

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

RICHARD LANGSTON *v.* COMMISSIONER OF
CORRECTION, SC 20221

Judicial District of Tolland

Habeas; Summary Disposal of Habeas Case; Whether Appellate Court Properly Affirmed Habeas Court’s Dismissal of Petitioner’s Untimely Habeas Petition Pursuant to General Statutes § 52-470 on Ground That Petitioner Did Not Present “Good Cause” For Delay in Filing Petition. In 2002, the petitioner, who had been convicted of various crimes, filed a first petition for a writ of habeas corpus. Although the petition was granted by the habeas court, on appeal that judgment was reversed by the Appellate Court, and the Supreme Court denied certification to appeal on December 5, 2007. The petitioner filed a second habeas petition in May, 2012, but subsequently withdrew it. The petitioner thereafter brought this action by a third habeas petition on December 3, 2014. General Statutes § 52-470 (d) provides that there shall be a rebuttable presumption that a habeas petition has been delayed without “good cause” if the petition was filed two years or more after the date on which a final judgment was entered on a prior petition, or after October 1, 2014, whichever date is later. In a case in which the rebuttable presumption of delay applies, the petitioner must show “good cause” for the delay pursuant to § 52-470 (e). In the present case, because more than two years had elapsed between the time the judgment on the first habeas petition became final and the filing of the present habeas petition, October 1, 2014, was the latest date under § 52-470 (d) that the present habeas petition could have been filed in order to avoid the rebuttable presumption of delay. Because the present habeas petition was filed after October 1, 2014, the respondent Commissioner of Correction moved that the habeas court order the petitioner to show cause as to why the petition should not be dismissed as untimely pursuant to §§ 52-470 (d) and (e). After the show cause hearing, the habeas court dismissed the petition as untimely filed. The petitioner appealed, claiming that the habeas court improperly concluded that he failed to show good cause for the delay in filing his habeas petition. He claimed that (1) his untimely petition did not violate the spirit of § 52-470 because it concerned issues that had been litigated for several years, and (2) in withdrawing his prior petition, he was following the advice of his former attorney and did not understand the consequences of his deci-

sion. The Appellate Court (185 Conn. App. 528) rejected the petitioner's claims and affirmed the habeas court's judgment of dismissal. With respect to the petitioner's first claim, the Appellate Court concluded that the fact that the petitioner had litigated previous habeas claims did not excuse his tactic of voluntarily withdrawing his prior petition just days before a motion to dismiss was to be heard and less than one month before trial, nor did it explain his failure to refile his case before the October 1, 2014 statutory deadline. As to his second claim, the Appellate Court, noting that petitioner's prior counsel did not testify at the show cause hearing, ruled that the petitioner failed to adduce sufficient evidence in support of his claim that his prior counsel failed to advise him of the time constraints governing the present habeas petition. The petitioner was granted certification to appeal from the Appellate Court's decision, and the Supreme Court will decide whether the Appellate Court properly upheld the habeas court's dismissal of the petitioner's habeas petition on the ground that he did not present "good cause" for his delay in filing the petition, pursuant to § 54-470 (d).

TOWN OF REDDING et al. v. GEORGETOWN LAND
DEVELOPMENT COMPANY, LLC, et al., SC 20322
Judicial District of Hartford

Foreclosure; Taxation; Whether Tax Liens of Town and Fire District have Priority over Those of Special Taxing District. The plaintiffs, the town of Redding and the Georgetown Fire District, brought this action seeking to foreclose municipal liens on approximately fifty-one acres of property owned almost entirely by the Georgetown Land Development Company, LLC (GLDC). GLDC, which did not appear in this action, commenced, but has not yet completed, a mixed-use development on the site. The defendant RJ Tax Lien Investments, LLC (RJ Tax) also has liens on the property by virtue of assignments from the Georgetown Special Taxing District (special taxing district). The special taxing district was established by special act to facilitate the acquisition and financing of the public infrastructure and other public facilities necessary for the development. The act granted the special taxing district "all the powers and privileges with respect to [the collection and enforcement of taxes] as districts organized pursuant to section 7-325 of the general statutes, and as held by municipal[ities]." While taxing districts created by § 7-325 have equal lien priorities to municipalities, the act creating the special taxing district provides that its liens "shall take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding." The

trial court rendered summary judgment in favor of the plaintiffs on the issue of the priority of the parties' liens, finding that the plaintiff's liens enjoyed priority over those of the special taxing district. The court held that the plain and unambiguous language of the act subordinates the liens of the special taxing district to those of the town and that the special taxing district's liens are subordinate to those of the fire district because the fire district's liens are of equal priority to the town's liens. The trial court found unreasonable the defendants' argument that the provision of the act which states that the special taxing district's liens "shall take precedence over other liens except a lien for taxes of the town of Redding" means that the special taxing district's liens are equal in priority to the town's liens and not superior to those liens. The trial court noted that the provision uses the same language that the legislature typically uses to give town tax liens priority over other types of liens and that the defendants' interpretation would render the provision superfluous because § 7-325 already grants a taxing district's liens equal priority to those of a municipality. Finally, the court noted that the defendants' interpretation of the special act would lead to an absurd result in that it would both empower and incentivize GLDC, the district's sole taxpayer and voter, to render the town's taxes virtually unenforceable by levying, but not paying, a tax against itself. The trial court subsequently rendered a judgment of strict foreclosure, assigning the law days according to its previous ruling as to the lien priorities. Defendant RJ Tax appeals, claiming that the trial court erred in ruling that the special taxing district's liens were subordinate to those of the town and the fire district.

