STATE OF CONNECTICUT *v.* ORANE C.*
(SC 20843)

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

Syllabus

The defendant appealed, on the granting of certification, from the judgment of the Appellate Court, which had affirmed his conviction of three counts of sexual assault in the first degree. The defendant claimed that the Appellate Court, in upholding the trial court's denial of his motion to dismiss count two of the state's February, 2020 substitute information, incorrectly concluded that the second count was not time barred by the applicable five year statute of limitations ((Rev. to 2013) § 54-193 (b)). *Held*:

Count two of the state's February, 2020 substitute information, which alleged conduct that had occurred on or about January 1, 2014, at a particular address and which the state first included in the February, 2020 substitute information, was filed more than five years after the date on which the conduct allegedly occurred.

Count two substantially broadened or amended the charges that were contained in the state's previous, timely filed short and long form informations, which alleged conduct that occurred in 2017 at or near a different location than that at which the 2014 conduct occurred, and which made no mention of the 2014 conduct, and, thus, the untimely filed charge in count two did not relate back to the timely filed charges in the state's previous informations.

Although the defendant, through the timely filed informations, received notice within the limitation period that he would be called on to defend against charges relating to the 2017 conduct, he did not receive notice within the limitation period that he would be called on to defend against the 2014 conduct, and an affidavit that the state submitted in 2018 in support of a warrant for the defendant's arrest that referred to the 2014 conduct charged in count two did not toll the statute of limitations, as an arrest warrant

* In accordance with our policy of protecting the privacy interests of the victims of sexual assault, 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 party's identity may be ascertained.

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

affidavit does not toll the statute of limitations for the uncharged conduct alleged therein.

Accordingly, the Appellate Court incorrectly concluded that count two of the state's February, 2020 information was not time barred, and this court reversed the Appellate Court's judgment only as to count two and ordered a remand to the trial court with direction to render a judgment of acquittal on that count and to resentence the defendant on the remaining counts.

Argued September 26—officially released December 17, 2024

Procedural History

Substitute information charging the defendant with three counts of sexual assault in the first degree, brought to the Superior Court in the judicial district of Fairfield, where the case was tried to the jury before *Calistro*, *J.*; thereafter, the court, *Calistro*, *J.*, denied the defendant's motion to dismiss; subsequently, verdict and judgment of guilty, from which the defendant appealed to the Appellate Court, *Alvord*, *Cradle* and *Suarez*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Reversed in part*; *judgment directed in part*; *further proceedings.*

Pamela S. Nagy, supervisory assistant public defender, for the appellant (defendant).

Laurie N. Feldman, assistant state's attorney, with whom, on the brief, were *Joseph T. Corradino*, state's attorney, *Ann P. Lawlor*, former supervisory assistant state's attorney, and *Susan Campbell*, assistant state's attorney, for the appellee (state).

Opinion

DANNEHY, J. The defendant, Orane C., was convicted, following a jury trial, of three counts of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (1). The Appellate Court affirmed the defendant's conviction, rejecting his claim that count two of the state's February 7, 2020 substitute informa-

tion (2020 substitute information) was time barred by the five year statute of limitations. On appeal, the defendant claims that count two of the 2020 substitute information, charging conduct from 2014, substantially broadened or amended the charges that were timely brought, therefore rendering it time barred under General Statutes (Rev. to 2013) § 54-193 (b).[1] We agree with the defendant and, accordingly, reverse in part the judgment of the Appellate Court.

The following facts and procedural history are relevant to the defendant's claim on appeal. In February, 2018, the state submitted an arrest warrant application and supporting affidavit (arrest warrant affidavit) to a judge of the Superior Court. The arrest warrant affidavit contained thirty-eight paragraphs that detailed the defendant's alleged pattern and history of sexual assault against his stepdaughter, S, over a fifteen year period. The court, *Devlin*, *J.*, on the basis of the arrest warrant affidavit, found probable cause to issue an arrest warrant for the charges of aggravated sexual assault in the first degree, threatening in the first degree, and unlawful restraint in the first degree.[2] The charged conduct was alleged to have occurred on or about May 22, 2017, well within the limitation period, in Bridgeport. After the state filed the original short form information, it filed several substitute informations. Defense counsel never moved for a bill of particulars.

[1] The five year statute of limitations set forth in General Statutes (Rev. to 2013) § 54-193 (b) applies to the charges in the present case. Accordingly, all references to § 54-193 (b) in this opinion are to the 2013 revision of the statute.

[2] The offenses charged were set forth on a Connecticut Judicial Branch form JD-CR-71, titled "Information," which was filled out and signed by a state's attorney. A copy of the arrest warrant was attached to the information and was given to the defendant upon being taken into custody. See *State* v. *Pierre*, 277 Conn. 42, 96, 890 A.2d 474 (explaining procedure for and contents of arrest warrant and information), cert. denied, 547 U.S. 1197, 126 S. Ct. 2873, 165 L. Ed. 2d 904 (2006).

In March, 2018, the state filed a long form information (2018 long form information) that charged the defendant with the same three counts but changed the date of May 22, 2017, which appeared on the short form information, to July 22, 2017, with respect to each count.[3] The 2018 long form information alleged that the conduct charged in each count occurred at a particular address on Beechwood Avenue in Bridgeport.

The state thereafter filed the relevant 2020 substitute information, which contained three counts. Count one, charging aggravated sexual assault in the first degree, alleged conduct that occurred on or about May 22, 2017, at or near a particular address on Beechwood Avenue in Bridgeport; count two, charging aggravated sexual assault in the first degree, alleged conduct that occurred on or about January 1, 2014, at a particular address on North Bishop Avenue in Bridgeport; and count three, charging sexual assault in the first degree, alleged conduct that occurred on or about January 1, 2016, in the area of Park Avenue in Fairfield. Count two of the 2020 substitute information is the subject of this appeal.

Six days after the 2020 substitute information was filed, jury selection began, and a six day trial commenced three weeks later.[4] After the state completed its presentation of evidence, the defendant moved to dismiss count two, arguing that the prosecution of the 2014 offense was time barred under § 54-193 (b) because the charge was not brought until 2020, more than five

[3] The state represents that this change of date was not a typographical error but, rather, is the date that the victim reported the incidents to the police.

