any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Thus, a claim is cognizable in a motion to correct an illegal sentence if it is a challenge specifically directed to the punishment imposed, even if relief for that illegal punishment requires the court to in some way modify the underlying convictions, such as for double jeopardy challenges. See *State* v. *Cator*, 256 Conn. 785, 804–805, 781 A.2d 285 (2001) (concluding that "trial court had jurisdiction to alter the sentence pursuant to Practice Book § 43-22, because otherwise the constitutional prohibition against double jeopardy would have been violated," even though correction of illegal sentence required merger of underlying convictions). We emphasize, however, that the motion to correct is not another bite at the apple in place of challenges that are more properly brought on direct appeal or in a petition for a writ of habeas corpus.[13] See *State* v. *McGee*, 175 Conn.

[13] As Judge Bishop has recently observed, it is not always clear when a motion to correct an illegal sentence challenges a sentence rather than a conviction. See *State* v. *McGee*, 175 Conn. App. 566, 586, 168 A.3d 495 (*Bishop*, *J.*, dissenting) ("confusion abounds on the question of the jurisdiction of the trial court to hear a motion to correct an illegal sentence"), cert. denied, 327 Conn. 970, 173 A.3d 953 (2017). Judge Bishop notes that this confusion is particularly acute with respect to the second category of illegal sentences, namely, double jeopardy violations for multiple punishments, which by definition challenge convictions rather than the sentences for those convictions. See id., 592–95 (questioning whether this court's line of cases under *State* v. *Cator*, supra, 256 Conn. 785, was intended "to open wide the door to attacks on convictions through the guise of a Practice Book § 43-22 motion, nominally assailing a sentence," and stating that jurisdictional case law has "create[d] currents and crosscurrents in need of calming by a higher power"). In his thoughtful dissent in *McGee*, Judge Bishop suggested revisions to the case law governing motions to correct, including the imposition of time limitation and limiting vacation of convictions to cases in which "it is obvious from the criminal information and verdict that convictions violate the protection against double jeopardy," and "that such remedial action can only be taken before a defendant has commenced serving his or her sentence." Id., 595–98. Although we leave the specific issues identified by Judge Bishop to another day, we nevertheless acknowledge that the demarcation between conviction and sentence may not always be crystal clear, particularly in cases presenting *Apprendi* issues, and may invoke the presumption in favor of jurisdiction in cases in which the defendant has made a colorable—however doubtful—claim of illegality affecting the *sentence*, rather than the underlying conviction. See, e.g., *State* v. *Fowlkes*, 283 Conn. 735, 739, 930 A.2d 644 (2007); see also *State* v. *Ramos*, 306 Conn. 125, 134–35, 49 A.3d 197 (2012) ("although this court has recog-

App. 566, 574 n.6, 168 A.3d 495 (2017) (The trial court had jurisdiction over a motion to correct an illegal sentence that sought to vacate a robbery conviction as a remedy for a double jeopardy violation because "the defendant has not challenged, in any way, the validity of his convictions for robbery in the second degree or of the guilty verdicts upon which they rest. He has not claimed any infirmity with the state's information; he has not advanced any claims of insufficiency with respect to the state's evidence against him, or of evidentiary error, instructional error, prosecutorial impropriety, or any other type of error upon which the legality of trial proceedings or of the verdicts and judgments they result in are routinely challenged. Rather, he claimed that, at sentencing, the court should have vacated one of his two second degree robbery convictions and sentenced him only on one of those convictions."), cert. denied, 327 Conn. 970, 173 A.3d 953 (2017).

As the "parameters of an illegal sentence [have] evolve[d]"; *State* v. *Parker*, supra, 295 Conn. 840; particularly given the landmark decision of the United States Supreme Court in *Apprendi* v. *New Jersey*, supra, 530 U.S. 466, we find instructive the Appellate Court's decision in *State* v. *Henderson*, supra, 130 Conn. App. 435. In *Henderson*, the defendant claimed that his robbery and assault sentence, which had been enhanced pursuant to the persistent serious felony offender statute, General Statutes (Rev. to 1993) § 53a-40 (g), was illegal under *Apprendi* because, although he had pleaded guilty to a part B information seeking that enhancement, he did not expressly admit "that the public interest would be best served by extended incarceration and lifetime supervision." Id., 438–39. The Appellate Court concluded that jurisdiction existed over the motion to

nized the general principle that there is a strong presumption in favor of jurisdiction . . . in criminal cases, this principle is considered in light of the common-law rule that, once a defendant's sentence has begun [the] court may no longer take any action affecting a defendant's sentence unless it *expressly* has been authorized to act" [citations omitted; emphasis in original; internal quotation marks omitted]).

