sentence so that the defendant could appeal the court's ruling that it lacked authority to order the commissioner to apply specific presentence confinement credit. She argued that, without such a stay, there was a serious risk that the defendant would end up serving far more time than the six months ordered by the court given that the defendant had already been incarcerated for seven months. Although the court refused to stay execution of the defendant's sentence, it agreed to set an appellate bond. After the defendant's sentencing, the state entered a nolle prosequi on the charge of threatening in the second degree. See *State* v. *Eric L.*, 218 Conn. App. 302, 307 n.6, 291 A.3d 621 (2023).

On appeal to the Appellate Court, the defendant claimed that the trial court had abused its discretion in declining to direct the commissioner to apply the requested presentence confinement credit to his sentence. Id., 321. The Appellate Court rejected this claim, citing its decision in *State* v. *Hurdle*, 217 Conn. App. 453, 288 A.3d 675 (2023), in which it determined that the trial court lacked authority to award such credit under § 18-98d. See *State* v. *Eric L.*, supra, 218 Conn. App. 323–24; see also *State* v. *Hurdle*, supra, 461, 469.

On appeal to this court following our grant of certification, the defendant claims that *State* v. *Hurdle*, supra, 217 Conn. App. 453, was wrongly decided and that the trial court has authority to order the commissioner to apply specific presentence confinement credit to his sentence. The state contends that *Hurdle* was correctly decided but argues that, even if we disagree, the defen-

dant is not entitled to presentence confinement credit starting on May 14, 2020, the date on which the arrest warrant for violation of probation was signed, because the warrant was not served on him until October 22, 2020. The state contends that, until such time as the defendant was arraigned on the violation of probation charge, he was not technically being held on that charge, only on the threatening charge, which was subsequently nolled.

The issue of whether the trial court has authority to order the commissioner to apply specific presentence confinement credit to a sentence was addressed in the companion case that we also decided today, *State* v. *Hurdle*, 350 Conn. 770, A.3d (2024), in which we concluded that our trial courts have the authority to direct the commissioner to apply specific presentence confinement credit to a sentence on a judgment mittimus. Id., 773, 785. Our examination of the issue in *Hurdle* addresses the arguments of the parties in the present case with respect to this issue.

We disagree with the state that the defendant is not entitled to presentence confinement credit starting on May 14, 2020, the date on which the arrest warrant for violation of probation was signed, because the warrant was not served on the defendant until October 22, 2020. The state cites no provision in § 18-98d (a) (1) (A) that would preclude the court from awarding credit starting on May 14, 2020. Moreover, the state's reliance on *Breen* v. *Warden*, 173 Conn. 312, 315–16, 377 A.2d 335 (1977), and *McCarthy* v. *Commissioner of Correction*, 217 Conn. 568, 583, 587 A.2d 116 (1991), is misplaced because, in both of those cases, the defendants sought presentence confinement credit for "dead time"—"prison parlance for presentence confinement time that cannot be credited because the inmate already is a sentenced prisoner serving time [in connection with] another sentence." *Griffin* v. *Commissioner of Correction*, 123

Conn. App. 840, 843 n.3, 3 A.3d 189, cert. denied, 299 Conn. 906, 10 A.3d 522 (2010). In the present case, it is undisputed that the defendant was not a sentenced prisoner serving time in connection with another sentence between May 14 and October 22, 2020. Had the defendant been promptly arraigned when the arrest warrant was signed on May 14, 2020, which presumably would have occurred but for pandemic related delays in court operations, there would be no question as to the defendant's entitlement to credit for time served from that date until his release on bond on December 28, 2020.

Because the trial court incorrectly determined that it had no discretion to direct the commissioner to apply specific presentence confinement credit on the judgment mittimus for the time that the defendant was incarcerated prior to his release on bond, the case must be remanded to that court so that it may exercise its discretion in accordance with this opinion and *State* v. *Hurdle*, supra, 350 Conn. 770.

The judgment of the Appellate Court with respect to its conclusion regarding the trial court's authority to order the commissioner to apply presentence confinement credit to the defendant's sentence is reversed and the case is remanded to that court with direction to remand the case to the trial court for further proceedings in accordance with this opinion; the judgment of the Appellate Court is affirmed in all other respects.