[4] At the end of trial, the state filed a final substitute information amending the defendant's charges to three counts of sexual assault in the first degree. Each count alleged the same date of occurrence as the charges in the February, 2020 substitute information. The counts, however, are listed in a different order. Count one refers to May 22, 2017, count two refers to January 1, 2016, and count three refers to January 1, 2014. The final substitute information is not relevant to this appeal because the defendant's motion to dismiss concerns the February, 2020 substitute information.

years after the date of the offense. After hearing arguments on the defendant's motion to dismiss, the trial court, *Calistro*, *J.*, considered the 2018 long form information, the 2020 substitute information, and the arrest warrant affidavit to determine whether count two was time barred. The court, relying primarily on the arrest warrant affidavit, concluded that the defendant had notice of the 2014 allegations charged in count two "from the very beginning when [the arrest] warrant was served," and, therefore, the addition of count two in the 2020 substitute information did not substantially broaden or amend the timely charges in the 2018 long form information. The court, therefore, ruled that count two was not time barred and denied the defendant's motion.

At the conclusion of trial, the court charged the jury, and after one day of deliberations, the jury found the defendant guilty on each count. The trial court rendered judgment in accordance with the jury's verdict and imposed a total effective sentence of sixty years of incarceration, suspended after thirty years, followed by thirty years of probation.[5]

On appeal to the Appellate Court, the defendant claimed that the trial court had improperly denied his motion to dismiss count two of the 2020 substitute information. *State* v. *Orane C.*, 218 Conn. App. 683, 692, 293 A.3d 68 (2023). After reviewing the 2018 long form information, the 2020 substitute information, and the arrest warrant affidavit to determine whether count two substantially broadened or amended the timely charges, the Appellate Court agreed with the trial court that the additional count did not broaden the timely charges

[5] The sentence imposed for each individual count was twenty years of incarceration, suspended after ten years, followed by thirty years of probation. Sexual assault in the first degree under § 53a-70 (a) (1) is a class B felony with twenty years as the maximum term of imprisonment. General Statutes §§ 53a-35a (6) and 53a-70 (b) (1).

because "[t]he arrest warrant affidavit described, in detail, the factual predicate of the 2014 assault" and, therefore, provided the defendant with sufficient notice of the charge. Id., 699. The Appellate Court thus rejected the defendant's claim and upheld the trial court's denial of his motion to dismiss. Id., 700, 711. We granted the defendant's petition for certification to appeal from the judgment of the Appellate Court. *State* v. *Orane C.*, 346 Conn. 1023, 1023, 294 A.3d 27 (2023).

The sole certified question before us is whether the Appellate Court correctly concluded, in upholding the trial court's denial of the defendant's motion to dismiss count two of the 2020 substitute information, that count two was not barred by the applicable statute of limitations, insofar as the 2020 substitute information did not substantially broaden the original charges set forth in the 2018 informations. See id. The answer to that question is no. Because an affidavit submitted in support of an arrest warrant does not toll the statute of limitations for the uncharged conduct referred to therein, and because the timely filed 2018 informations contain no mention of the conduct charged in count two of the 2020 substitute information, we hold that the Appellate Court incorrectly concluded that the 2020 substitute information did not substantially broaden or amend the timely filed charges.

We begin by setting forth our standard of review. In *State* v. *Littlejohn*, 199 Conn. 631, 639–40, 508 A.2d 1376 (1986), we established that the statute of limitations in a criminal case is "generally considered 'an affirmative defense . . . .' " *State* v. *Ward*, 306 Conn. 698, 706, 52 A.3d 591 (2012), quoting *State* v. *Coleman*, 202 Conn. 86, 90–91, 519 A.2d 1201 (1987); see General Statutes § 53a-12; see also *State* v. *Swebilius*, 325 Conn. 793, 804, 159 A.3d 1099 (2017) (adopting burden shifting framework). Since *Littlejohn*, however, we have backed away from strictly treating a statute of limita-

tions as an affirmative defense, like all affirmative defenses that must be raised or waived; *State* v. *Daren Y.*, 350 Conn. 393, 409–10, 324 A.3d 734 (2024); and, instead, described it as "in the nature of a procedural protection . . . ." Id., 409. We have also noted that, although the statute of limitations is generally considered an affirmative defense, which the defendant must prove by a preponderance of the evidence in the orderly course of a trial, Practice Book § 41-8 (3) provides that a defendant may also raise a statute of limitations defense in a pretrial motion to dismiss. *State* v. *Juan F.*, 344 Conn. 33, 39, 277 A.3d 126 (2022).

It is well settled that, in reviewing a motion to dismiss, "appellate courts exercise plenary review over the trial court's ultimate legal conclusions, even as the facts underlying the decision are reviewed only for clear error." (Internal quotation marks omitted.) Id., 41; see, e.g., id., 35–36, 41, 46 (upholding trial court's denial of defendant's motion to dismiss, reasoning that trial court did not err in finding that defendant had failed to demonstrate his availability during statutory period, and, as matter of law, defendant's motion to dismiss was properly denied). In some cases, when reviewing a motion to dismiss, the court will be presented with a purely legal question because "the expiration of the statute of limitations [will be] dispositive on the face of the complaint, and the defendant [would] not [be] required to establish any facts beyond the date of the offense and the date the charges were initiated." *State* v. *Daren Y.*, supra, 350 Conn. 409. In such cases, including the present case, our review of such a claim is plenary. See, e.g., *State* v. *Juan F.*, supra, 344 Conn. 41; *State* v. *Swebilius*, supra, 325 Conn. 801 n.6.

Statutes of limitations in the criminal context set forth the period within which a criminal prosecution must be commenced against a defendant after a defendant has committed a crime. "At the core of the limita-

tions doctrine is notice to the defendant." *State* v. *Almeda*, 211 Conn. 441, 446, 560 A.2d 389 (1989), citing *United States* v. *Gengo*, 808 F.2d 1, 3 (2d Cir. 1986). Upon the commencement of a prosecution, the statute of limitations is tolled. *State* v. *Crawford*, 202 Conn. 443, 447–51, 521 A.2d 1034 (1987). "A prosecution is commenced either when an indictment is found [or an information filed] . . . ." (Internal quotation marks omitted.) *State* v. *Swebilius*, supra, 325 Conn. 814 n.16; see also *United States* v. *Grady*, 544 F.2d 598, 601 (2d Cir. 1976); *State* v. *Almeda*, supra, 446–47. In addition, an arrest warrant that is issued and executed without unreasonable delay commences a prosecution and tolls the statute of limitations as to the charges for which it was issued.[6] *State* v. *Crawford*, supra, 447–51. Unlike an arrest warrant, an arrest warrant *affidavit* does not commence a criminal prosecution and thus does not toll the statute of limitations for the uncharged conduct referred to therein. See *State* v. *Swebilius*, supra, 814 n.16.