STATE *v.* FOTIS DULOS, SC 20363

Judicial District of Stamford-Norwalk at Stamford

Criminal; First Amendment; Whether Trial Court Properly Entered Gag Order Barring Defendant, Attorneys, Witnesses, and Law Enforcement from Making Public Statements "Posing Substantial Likelihood of Material Prejudice to This Case." The defendant was arrested and charged with tampering with or fabricating physical evidence and hindering prosecution in connection with the disappearance of his estranged wife, Jennifer Dulos, who remains missing. The couple has been involved in contentious divorce proceedings that are still pending in the trial court. This action has generated a high degree of pretrial publicity and media coverage, including statements by defense counsel regarding Jennifer Dulos' disappearance and "leaks" of information by "law enforcement sources." The state filed a motion for a gag order that would apply to counsel for both

sides under Rule 3.6 of the Rules of Professional Conduct, which prohibits an attorney from making public statements that have a substantial likelihood of materially prejudicing a pending action but excepts statements that an attorney believes are necessary to protect a client from adverse publicity initiated by another party. The trial court granted the state's motion and determined that the gag order should extend beyond the attorneys to also apply to the defendant, to trial witnesses, and to law enforcement agencies investigating the case. It ordered that those people and entities were prohibited from making public statements about certain aspects of the investigation and litigation of the case and about information that would be inadmissible as evidence at trial and that, if disclosed, would create a substantial risk of prejudicing an impartial trial. The trial court acknowledged that the gag order was a prior restraint on speech that infringed upon the first amendment rights of the affected parties, but it concluded that those rights had to be balanced with the defendant's sixth amendment right to a fair trial, which could be compromised by prejudicial media coverage. The trial court looked to federal cases involving gag orders for the appropriate legal standard to govern its order and settled on a three part test. First, the court considered whether there would be a substantial likelihood of material prejudice without a gag order and answered that question in the affirmative, noting the extensive pretrial publicity, the statements that defense counsel and law enforcement had already made to the press, and the potential effect of the media coverage on the jury. The trial court then considered whether the order was narrowly tailored so that it was no broader than necessary to protect the constitutional right to a fair trial. It noted that the order did not prohibit the affected parties from making *any* public comments about the case and that the order was consistent with the applicable rules of practice and Rule 3.6. Finally, the trial court considered whether the order was the least restrictive means of eliminating potential prejudice and answered that question in the affirmative, noting that the order was "the type of remedial measure that will prevent prejudice at its inception." The defendant appeals upon the granting of certification by the Chief Justice pursuant to General Statutes § 52-265a. The Supreme Court will decide whether the trial court properly granted the state's motion for a gag order where the defendant argues that the order violates his sixth amendment right to a fair trial and his free speech rights under the federal and state constitutions.

JANET FELICIANO *v.* STATE OF CONNECTICUT et al., SC 20373
Judicial District of Hartford

Sovereign Immunity; Workers’ Compensation; Whether Trial Court Properly Dismissed Negligence Claim Brought Against State by State Employee under General Statutes § 52-556 on Ground that State Entitled to Sovereign Immunity Where Employee Had Received Workers’ Compensation Benefits. The plaintiff was a state employee when she sustained injuries in a motor vehicle accident where she was a passenger in a vehicle owned and insured by the state and operated by another state employee. The plaintiff brought this action claiming negligence under General Statutes § 52-556, which provides in relevant part that “[a]ny person injured in person or property through the negligence of any state . . . employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage shall have a right of action against the state to recover damages for such injury.” The state moved that the action be dismissed as to the state and argued that it was entitled to sovereign immunity under *Sullivan v. State*, 189 Conn. 550, 555 n.7 (1983). In *Sullivan*, the plaintiff’s decedent was a state employee who was killed when he was struck by a motor vehicle owned by the state and operated by another state employee. The plaintiff, the administratrix of the decedent’s estate, brought a wrongful death action against the state, which the trial court dismissed. The Supreme Court affirmed the judgment of dismissal on the ground that the plaintiff failed to exhaust her administrative remedies, and it concluded in a footnote that the legislature did not intend § 52-556 to authorize state employees or their representatives who are eligible for workers’ compensation to sue the state in negligence. The trial court here granted the state’s motion to dismiss, noting that the plaintiff had received workers’ compensation benefits and citing *Sullivan* in its dismissal order. The plaintiff appeals, and the Supreme Court will decide whether the trial court properly granted the state’s motion to dismiss where the plaintiff argues that § 52-556 can be read to allow for her negligence claim against the state and that the trial court improperly relied on dicta in *Sullivan* that is not binding authority. The Supreme Court will also decide whether the trial court’s judgment can be affirmed on the alternative ground that the plaintiff’s negligence claim against the defendant is barred under General Statutes § 31-284 (a), the exclusive remedy provision of the Workers’ Compensation Act.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues

raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

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