STATE OF CONNECTICUT *v.* KELLY NIXON
(SC 20848)

McDonald, D'Auria, Mullins, Ecker, Alexander and Dannehy, Js.*

Syllabus

The defendant appealed from the judgment of the trial court, which dismissed his motion to correct an illegal sentence for lack of subject matter

* This case originally was argued before a panel of this court consisting of Chief Justice Robinson and Justices McDonald, D'Auria, Mullins, Ecker,

jurisdiction. He claimed, inter alia, that the trial court had incorrectly concluded that it lacked authority under the statute (§ 18-98d) governing presentence confinement credit to direct the commissioner of correction to apply such credit to his sentence. *Held*:

The issue of whether the trial court has authority to direct the commissioner to apply presentence confinement credit to a sentence was resolved in the companion case of *State* v. *Hurdle* (350 Conn. 770), in which this court held that trial courts do have authority to direct the commissioner to apply such credit to a sentence on a judgment mittimus.

The trial court improperly dismissed the defendant's motion to correct an illegal sentence, as the court had jurisdiction over that motion under the applicable rule of practice (§ 43-22) because the motion raised a colorable claim that the defendant's plea agreement required that he receive a certain number of days of presentence confinement credit, and there was no indication in the record that, as part of the plea agreement, the defendant waived his right to the reduction in his sentence mandated by § 18-98d.

Accordingly, the trial court's judgment was reversed and the case was remanded so that the trial court could consider the merits of the defendant's motion to correct.

Argued April 25—officially released December 10, 2024

Procedural History

Information, in the first case, charging the defendant with the crimes of burglary in the third degree and larceny in the fourth degree, and substitute information, in the second case, charging the defendant with the crime of attempt to commit robbery in the first degree, brought to the Superior Court in the judicial district of New Britain, where the defendant was presented to the court, *Geathers*, *J.*, on pleas of guilty to burglary in the third degree and attempt to commit robbery in the first degree; judgments of guilty in accordance with the pleas; subsequently, the court, *Keegan*, *J.*, dismissed the defendant's motion to correct an illegal sentence, and the defendant appealed. *Reversed*; *further proceedings*.

Alexander, and Dannehy. Thereafter, Chief Justice Robinson retired from this court and did not participate in the consideration of this case.

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

James B. Streeto, senior assistant public defender, for the appellant (defendant).

Linda F. Rubertone, senior assistant state's attorney, with whom, on the brief, were *Christian M. Watson* and *Matthew C. Gedansky*, state's attorneys, and *Robert Mullins*, supervisory assistant state's attorney, for the appellee (state).

Opinion

PER CURIAM. The defendant, Kelly Nixon, appeals[1] from the judgment of the trial court dismissing his motion to correct an illegal sentence for lack of subject matter jurisdiction. On appeal, the defendant claims that the trial court incorrectly concluded that it lacked authority under General Statutes § 18-98d[2] to direct the commissioner of correction (commissioner) to apply a specific number of presentence confinement credits to his sentence. We agree and, accordingly, reverse the judgment of the trial court.

The record reveals the following relevant facts. The defendant was charged with multiple offenses in con-

[1] The defendant appealed to the Appellate Court, and we transferred the appeal to this court. See General Statutes § 51-199 (c) and Practice Book § 65-2.

[2] General Statutes § 18-98d provides in relevant part: "(a) (1) (A) Any person who is confined to a community correctional center or a correctional institution for an offense committed on or after July 1, 1981, and prior to October 1, 2021, under a mittimus or because such person is unable to obtain bail or is denied bail shall, if subsequently imprisoned, earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed; provided (i) each day of presentence confinement shall be counted only once for the purpose of reducing all sentences imposed after such presentence confinement; and (ii) the provisions of this section shall only apply to a person for whom the existence of a mittimus, an inability to obtain bail or the denial of bail is the sole reason for such person's presentence confinement . . . ."