The general rule is that the "prosecution has broad authority to file an amended or substitute information prior to trial" within the limitation period. *State* v. *Golodner*, 305 Conn. 330, 357, 46 A.3d 71 (2012). If the state files a substitute information after the limitation period has passed, the statute of limitations will remain satisfied with respect to substitute charges only if the substitute charges do not substantially broaden or amend the timely charges that initially satisfied the statute of limitations. Id. In *Almeda*, we considered, as a matter of first impression, whether substitute charges in an information filed beyond the limitation period were time barred by the statute of limitations. *State* v. *Almeda*, supra, 211 Conn. 445–46. To answer this

[6] In the present case, because the arrest warrant was attached to the 2018 short form information, our focus is on the 2018 short form, 2018 long form, and 2020 substitute informations.

question, we adopted the federal relation back approach, which requires a court to compare the timely charges that initially satisfied the statute of limitations to the substitute charges filed after the limitation period passed. Id., 446–47. This approach, which appears to have originated in the United States Court of Appeals for the Second Circuit, asks whether the substitute charges substantially broaden or amend the timely charges.[7] Id.; see *United States* v. *Salmonese*, 352 F.3d 608, 622 (2d Cir. 2003); *United States* v. *Grady*, supra, 544 F.2d 602. If the court determines that the substitute charges do not substantially broaden or amend the timely charges, the substitute charges relate back and inherit the timeliness of the original charges, meaning that the statute of limitations is satisfied with respect to the substitute charges as well. *United States* v. *Salmonese*, supra, 622.

Recognizing in *Almeda* that the "principal purpose" of the statute of limitations is to "ensure that a defendant receives notice, within a prescribed time, of the

[7] At the time *Almeda* was decided, the United States Court of Appeals for the Second Circuit did not explicitly use the phrase "relation back." See, e.g., *United States* v. *Gengo*, supra, 808 F.2d 3; *United States* v. *Grady*, supra, 544 F.2d 601–602. In *United States* v. *Zvi*, 168 F.3d 49, 54 (2d Cir.), cert. denied, 528 U.S. 872, 120 S. Ct. 176, 145 L. Ed. 2d 148 (1999), however, the Second Circuit used the phrase "relation back" when it discussed *Gengo* and *Grady*. The Second Circuit's "relation back" approach appears to have been adopted by every federal circuit court of appeals that has considered this issue. See, e.g., *United States* v. *Ross*, 77 F.3d 1525, 1537 (7th Cir. 1996); *United States* v. *Gomez*, 38 F.3d 1031, 1036 n.8 (8th Cir. 1994); *United States* v. *O'Bryant*, 998 F.2d 21, 23–24 (1st Cir. 1993); *United States* v. *Davis*, 953 F.2d 1482, 1491 (10th Cir.), cert. denied, 504 U.S. 945, 112 S. Ct. 2286, 119 L. Ed. 2d 210 (1992); *United States* v. *Pacheo*, 912 F.2d 297, 304–305 (9th Cir. 1990); *United States* v. *Schmick*, 904 F.2d 936, 940 (5th Cir. 1990), cert. denied sub nom. *Brewer* v. *United States*, 498 U.S. 1067, 111 S. Ct. 782, 112 L. Ed. 2d 845 (1991); *United States* v. *Italiano*, 894 F.2d 1280, 1282–83 (11th Cir.), cert. denied, 498 U.S. 896, 111 S. Ct. 246, 112 L. Ed. 2d 205 (1990); *United States* v. *Saussy*, 802 F.2d 849, 852 (6th Cir. 1986), cert. denied, 480 U.S. 907, 107 S. Ct. 1352, 94 L. Ed. 2d 522 (1987); *United States* v. *Snowden*, 770 F.2d 393, 398 (4th Cir.), cert. denied, 474 U.S. 1011, 106 S. Ct. 540, 88 L. Ed. 2d 470 (1985); *United States* v. *Friedman*, 649 F.2d 199, 204 (3d Cir. 1981).

acts with which he is charged, so that he and his lawyers can assemble the relevant evidence [to prepare a defense] before documents are lost [and] memor[ies] fade," we explained that substitute charges will relate back to the timely charges only if the "facts underlying [the charges in the substitute information] . . . are substantially similar to the facts underlying [the charges in the] timely filed information . . . ." (Internal quotation marks omitted.) *State* v. *Almeda*, supra, 211 Conn. 446. We reasoned that, if the facts underlying the substitute charges are the same, or substantially similar, to the timely filed charges, the timely charges would have notified the defendant of the "factual allegations against which he [would] be required to defend." Id. Consequently, there would be no broadening of the charges because the defendant would not be required "to address any factual allegations" beyond those alleged within the limitation period. Id., 447.

More than twenty years passed before this court addressed this issue again. In *State* v. *Golodner*, supra, 305 Conn. 336, the defendant was arrested after driving his van at two individuals. The state charged the defendant in the original information with reckless endangerment in the second degree as to one individual. Id., 355–56. After the limitation period lapsed, the state filed a substitute information charging the defendant with an additional charge of reckless endangerment in the second degree as to the second individual who was involved in the same incident. Id. This court concluded that, although the events occurred at the same place and time, the new charge substantially broadened the timely charges in the original information because it related to a different victim and the defendant did not have any notice that he was accused of an offense related to that victim. Id., 358–59. In setting forth the legal standard, we underscored, as in *Almeda*, that notice is the "touchstone" of the analysis in determining

whether a substitute information substantially broadens or amends the timely charges. (Internal quotation marks omitted.) Id., 357–58. We added, however, that there are four factors that can assist a court in making this determination. Id., 358. They ask whether the substitute information (1) alleges violations of a different statute, (2) contains different elements, (3) relies on different evidence, or (4) exposes the defendant to a potentially greater sentence. Id. These factors originated in *United States* v. *Zvi*, 168 F.3d 49, 54–55 (2d Cir.), cert. denied, 528 U.S. 872, 120 S. Ct. 176, 145 L. Ed. 2d 148 (1999), and were identified in *United States* v. *Salmonese*, supra, 352 F.3d 622, as factors (*Salmonese* factors) that can be considered when determining whether a superseding indictment substantially broadens or amends the timely filed charges that satisfied the statute of limitations.[8]

Despite recognizing in *Golodner* that these four factors may assist a court, we did not rely on them in concluding that the additional reckless endangerment charge substantially broadened or amended the timely charges and, therefore, was barred by the applicable statute of limitations. See *State* v. *Golodner*, supra, 305 Conn. 358–59. Instead, we focused on the central question of notice and determined that the additional reckless endangerment charge was untimely because, although the events occurred at the same place and time, the new charge related to a different victim and the defendant did not have any notice that he was accused of an offense related to that victim. See id.