correct an illegal sentence, even though it challenged the trial court's failure to submit the issue to the jury—an action that by definition occurs prior to sentencing—because of the defendant's "legal theory as to why his sentence was illegal," namely, a violation of *Apprendi*. Id., 441; see also id., 446. Following *State* v. *Koslik*, supra, 116 Conn. App. 700, which held that there was jurisdiction over a defendant's claim that a trial court had failed to make a finding necessary to justify an extended probation period, the court emphasized in *Henderson* that "the defendant's claims go to the actions of the sentencing court. Specifically, he challenges actions taken by the sentencing court that, although proper at the time, were affected by a subsequent change in the law." *State* v. *Henderson*, supra, 445; see also *State* v. *Abraham*, 152 Conn. App. 709, 720–23, 99 A.3d 1258 (2014) (The court, after reviewing case law, noted the state's concession that the court had jurisdiction under *Henderson* over a motion to correct raising an *Apprendi* challenge to the "sentencing court's decision to impose a sentence enhancement, under [General Statutes] § 53-202k, without first obtaining the necessary jury finding. We further conclude that this jurisdiction encompasses a claim that the defendant did not properly waive his right to a jury determination of the violation, resulting in a sentence imposed in an illegal manner that exceeds the statutory limit for the underlying crimes of which he was found guilty by the jury.").

The state's jurisdictional challenge requires us to consider whether "the defendant has raised 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. . . . In the absence of a colorable claim requiring correction, the trial court has no jurisdiction to modify the sentence." (Citation omitted; internal quo-

tation marks omitted.) *State* v. *Delgado*, supra, 323 Conn. 810. "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." (Citation omitted; emphasis in original; internal quotation marks omitted.) *In re Santiago G.*, 325 Conn. 221, 231, 157 A.3d 60 (2017). 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. See id. "It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *State* v. *Fowlkes*, 283 Conn. 735, 739, 930 A.2d 644 (2007). We emphasize, however, that this "general principle that there is a strong presumption in favor of jurisdiction . . . in criminal cases . . . is considered in light of the common-law rule that, once a defendant's sentence has begun [the] court may no longer take any action affecting a defendant's sentence unless it *expressly* has been authorized to act." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Ramos*, 306 Conn. 125, 134–35, 49 A.3d 197 (2012); see, e.g., *State* v. *Koslik*, supra, 116 Conn. App. 697 (applying presumption to motion to correct illegal sentence). Thus, the presumption in favor of jurisdiction does not itself broaden the nature of the postsentencing claims over which the court may exercise jurisdiction in criminal cases, but merely serves to emphasize that the jurisdictional inquiry is guided by the "plausibility" that the defendant's claim is a challenge to his sentence, rather than its ultimate legal correctness. *In re Santiago G.*, supra, 232–33; see also footnote 13 of this opinion.

In determining whether it is plausible that the defendant's motion challenged the sentence, rather than the

underlying trial or conviction, we consider the nature of the specific legal claim raised therein. See *State* v. *Henderson*, supra, 130 Conn. App. 441. As we understand the defendant's claims in the present appeal, he does not ask us to disturb his conviction under § 21a-278 (b), or otherwise claim that he was convicted under the wrong statute. Instead, the defendant seeks resentencing, claiming that § 21a-278 (b) merely enhances the penalty available under § 21a-277 (a) when those statutes are read with the judicial gloss rendered necessary by the United States Supreme Court's decisions in *Alleyne* v. *United States*, supra, 570 U.S. 99, and *Apprendi* v. *New Jersey*, supra, 530 U.S. 466.[14]