Although § 18-98d (a) (1) was amended by No. 21-102, § 21, of the 2021 Public Acts, those amendments have no bearing on this appeal. In the interest of simplicity, we refer to the current revision of the statute.

nection with a string of robberies and burglaries that occurred in September and October, 2020, in the judicial districts of Tolland, Windham, Hartford, and New Britain. He was incarcerated immediately following his arrest on October 27, 2020.

On December 3, 2021, during pretrial proceedings in the judicial district of Tolland, State's Attorney Matthew C. Gedansky informed the court that he was working with the state's attorneys in the other judicial districts to achieve a global resolution of all charges. The defendant then reached an agreement with the state whereby he would plead guilty to certain charges in exchange for a total effective sentence of ten years of imprisonment, followed by five years of special parole. Pursuant to the terms of the plea agreement, the sentences were to run concurrently and to be stayed until April 1, 2022, so that they all would take effect on the same date.

On January 28, 2022, Gedansky informed the court that the global resolution would "be structured in a certain way to make sure that [the defendant's] pretrial credit doesn't get harmed in any way . . . ." Subsequently, the defendant entered guilty pleas in each of the judicial districts. On March 10, 2022, in the judicial district of New Britain, the defendant pleaded guilty to attempt to commit robbery in the first degree under docket number HHB-CR-21-0333647-T and burglary in the third degree under docket number H15N-CR-21-0332103-S, and received a total effective sentence of ten years of imprisonment, followed by five years of special parole. In accordance with the terms of the global plea agreement, the court issued a "no body" mittimus and stayed the sentence until April 1, 2022.

On March 11, 2022, in the judicial district of Windham, the defendant pleaded guilty to two counts of robbery in the second degree and received a total effective sentence of seven and one-half years of imprisonment,

followed by five years of special parole. During the sentencing hearing, the court sought confirmation that the sentences were to be stayed until April 1, 2022. Defense counsel responded in the affirmative, stating: "[The stay] will be lifted . . . on April 1, so that he's got, you know, all the credit for every one on the same date." The court responded, "[u]nderstood."

On March 31, 2022, in the judicial district of Hartford, the defendant pleaded guilty to robbery in the second degree and was sentenced to five years of imprisonment. At that time, defense counsel informed the court: "[T]he only thing I will indicate to the court is that [the defendant], and I had a long talk about his jail credit, which isn't an issue here. It was more of an issue in . . . New Britain. I didn't have a chance to let him know that I did . . . speak with his . . . New Britain attorney, Attorney Christopher Eddy, who will ask for credit on the mittimus tomorrow, for the dates that . . . [the defendant] and I talked about."

On April 1, 2022, in the judicial district of Tolland, the defendant pleaded guilty to robbery in the first degree and was sentenced to ten years of imprisonment, followed by five years of special parole. During the sentencing hearing, defense counsel asked the court to note on the mittimus that the defendant had been incarcerated since October 27, 2020. The court responded that it would make such a notation and then informed the defendant: "I want to let you know you may have credit for the time you've been held."

Also on April 1, 2022, Eddy appeared before the court in New Britain without the defendant and requested that the court note on the mittimus that the defendant was entitled to presentence confinement credit from August 26, 2021, to April 1, 2022. The court asked Eddy whether the defendant was free when the arrest warrant was signed in docket number HHB-CR-21-0333647-T.

Eddy responded: "No, he's . . . been incarcerated since October, 2020, and there was [an] ongoing investigation, and the warrant was signed [on] August 26, 2021, but he was not served until September 15, 2021, because of the [COVID-19] pandemic." The court declined to make the requested notation, stating that, because the defendant was incarcerated when the arrest warrant was signed, it would "just leave that up to [the commissioner]."