Subsequent to *Golodner* and the enumeration of the *Salmonese* factors, numerous courts have used those

[8] The superseding indictments in both *Zvi* and *Salmonese* alleged long-term conspiracies with multiple objects, transactions, and events, making the relation back inquiry complicated and the factors useful. See *United States* v. *Salmonese*, supra, 352 F.3d 622; *United States* v. *Zvi*, supra, 168 F.3d 53–55.

factors as a starting point for determining whether a substitute information filed beyond the limitation period substantially broadens or amends the timely filed charges, resulting in a mechanical application of them. Nothing in *Golodner*, however, was intended to alter or change the core inquiry at the heart of *Almeda*, that is, whether the factual allegations underlying the substitute charges are the same, or substantially similar, to the factual allegations underlying the timely charges, such that the timely charges provide notice to the defendant of the facts that he would have to defend against at trial. See *State* v. *Almeda*, supra, 211 Conn. 446–47. In some cases, without even considering the *Salmonese* factors, it will be clear that the substitute charge implicates substantially different facts than those implicated in the timely charge because the substitute charge is based on conduct that occurred at different times, on different dates, or in different locations. In other cases, it may be more difficult to determine whether a substitute charge relies on different facts those relied on in connection with the timely charge. In such cases, a court should consider the *Salmonese* factors to help determine whether the substitute charge relates back to the timely filed charge.[9]

[9] The Appellate Court's decision in *State* v. *Mosback*, 159 Conn. App. 137, 154, 121 A.3d 759 (2015), provides a helpful example when, in addition to considering the third *Salmonese* factor (evidence), it may also be appropriate to consider the first and second factors (statutes and elements) to determine whether the substitute charge relies on different evidence or facts. In *Mosback*, the court considered whether the substitute information, which added a charge of reckless driving in violation of General Statutes § 14-222, broadened the timely information that alleged operating a motor vehicle under the influence of alcohol in violation of General Statutes § 14-227a. Id., 142–43. Although both charges arose from a single event, this did not end the inquiry. Id., 156–58. The court compared the statutes and elements of the timely filed and new charges and determined that the factual allegations relevant to proving the new charge were not different from those relevant to proving the timely charge. Id., 158. As a result, the court concluded that the new charge did not substantially broaden or amend the timely filed charge because the defendant was not asked to address any factual allegations beyond those alleged within the limitation period. Id., 155–58.

With these legal principles in mind, we turn to the defendant's claim on appeal. The defendant claims that count two of the 2020 substitute information, which charged the defendant with committing aggravated sexual assault in the first degree on or about January 1, 2014, at a particular address on North Bishop Avenue in Bridgeport, substantially broadened or amended the timely charges, which charged the defendant with committing aggravated sexual assault in the first degree on or about July 22, 2017, at or near a particular address on Beechwood Avenue in Bridgeport. The defendant claims that, even though the arrest warrant affidavit included facts related to the 2014 conduct alleged in count two, the affidavit did not provide him with notice that he would face charges related to such conduct. Therefore, the defendant contends, because he was not notified that he was being charged with the 2014 conduct until the 2020 substitute information was filed, more than five years after the alleged offense occurred, count two is time barred.

The state, relying on *State* v. *Mosback*, 159 Conn. App. 137, 154, 121 A.3d 759 (2015), argues that the Appellate Court properly upheld the trial court's decision because "[a]llegations detailed in an arrest warrant affidavit [in addition to a timely filed information] can provide [a defendant with] notice of potential charges that are not filed from the outset" for the purposes of satisfying the statute of limitations. The state contends that count two did not broaden or amend the timely charges because the defendant "received the arrest warrant affidavit in February, 2018," within five years of the alleged offense and, therefore, "was well aware of his exposure to [the] 2014 [conduct]."

Applying the legal framework set forth in the preceding paragraphs reveals that count two of the 2020 substitute information substantially broadened or amended

the timely charges.[10] The defendant received notice within the limitation period through the timely filed 2018 short form and long form informations that he would be called on to defend against a charge of aggravated sexual assault in the first degree that allegedly occurred on July 22, 2017, at or near a particular address on Beechwood Avenue in Bridgeport. The timely filed informations contain no mention of an alleged aggravated sexual assault that occurred on January 1, 2014, more than three years earlier, at a particular address on North Bishop Avenue. The 2017 conduct charged in the timely filed informations and the 2014 conduct charged in count two of the 2020 substitute information relate to offenses occurring in entirely different years and locations. The arrest warrant affidavit did not toll the statute of limitations for the uncharged 2014 conduct contained therein. Although the uncharged 2014 conduct referred to in the arrest warrant affidavit may have provided the defendant with notice that the state may seek to introduce such conduct as uncharged misconduct evidence under § 4-5 of the Connecticut Code of Evidence, the defendant did not receive notice within the applicable statute of limitations that he would be called on to defend against that conduct as a charged offense. It cannot be assumed that a defendant prepares to defend against evidence of uncharged misconduct to the same extent as evidence relating to a charged offense. See, e.g., *United States* v. *Ratcliff*, 245 F.3d 1246, 1255 (11th Cir. 2001) ("[i]t is one thing to be faced with evidence of criminal activity for which one cannot be convicted, and quite another to face conviction and punishment for that activity").

[10] The parties' arguments assume that this court will apply the *Salmonese* factors. But our review of the short form and substitute informations readily answers the question of whether the factual allegations underlying the charge relating to the 2014 conduct are the same as, or substantially similar to, the factual allegations underlying the timely charges. We therefore find it unnecessary to consider the *Salmonese* factors in the present case.