[14] Specifically, the defendant argues in his brief that §§ 21a-277 (a) and 21a-278 (b) are, in fact, the same offense insofar as they prohibit "identical conduct." He claims that § 21a-277 serves as the "base offense" and that the addition of drug dependency language renders § 21a-278 (b) simply an aggravated form of § 21a-277 (a) for purposes of proof as an element under federal constitutional law. He suggests, therefore, that he should be resentenced under § 21a-277 (a), with a maximum of fifteen years imprisonment and no mandatory minimum, insofar as § 21a-278 (b) only precludes the trial court from suspending, rather than reducing, the mandatory minimum. The defendant notes that the trial court "had the discretion to impose a nonmandatory minimum portion of the sentence by reducing the mandatory minimum sentence to no mandatory minimum," observing that, "although the mandatory minimum [under § 21a-278 (b)] is nonsuspendable, it is not nonreducible." Cf. General Statutes § 53a-59a (d) (providing in relevant part that "[a]ny person found guilty under this section shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court"); General Statutes § 53a-70a (a) (2) ("ten years of the sentence imposed may not be suspended or reduced by the court"). The defendant also emphasizes that, "although § 21a-278 (b) does not provide for . . . a nonmandatory sentence, such a sentence is permissible because §§ 21a-278 (b) and 21a-277 (a) have the same essential elements . . . and § 21a-277 (a) provides for a sentence without a mandatory minimum." (Citation omitted.) See also General Statutes § 21a-283a (in sentencing defendant under certain narcotics statutes, including § 21a-278 [b], when facts of underlying offense "did not involve the use, attempted use or threatened use of physical force against another person or result in the physical injury or serious physical injury of another person, and in the commission of which such person neither was armed with nor threatened the use of or displayed or represented by word or conduct that such person possessed any firearm, deadly weapon or dangerous instrument . . . the court may, upon a showing of good cause by the defendant, depart from the prescribed mandatory minimum sentence, provided the provisions of this section have not previously been invoked on the defendant's behalf and the court, at the time of sentencing, states in open court the reasons for imposing the particular sentence and the specific reason for imposing a sentence that departs from the prescribed mandatory minimum sentence"). Given this interpretation of the statutory scheme, the defendant then argues in his reply brief that "the remedy for an *Apprendi* or *Alleyne* error is to correct the sentence, not vacate the conviction," and that the "court has

Given the otherwise identical statutory language of §§ 21a-277 (a) and 21a-278 (b), and the lack of any case law from this court squarely rejecting the defendant's proffered interpretation of § 21a-278 (b) as merely providing a penalty enhancement in view of the Supreme Court's decision in *Alleyne*, which extended the protections of *Apprendi* to mandatory minimum sentences; see *Alleyne* v. *United States*, supra, 570 U.S. 103; we conclude that the defendant's interpretation of the narcotics statutory scheme is sufficiently plausible to render it colorable for the purpose of jurisdiction over his motion. See *In re Santiago G.*, supra, 325 Conn. 233–34 (dismissing appeal for lack of final judgment from denial of motion to intervene in termination of parental rights action because there was no colorable claim given unchallenged Appellate Court case law rejecting existence of such right). In particular, the fact that the defendant does not ask us to disturb his conviction under § 21a-278 (b), but merely seeks remand for resentencing, renders this case distinguishable from *State* v. *Lawrence*, supra, 281 Conn. 151, 158–59, in which we concluded that the trial court lacked jurisdiction over a motion to correct claiming that court had improperly convicted the defendant of manslaughter in the first degree with a firearm, rather than simply manslaughter in the first degree, following his successful assertion of the affirmative defense of extreme emotional disturbance.[15]

the common-law authority, as codified in [Practice Book] § 43-22, to hear an argument that a sentence is illegal because it exceeds the statutorily authorized sentence, and to order that such sentence be corrected so that it is legal and within the proper sentencing guidelines."

[15] For other illustrative authorities with respect to the limits of a court's jurisdiction over a motion to correct an illegal sentence, compare *State* v. *Delgado*, supra, 323 Conn. 809 n.6 (trial court had jurisdiction over motion to correct claiming that sentence of life without parole for juvenile, without consideration of mitigating factors, violated eighth amendment), *State* v. *Martin M.*, 143 Conn. App. 140, 143–44 and n.1, 70 A.3d 135 (trial court had jurisdiction over motion to correct claiming that sentencing court improperly relied on subsequently reversed kidnapping conviction in determining sentence), cert. denied, 309 Conn. 919, 70 A.3d 41 (2013), and *State* v. *Koslik*, supra, 116 Conn. App. 700–701 (trial court had jurisdiction over motion to correct claiming that sentencing court had failed to make finding regarding repayment to victim that would permit imposition of three years of probation), with *State* v. *Robles*, 169 Conn. App. 127, 135, 150 A.3d 687 (2016)