On January 18, 2023, the defendant filed a motion to correct an illegal sentence in the judicial district of New Britain, arguing that, although he had been promised a total effective sentence of ten years of imprisonment and 521 days of presentence confinement credit, the commissioner applied only 198 days of credit to his sentence in docket number HHB-CR-21-0333647-T and 302 days of credit to his sentence in docket number H15N-CR-21-0332103-S. As a result, he argued, he will have to serve a total effective sentence of nearly eleven years of imprisonment. The defendant argued that an "explicit inducement" to his entering into a plea agreement was that his total effective sentence would result in a sentence of ten years of imprisonment, followed by five years of special parole, calculated from the date of his initial arrest on October 27, 2020. He asked the court to order the commissioner to apply 521 days of presentence confinement credit to his sentences in docket numbers HHB-CR-21-0333647-T and H15N-CR-21-0332103-S. The defendant further argued that "[t]he state's failure to abide by the terms of the defendant's plea agreement constituted a material breach of [the] agreement pursuant to *Santobello* [v. *New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)]." The trial court dismissed the defendant's motion to correct for lack of subject matter jurisdiction, citing the Appellate Court's decision in *State* v. *Hurdle*, 217 Conn. App. 453, 288 A.3d 675 (2023), in which the court determined

that the trial court lacked authority under § 18-98d to award presentence confinement credit. See id., 461, 469.

On appeal, the defendant argues that *State* v. *Hurdle*, supra, 217 Conn. App. 453, was wrongly decided, and, therefore, the trial court improperly dismissed his motion to correct. The defendant further argues that, because his plea agreement with the state explicitly included 521 days of presentence confinement credit, that credit must be applied across all of his sentences or else he must be allowed to withdraw his plea. The state counters that *Hurdle* was correctly decided, and, as such, the trial court properly dismissed the defendant's motion for lack of subject matter jurisdiction. In the alternative, the state contends that the motion was properly dismissed because, "on its face, the motion did not actually challenge the manner in which the court imposed sentence, but, rather, it challenged the manner in which the [commissioner] had applied the defendant's presentence confinement credits, which is a matter for the habeas court." The state further contends that, even if the defendant's motion to correct can be construed as attacking the legality of the sentencing proceeding, "the factual basis [on] which [the defendant's] claim rests, namely, [Gedansky's] single remark at the January 28, 2022 pretrial hearing . . . does not suffice to show that it was plausible that the New Britain court imposed sentence contrary to the [plea] agreement by failing to order presentence confinement credits on the mittimus. . . .

"Other than [Gedansky's] isolated remark, the motion does not include any facts demonstrating a mutual understanding between the parties that the plea agreement included presentence confinement credit. The motion contains no statements, by the defendant or any of his four defense attorneys at any of the various court proceedings, in support of [the defendant's claim]."

The issue of whether the trial court has authority to order the commissioner to apply specific presentence confinement credit to a sentence was addressed in the companion case that we also decided today, *State* v. *Hurdle*, 350 Conn. 770, A.3d (2024), in which we concluded that trial courts have the authority to direct the commissioner to apply specific presentence confinement credit to a sentence on a judgment mittimus. Id., 773, 785. Our examination of the issue in *Hurdle* addresses the arguments of the parties in the present case with respect to this issue.

The state argues nonetheless that this court can affirm the trial court's judgment on an alternative ground. Specifically, the state argues that the trial court properly dismissed the defendant's motion to correct because the motion failed to allege a plausible claim that the New Britain court imposed a sentence that was contrary to the plea agreement when it failed to order 521 days of presentence confinement credit on the mittimus. We are not persuaded.

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." "Sentences imposed in an illegal manner have been defined as being within the relevant statutory limits but . . . imposed in a way [that] 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 . . . ." (Internal quotation marks omitted.) *State* v. *Ward*, 341 Conn. 142, 150–51, 266 A.3d 807 (2021). This case involves the third category of illegal sentences.

"Because of the limited nature of the court's jurisdiction [to correct an illegal sentence], we . . . have explained that the trial 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 omitted; internal quotation marks omitted.) Id., 151–52. "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." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Evans*, 329 Conn. 770, 784, 189 A.3d 1184 (2018), cert. denied, U.S. , 139 S. Ct. 1304, 203 L. Ed. 2d 425 (2019).