Moreover, although the state relies on the Appellate Court's decision in *Mosback* for the proposition that conduct referred to in an arrest warrant affidavit can provide sufficient notice of potential charges, its reliance on *Mosback* is misplaced. The court in that case simply looked to the affidavit to provide greater detail about the underlying facts of the *timely filed charge* of operating a motor vehicle under the influence of alcohol in violation of General Statutes § 14-227a and concluded that the new charge of reckless driving in violation of General Statutes § 14-222 arose from the same event and that the evidence required to prove the additional charge involved the same specific factual allegations that could have been used to prove the timely charge. *State* v. *Mosback*, supra, 159 Conn. App. 155–58. It did not consider the arrest warrant affidavit to have tolled the statute of limitations for any uncharged conduct contained therein. Accordingly, we conclude that count two of the state's 2020 substitute information substantially broadened or amended the timely charges, and, therefore, count two does not relate back to the timely charges, rendering it time barred under § 54-193 (b).

The judgment of the Appellate Court is reversed in part and the case is remanded to that court with direction to reverse the judgment of the trial court as to count two of the February, 2020 substitute information only, to remand the case to the trial court with direction to render a judgment of acquittal on that count, and to resentence the defendant on the remaining counts; the judgment of the Appellate Court is affirmed in all other respects.

In this opinion the other justices concurred.

LARISSA MARLAND, ADMINISTRATRIX (ESTATE OF NORMAN MARLAND), ET AL. *v.* UNIVERSITY OF CONNECTICUT HEALTH CENTER ET AL.

(SC 20854)

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

Syllabus

The plaintiff, individually and as administratrix of the estate of the decedent, appealed from the judgment of the trial court, which had dismissed the plaintiff's medical malpractice action against the state defendants for lack of subject matter jurisdiction. In dismissing the action, the trial court specifically concluded that the claims commissioner's waiver of the state's sovereign immunity pursuant to statute ((Rev. to 2015) § 4-160 (b)) was not valid because the purported waiver occurred after the expiration of a one year extension of time that the General Assembly had granted to the commissioner to dispose of the plaintiff's claim. The plaintiff contended that the trial court had incorrectly concluded that the commissioner's waiver was not valid. *Held*:

This court concluded that the present case was controlled by its recent decision in *Lynch* v. *State* (348 Conn. 478), in which this court held that, unlike the more typical claim that the allegations in a plaintiff's complaint do not fall within the scope of the claims commissioner's waiver of sovereign immunity, a challenge to the commissioner's decision to waive sovereign immunity and to grant permission to sue the state is not reviewable by a court, and such a challenge should be raised before the claims commissioner, if at all.

In the present case, the defendants' challenge in the trial court to the plaintiff's claims did not concern whether those claims fell within the scope of the waiver of sovereign immunity granted by the claims commissioner, as they undisputably did, but, rather, concerned whether the commissioner had the authority to grant a waiver of sovereign immunity after the expiration of the one year extension granted by the legislature.

The defendants failed to raise their claim regarding the authority of the claims commissioner to waive sovereign immunity before the commissioner in the first instance, once the commissioner authorized suit, the defendants waived all defenses to the claims commissioner's decision, and that decision was insulated from collateral attack.

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

Accordingly, the trial court improperly dismissed the plaintiff's action for lack of subject matter jurisdiction.

Argued September 16—officially released December 17, 2024

Procedural History

Action to recover damages for the defendants' alleged medical malpractice, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *S. Connors*, *J.*, granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiffs appealed. *Reversed*; *judgment directed.*

Bruce Edward Newman, for the appellants (plaintiffs).

Michael G. Rigg, for the appellees (defendants).

Opinion

MULLINS, J. This appeal arises from a claim of medical malpractice initiated by the plaintiff, Larissa Marland, individually and as administratrix of the estate of the decedent, Norman Marland,[1] against the defendants, the University of Connecticut Health Center, UConn Health Partners, and UConn John Dempsey Hospital (collectively, the state).[2] After the claims commissioner waived the state's sovereign immunity and granted the plaintiff permission to sue the state, the plaintiff filed the present action in the Superior Court. The state moved to dismiss the complaint, asserting that the claims commissioner's failure to timely dispose of the plaintiff's claim deprived the commissioner of the authority to waive the state's sovereign immunity and to grant the plaintiff permission to sue the state. The trial court agreed with the state and dismissed this action. This appeal requires us to decide whether the state can chal-

[1] For simplicity, we refer to Larissa Marland, in both her individual capacity and as administratrix of the decedent's estate, as the plaintiff.

[2] The parties do not dispute that these entities are all operated by the state of Connecticut, and we will refer to the defendants collectively as the state.

lenge, in the Superior Court, the decision of the claims commissioner to grant permission to sue under General Statutes (Rev. to 2015) § 4-160 (b)[3] for medical malpractice. We conclude that, once the claims commissioner grants permission to sue the state and waives sovereign immunity, the state cannot challenge that decision in the Superior Court. Accordingly, we reverse the judgment of the trial court dismissing the plaintiff's complaint.

The record reveals the following facts and procedural history. In the weeks prior to his death, the decedent had received inpatient treatment at UConn John Dempsey Hospital (hospital) on two occasions. After the decedent's last inpatient treatment, hospital personnel discharged him to a short-term rehabilitation facility for follow-up care.

Soon thereafter, the decedent returned to the emergency department at the hospital because he began experiencing medical issues. The hospital staff admitted him to the intensive care unit for cardiac monitoring and oxygen, intravenous fluids and antibiotic therapy. Upon the decedent's admission to the intensive care unit, hospital staff assessed him to be a fall risk.

Only a few hours after his admission to the intensive care unit, at approximately 3:14 a.m. on January 3, 2015, the decedent fell out of his bed. There were no witnesses to the fall. Hospital staff found him on his back, lying

[3] General Statutes (Rev. to 2015) § 4-160 (b) provides that, "[i]n any claim alleging malpractice against the state, a state hospital or a sanitorium or against a physician, surgeon, dentist, podiatrist, chiropractor or other licensed health care provider employed by the state, the attorney or party filing the claim may submit a certificate of good faith to the Claims Commissioner in accordance with section 52-190a. If such a certificate is submitted, the Claims Commissioner shall authorize suit against the state on such claim."

Hereinafter, unless otherwise indicated, all references to § 4-160 are to the 2015 revision of the statute.

face up and unresponsive. He was breathing but had no pulse. He died approximately nineteen minutes after his fall.

On December 17, 2015, pursuant to § 4-160 (b), the plaintiff filed a notice of claim with the claims commissioner, seeking permission to sue the state for medical malpractice, both individually and in her representative capacity as administratrix of the decedent's estate. In the notice of claim, the plaintiff alleged that the employees and agents of the state caused the decedent's injuries by departing from the applicable standard of care. The plaintiff also submitted a physician's opinion letter to the claims commissioner, which described the physician's reasons for concluding that the state had failed to meet the appropriate standard of care relating to the decedent's medical treatment.

On February 27, 2018, the claims commissioner sent a letter to the plaintiff notifying her of, and apologizing to her for, the failure to resolve her claim within two years of its filing. In a separate letter, the claims commissioner also informed the plaintiff that, pursuant to General Statutes (Rev. to 2017) § 4-159a (a),[4] the commissioner had reported the plaintiff's unresolved claim to the General Assembly. On May 9, 2018, pursuant to § 4-159a (c), the General Assembly granted the claims commissioner an extension for a period of one year from that date to dispose of the plaintiff's claim.

[4] General Statutes (Rev. to 2017) § 4-159a (a) provides: "Not later than five days after the convening of each regular session, the Office of the Claims Commissioner shall report to the General Assembly on all claims that have been filed with the Office of the Claims Commissioner pursuant to section 4-147 and have not been disposed of by the Office of the Claims Commissioner within two years of the date of filing or within any extension thereof granted by the General Assembly pursuant to subsection (c) of this section, except claims in which the parties have stipulated to an extension of time for the Office of the Claims Commissioner to dispose of the claim."

Hereinafter, all references to § 4-159a are to the 2017 revision of the statute.

The claims commissioner failed to dispose of the claim within that one year extension. Instead, on November 25, 2020, approximately eighteen months after the one year extension had expired, the claims commissioner concluded that the plaintiff's claim had satisfied the requirements of § 4-160 (b) and consequently granted the plaintiff's request for permission to sue the state for medical malpractice. The state took no action to challenge that decision before the claims commissioner.

The plaintiff subsequently commenced the present action. In count one of her complaint, the plaintiff alleged medical malpractice on behalf of the decedent's estate. In count two of her complaint, the plaintiff alleged medical malpractice against the state in her individual capacity. More specifically, the plaintiff alleged in the complaint that the state had breached the applicable standard of care owed to the decedent as a patient in the intensive care unit. The plaintiff also alleged that, pursuant to § 4-160 (b), "permission to sue the state . . . was granted by way of a decision signed by . . . the claims commissioner on November 25, 2020 . . . ."

Before the trial court, the state moved to dismiss the plaintiff's complaint on the ground that the waiver of sovereign immunity issued by the claims commissioner pursuant to § 4-160 (b) was not valid. The state asserted that the waiver was invalid for two reasons: (1) it was issued after the expiration of the one year extension granted by the General Assembly pursuant to § 4-159a (c); and (2) the plaintiff failed to file with the claims commissioner an opinion letter from a " 'similar health care provider,' " as required by General Statutes § 52-190a (a).

The trial court granted the state's motion to dismiss. The trial court explained that, at the time the claims

commissioner granted the waiver in the present case, the commissioner no longer had authority to do so because the one year extension of time granted by the General Assembly pursuant to § 4-159a (c) had expired. Because there had been no valid waiver of the state's sovereign immunity, the trial court concluded that it did not have subject matter jurisdiction over the plaintiff's claims. As a result, the court did not address the state's claim regarding the sufficiency of the opinion letter submitted to the claims commissioner. This appeal followed.[5]

We begin by setting forth certain fundamental principles that are not in dispute. "The principle that the state cannot be sued without its consent . . . has deep roots in this state and our legal system in general, finding its origin in ancient common law." (Internal quotation marks omitted.) *DaimlerChrysler Corp.* v. *Law*, 284 Conn. 701, 711, 937 A.2d 675 (2007). "[T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss." (Internal quotation marks omitted.) *Columbia Air Services, Inc.* v. *Dept. of Transportation*, 293 Conn. 342, 347, 977 A.2d 636 (2009).

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . [O]ur review of the trial court's ultimate legal conclusion and resulting [decision on] . . . the motion to dismiss will be de novo." (Internal quotation marks omitted.) Id., 346–47.

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

"When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) *Conboy* v. *State*, 292 Conn. 642, 651, 974 A.2d 669 (2009).

On appeal, the plaintiff asserts that the trial court improperly dismissed her complaint for lack of subject matter jurisdiction because she, in fact, had complied with all statutory requirements for filing her suit in the Superior Court and had received authorization to sue the state from the claims commissioner. At oral argument before this court, the plaintiff's attorney expounded on this point, arguing that, because the state had failed to raise any claim before the claims commissioner regarding the commissioner's allegedly untimely decision and the impact, if any, that had on the commissioner's authority to grant permission to sue the state, the claims commissioner's ultimate decision to authorize suit is not subject to review by the courts.[6]

The state's counsel disagreed and asserted that the authority of the claims commissioner is a question of statutory interpretation, which the courts have jurisdiction to decide. The state's counsel further asserted that the trial court correctly concluded that it did not have subject matter jurisdiction over the plaintiff's claims

[6] In making this argument, the plaintiff's attorney relied on *Lynch* v. *State*, 348 Conn. 478, 501–504, 308 A.3d 1 (2024), which was issued after the briefs in this case were filed. In *Lynch*, we held that, once the claims commissioner authorizes suit against the state, the state is precluded from challenging that decision in court. See id., 502–504. At oral argument, the state's counsel responded to the argument of the plaintiff's attorney without precisely addressing *Lynch*.

because § 4-159a limits the jurisdiction of the claims commissioner to act within the time frame provided by the General Assembly. Therefore, the state's counsel contended, at the time the claims commissioner authorized suit in the present case, the commissioner did not have authority to do so given that the commissioner's decision was issued beyond the one year extension of time granted by the General Assembly.

We agree with the plaintiff. As this court previously has recognized, the waiver of the state's sovereign immunity "is a matter for legislative, not judicial, determination." (Internal quotation marks omitted.) *Struckman* v. *Burns*, 205 Conn. 542, 558, 534 A.2d 888 (1987). We conclude that the current appeal is controlled by our recent decision in *Lynch* v. *State*, 348 Conn. 478, 501–504, 308 A.3d 1 (2024), and that, to the extent that the state disputed the authority of the claims commissioner to authorize suit beyond the one year extension of time granted by the legislature, it was incumbent on it to raise that issue before the claims commissioner while the matter was still under the commissioner's review.