We conclude that the defendant's motion to correct raises a colorable claim that the plea agreement required the defendant to receive 521 days of presentence confinement credit. On January 28, 2022, Gedansky informed the trial court that the global resolution would "be structured in a certain way to make sure that [the defendant's] pretrial credit doesn't get harmed in any way . . . ." Because the defendant's sentences were to run concurrently under the plea agreement, the very harm of which Gedansky spoke would have come to pass if the 521 days were not applied to the New Britain sentences. Moreover, there was no reason for the parties to agree to stay the defendant's sentences until April 1, 2022, "so that [the defendant gets] . . . all the credit for every [sentence] on the same date," if the

credit was not going to make any difference with respect to the defendant's release date.[3]

Finally, we note that § 18-98d (a) (1) (A) provides in relevant part that "[a]ny person who is confined to a community correctional center or a correctional institution . . . under a mittimus or because such person is

[3] The parties' agreement to stay the sentences until April 1, 2022, can only be seen as an effort to avoid this court's holding in *Harris* v. *Commissioner of Correction*, 271 Conn. 808, 860 A.2d 715 (2004). As discussed in the companion case of *Hurdle*, "the legislature amended § 18-98d (a) (1) in 2021 to add a new subparagraph (B), which addresses the calculation of presentence confinement credit in the case of multiple concurrent sentences pending at the time that the sentence was imposed. See Public Acts 2021, No. 21-102, § 21 (P.A. 21-102). That provision provides in relevant part: 'Any person who is confined to a community correctional center or a correctional institution for an offense committed on or after October 1, 2021, under a mittimus or because such person is unable to obtain bail or is denied bail shall, if subsequently imprisoned, earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed; provided (i) each day of presentence confinement shall be counted equally in reduction of any concurrent sentence imposed for any offense pending at the time such sentence was imposed; [and] (ii) each day of presentence confinement shall be counted only once in reduction of any consecutive sentence so imposed . . . .' General Statutes § 18-98d (a) (1) (B).

"The legislative history of that provision indicates that it was enacted in response to this court's decision in *Harris*. See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 5, 2021 Sess., p. 3070, remarks of Frank J. Riccio II, president of the Connecticut Criminal Defense Lawyers Association (explaining that result of *Harris* was that '[d]efendants with files in multiple court locations could inadvertently lose earned pretrial credits if they are sentenced on different dates' and that '[P.A. 21-102] would remedy that problem'). The legislature's enactment of subparagraph (B) of § 18-98d (a) (1) strongly suggests that it did not agree with the result of this court's decision in *Harris* and intended to overrule it prospectively. See General Statutes § 18-98d (a) (1) (B) (provision applies only to persons who committed offense on or after October 1, 2021). Because the trial court declined to order any presentence confinement dates on the judgment mittimus in the present case, the continuing vitality of *Harris* and our other § 18-98d case law in the wake of the 2021 amendment to the statute is not before us. Accordingly, we leave to another day any questions concerning the proper calculation of presentence confinement in cases subject to its terms." *State* v. *Hurdle*, supra, 350 Conn. 793–94 n.19.

unable to obtain bail or is denied bail *shall*, if subsequently imprisoned, *earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed* . . . ." (Emphasis added.) There is no indication in the record that, as part of the plea agreement, the defendant waived his right to the reduction in sentence mandated by the statute. To the contrary, the record indicates that the plea agreement contemplated that the defendant would receive all of the credit to which he was entitled and that some presentence confinement credits were, in fact, applied to all of his sentences. In the absence of evidence that the defendant expressly waived his rights under § 18-98d (a) (1) (A), the presumption must be that the parties intended to follow the law. See, e.g., *State* v. *Obas*, 320 Conn. 426, 444, 446–48, 130 A.3d 252 (2016) (because "ambiguous language of a plea agreement must be construed against the state," court would not infer from defendant's assent to register as sex offender for ten years that he forfeited his statutory right to request exemption from registration); *State* v. *Rivers*, 283 Conn. 713, 725, 931 A.2d 185 (2007) ("[b]ecause the government ordinarily has certain awesome advantages in bargaining power, any ambiguities in the [plea] agreement must be resolved in favor of the defendant" (internal quotation marks omitted)).

Because the trial court incorrectly determined that it had no authority to direct the commissioner to apply presentence confinement credits to the defendant's sentences and, therefore, that it did not have jurisdiction over the defendant's motion to correct, the case must be remanded to that court so that it may consider the merits of the defendant's motion.

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