Before addressing the state's claim in more detail, it is helpful to review the historical background informing our understanding of the role of the claims commissioner in processing claims against the state. "Historically, the legislature of this state would grant compensation, through the enactment of special acts, to citizens who were injured or who had other claims against the state. Indeed, prior to 1959, before the legislature created . . . the claims commission, the General Assembly in the first instance considered what action, if any, was appropriate on claims made against the state. That is, the General Assembly either authorized payment of a claim against the state, or authorized an action to be brought against the state in court [or denied the claim altogether]. The standard for the recompense

was whether justice required the state to pay for an injury it had caused. It is important to note that the predicate was not that the state was liable for such compensation, but, rather, that justice and equity required that the state make the payment or that the state respond to an action as if it were a private person. . . .

"It reached a point where the number of claims submitted to the legislature became a major burden and this interfered with the more important function of enacting general legislation. When legislation was proposed by the legislative council to establish a claims commission in order to relieve the General Assembly of a major portion of this burden, its director, George Oberst, explained the need to establish this alternative procedure for the processing of claims in order to ensure that 'equity and justice' [are] done.[7] A statutory procedure for the disposition of claims against the state, to be administered by a claims commission, was adopted

[7] "In 1959, Oberst testified as follows: 'Because of the doctrine of sovereign immunity, the [s]tate, unlike most of its citizens, is immune from liability and from suit; that is, without its consent the [s]tate cannot be held liable in a legal action for any damage or injury it may cause. By general law, the [g]overnor and the [c]omptroller have authority to settle claims of a very minor nature. But traditionally it is the duty of the General Assembly to hear and decide the great variety of demands made [on] the [s]tate for the payment of money. When claims are few in number and the financial outlay is small, legislative determination can function efficiently. But as the number of claims increases and demands [on] the [Office of the Treasurer] grow in size, the legislative process becomes progressively incapable of handling them efficiently. Other more important demands [on] the time of legislators and the natural limitations of legislative investigation do not always [e]nsure a just determination. This natural inadequacy is further complicated by the fact that some unsatisfied claimants reappear every session with the same claims, forcing the legislature into useless repetition. Despite an earnest desire to honor legitimate claims, there is little to [ensure] the equity and justice which the state rightly demands and which claimants rightly deserve.' Conn. Joint Standing Committee Hearings, Appropriations, Pt. 3, 1959 Sess., pp. 919–20." *Chotkowski* v. *State*, 240 Conn. 246, 273 n.8, 690 A.2d 368 (1997) (*Berdon*, *J.*, concurring and dissenting).

by the enactment of [No. 685 of the 1959 Public Acts]. Subsequently, in 1975, the legislature substituted a claims commissioner . . . for the claims commission. See Public Acts 1975, No. 75-605. Therefore, *the* [*claims*] *commissioner is in reality the conscience of the state*, assuming in part the prior role of the legislature to ensure that justice and equity [are] done. It is the [claims] commissioner who now determines what claims should be paid, what claims should be referred to the legislature for payment, or which claimants should be authorized to institute an action against the state." (Emphasis added; footnote in original; footnotes omitted.) *Chotkowski* v. *State*, 240 Conn. 246, 271–74, 690 A.2d 368 (1997) (*Berdon*, *J.*, concurring and dissenting); see also *Nelson* v. *Dettmer*, 305 Conn. 654, 670, 46 A.3d 916 (2012).

With that history in mind, we turn to the plaintiff's claim in the present case, namely, that the trial court improperly dismissed her complaint on the ground that the court lacked subject matter jurisdiction. Specifically, the plaintiff asserts that the trial court incorrectly concluded that the claims commissioner did not have authority to waive the state's sovereign immunity beyond the one year extension granted by the legislature pursuant to § 4-159a (c).

At the time that the plaintiff filed her medical malpractice claim with the claims commissioner, General Statutes (Rev. to 2015) § 4-160 (b) provided: "In any claim alleging malpractice against the state, a state hospital or a sanitorium or against a physician, surgeon, dentist, podiatrist, chiropractor or other licensed health care provider employed by the state, the attorney or party filing the claim may submit a certificate of good faith to the Claims Commissioner in accordance with section 52-190a. If such a certificate is submitted, the Claims Commissioner shall authorize suit against the state on such claim."

This court previously has explained that "the effect of § 4-160 (b) was to deprive the claims commissioner of his [or her] broad discretionary decision-making power to authorize suit against the state in cases [in which] a claimant has brought a medical malpractice claim and filed a certificate of good faith. Instead, § 4-160 (b) requires the claims commissioner to authorize suit in all such cases. In other words, the effect of the statute was to convert a limited waiver of sovereign immunity to medical malpractice claims, subject to the discretion of the claims commissioner, to a more expansive waiver subject only to the claimant's compliance with certain procedural requirements." (Emphasis omitted; footnote omitted.) *D'Eramo* v. *Smith*, 273 Conn. 610, 622, 872 A.2d 408 (2005).[8] Therefore, § 4-160 (b) conveys the legislature's intent to waive sovereign immunity with respect to all medical malpractice claims filed with the claims commissioner that are accompanied by a good faith certificate.

We have recently examined this statutory scheme in *Lynch* v. *State*, supra, 348 Conn. 501–504, and we conclude that *Lynch* controls the resolution of the issue presented in this appeal. In *Lynch*, the claims commissioner had authorized the plaintiffs' medical malpractice claim pursuant to § 4-160 (b). Id., 489. The plaintiffs filed suit in the Superior Court and obtained a judgment against the state. See id., 484, 489, 491. The state claimed

[8] In 2019, the legislature amended § 4-160 to allow plaintiffs to bypass the claims commissioner altogether and to bring a medical malpractice action directly to the Superior Court in accordance with § 52-190a (a) prior to the expiration of the limitation period. See Public Acts 2019, No. 19-182, § 4. This amendment has no bearing on this appeal because, at that time, the limitation period on the plaintiff's action had expired. See General Statutes § 4-148 (a).

Section 4-160 has also been amended a number of times since the claims commissioner authorized the plaintiff's action; see Public Acts 2024, No. 24-44, § 12; Public Acts 2023, No. 23-131, § 10; Public Acts 2022, No. 22-37, §§ 3 and 4; Public Acts 2021, No. 21-91, § 6; but those amendments also have no bearing on this appeal.

that the judgment against it should be set aside because of "the plaintiffs' failure to submit to the claims commissioner (1) a physician's opinion letter specifically addressing the plaintiffs' . . . claims, and (2) an attorney's certificate of good faith." Id., 501. This court rejected the state's claim. See id.

We relied on the same version of the statute at issue in the present case, General Statutes (Rev. to 2015) § 4-160 (c), which provides in relevant part that, "[i]n each action authorized by the Claims Commissioner pursuant to subsection (a) or (b) of this section or by the General Assembly pursuant to section 4-159 or 4-159a . . . [t]he state waives its immunity from liability and from suit . . . *and waives all defenses which might arise from the . . . governmental nature of the activity complained of*. The rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances." (Emphasis added.) See *Lynch* v. *State*, supra, 348 Conn. 501–502.

We reasoned that "[i]t is clear from the statutory scheme, therefore, that, once the claims commissioner authorized the plaintiffs' medical malpractice action, the state was precluded from raising a sovereign immunity defense to 'the activity complained of' in the notice of claim. General Statutes (Rev. to 2015) § 4-160 (c)." *Lynch* v. *State*, supra, 348 Conn. 502. We further reasoned that "the claims commissioner authorized the plaintiffs to bring a medical malpractice action, the plaintiffs' claims [fell] squarely within the scope of that authorization, and the authorization [was] consistent with the legislature's decision to waive the state's sovereign immunity with respect to medical malpractice claims." Id., 502–503.

We further explained that one of the state's jurisdictional claims in *Lynch* was not of the type that is nor-

mally reviewable by this court. See id., 502; see also, e.g., *Escobar-Santana* v. *State*, 347 Conn. 601, 605, 298 A.3d 1222 (2023) (deciding whether, for purposes of what is now General Statutes § 4-160 (f), "the statutory phrase 'medical malpractice claims' is broad enough to encompass a mother's allegation that she suffered emotional distress damages from physical injuries to her child that were proximately caused by the negligence of health care professionals during the birthing process"). In particular, in *Lynch*, one of the state's claims was that the claims commissioner had erred in waiving sovereign immunity and granting permission to sue, rather than the more typical claim that the allegations in a plaintiff's complaint do not fall within the waiver of sovereign immunity granted by the claims commissioner. See *Lynch* v. *State*, supra, 348 Conn. 502–503. We concluded that this type of claim was not reviewable by this court because, rather than challenge the plaintiffs' action as not authorized by the claims commissioner, the state challenged the decision of the claims commissioner itself, which we held is not subject to collateral attack even by the state as a litigant, and that the claim should have been raised before the claims commissioner, if at all. See id., 502–504. Ultimately, we concluded that, "[t]o the extent the state [as a litigant] disputed the applicability of § 4-160 (b) because of alleged defects or shortcomings in the plaintiffs' good faith certificate, it was incumbent on it to raise the issue with the claims commissioner while the matter was still under [the commissioner's] review." (Emphasis omitted.) Id., 503.

As grounds for our conclusion in *Lynch*, we reasoned that "§ 4-160 (c) operates in a manner similar to General Statutes § 4-164 (b), which provides in relevant part that '[t]he action of the . . . Claims Commissioner in approving or rejecting payment of any claim or part thereof shall be final and conclusive on all questions

of law and fact and shall not be subject to review except by the General Assembly.' " Id. We further explained that "[t]his court has held that the claims commissioner 'performs a legislative function directly reviewable only by the General Assembly.' *Circle Lanes of Fairfield, Inc.* v. *Fay*, 195 Conn. 534, 541, 489 A.2d 363 (1985); see also *Cooper* v. *Delta Chi Housing Corp. of Connecticut*, 41 Conn. App. 61, 64, 674 A.2d 858 (1996) ('The legislature has established a system for the determination of claims against the state. . . . A significant part of that system is the appointment of a claims commissioner . . . who is vested with sole authority to authorize suit against the state.' . . .). The legislature's decision to insulate the claims commissioner's decision under § 4-160 (b) from collateral attack by the state is consistent with the broader statutory scheme." *Lynch* v. *State*, supra, 348 Conn. 503–504. This conclusion is consistent with the well established principle that the Superior Court does not have jurisdiction to hear an appeal from a decision of the claims commissioner that challenges the commissioner's decision to grant or deny permission to sue. See, e.g., *Circle Lanes of Fairfield, Inc.* v. *Fay*, supra, 536, 541 (reaffirming that trial court did not have jurisdiction to hear administrative appeal from decision of claims commissioner in which commissioner denied authorization to sue).

As in *Lynch*, in the present case, the state's challenge to the plaintiff's claims does not concern whether the claims fall within the scope of the waiver of sovereign immunity granted by the claims commissioner. Indeed, here, they clearly do. It is undisputed that the activities complained of in the present case, and for which the claims commissioner granted permission to sue, were "acts of alleged medical negligence" that were squarely within the scope of the waiver. Therefore, once the claims commissioner authorized suit in the present case, the state waived all defenses to the decision of

the claims commissioner; see, e.g., *Lynch* v. *State*, supra, 348 Conn. 493, 501; and that decision was insulated from collateral attack. See, e.g., id., 503–504. Thus, we conclude that, if the state disputed the authority of the claims commissioner to issue permission to sue past the one year extension granted by the legislature, the state should have raised this claim before the claims commissioner. Its failure to do so is fatal to its claim.[9] Accordingly, we conclude that the trial court improperly granted the state's motion to dismiss.

The judgment is reversed and the case is remanded with direction to deny the state's motion to dismiss.

In this opinion the other justices concurred.

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[9] To the extent the state asserts that this court should address its claim in its motion to dismiss that the opinion letter that the plaintiff filed with the claims commissioner was deficient, we decline to do so for the same reason. It is clear from the record that the claims commissioner reviewed the plaintiff's notice of claim and the physician's opinion letter, and considered this issue before authorizing suit. As we have explained, the statutory scheme demonstrates that the legislature intended to "insulate the claims commissioner's decision under § 4-160 (b) from collateral attack by the state . . . ." *Lynch* v. *State*, supra, 348 Conn. 503–504.