

## SUPREME COURT PENDING CASES

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

MAURICE ROSS *v.* COMMISSIONER OF  
CORRECTION, SC 20281

*Judicial District of Tolland*

**Habeas; Whether Appellate Court Correctly Determined that Petitioner Precluded by Collateral Estoppel From Litigating Whether Defense Counsel’s Failure to Object to Prosecutor’s Improper Comments Resulted in Prejudice to the Defense as Contemplated by *Strickland v. Washington*.** The petitioner was convicted of murder in connection with the shooting death of his girlfriend, and he appealed, claiming that prosecutorial impropriety during closing arguments deprived him of a fair trial. The Appellate Court affirmed his conviction, ruling that, while at least one of the prosecutor’s comments was improper, that impropriety did not, either individually or taken together with other alleged improprieties, deprive the petitioner of a fair trial. Subsequently, the petitioner brought this habeas action, claiming that his trial counsel provided ineffective assistance by failing to object to improprieties in the prosecutor’s closing arguments. Under *Strickland v. Washington*, 466 U.S. 668 (1984), a petitioner, in order to prevail on a claim of ineffective assistance of counsel, must establish both that counsel’s performance was deficient and that the deficiency prejudiced the defense. The habeas court rejected the petitioner’s claim on the ground that the petitioner had failed to satisfy the prejudice prong of *Strickland v. Washington*. The petitioner appealed, and the Appellate Court (188 Conn. App. 251) affirmed the habeas court’s judgment. The Appellate Court ruled that its determination in the petitioner’s direct appeal that the prosecutor’s improper comments did not prejudice the petitioner or deprive him of a fair trial constituted a valid final judgment that precluded the relitigation of that issue under the doctrine of collateral estoppel. The petitioner was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly determined that the doctrine of collateral estoppel precluded the petitioner from litigating the issue of whether defense counsel’s failure to object to the prosecutor’s improper comments during the petitioner’s criminal trial prejudiced him. If the doctrine of collateral estoppel does not preclude the petitioner from litigating the issue of prejudice, the Supreme Court will decide whether the petitioner can prevail under *Strickland v. Washington*.

STATE *v.* WAGNER GOMES, SC 20407  
*Judicial District of Fairfield*

**Criminal; Whether “Investigative Inadequacy” Jury Instruction Prejudiced Defendant; Whether Supreme Court Should Overrule or Limit *State v. Williams* and *State v. Collins* and Invoke its Supervisory Authority to Prescribe a Jury Instruction on Investigative Inadequacy.** The defendant was convicted of assault in the second degree after he struck a woman in the head with a bottle outside of a bar in Bridgeport. The defendant appealed, claiming that the trial court deprived him of his right to present a defense of investigative inadequacy when it omitted from its instructions to the jury certain language in his written request to charge providing that the jury “may consider evidence of the police investigation as it might relate to any weaknesses in the state’s case.” The defendant claimed that, without the language he requested, the jury would not have understood how to use the evidence he elicited at trial about the inadequacies of the police investigation. The Appellate Court (193 Conn. App. 79) affirmed the conviction, holding that the trial court did not mislead the jury or violate the defendant’s right to present a defense by omitting the requested language from its instructions. The Appellate Court noted that the trial court’s jury charge was identical to the model jury instruction provided on the Judicial Branch’s website. The Appellate Court also noted that the trial court’s jury instruction was in keeping with long-standing Connecticut law, as nearly identical instructions were upheld by the Supreme Court in *State v. Williams*, 169 Conn. 322 (1975), and *State v. Collins*, 299 Conn. 567 (2011). The Appellate Court further noted that the defendant presented his evidence to the jury and cross-examined the state’s witnesses regarding the alleged inadequacy of the police investigation and that the trial court did not direct the jury to disregard that evidence or argument but, rather, specifically instructed the jury to consider all of the evidence before it. Finally, the Appellate Court noted that the trial court, in its charge on investigative inadequacy, repeated to the jury its responsibility to determine whether the state, in light of all the evidence, had proved beyond a reasonable doubt that the defendant was guilty of the crime with which he was charged. The defendant was granted certification to appeal, and the Supreme Court will consider (1) whether the Appellate Court correctly concluded that the trial court’s “investigative inadequacy” jury instruction did not mislead the jury or otherwise prejudice the defendant; and (2) whether the Supreme Court should overrule or limit its decisions in *Williams* and *Collins*, as they relate to the investigative inadequacy jury instruction, and invoke its supervisory authority to prescribe a jury instruction such as the one proposed by the defendant.

AMAADI COLE *v.* CITY OF NEW HAVEN et al., SC 20425  
*Judicial District of New Haven*

**Negligence; Governmental Immunity; § 52-557n; Whether Police Officer Entitled to Discretionary Act Immunity from Negligence Claims Arising From Motor Vehicle Accident; Whether Trial Court Properly Determined that Identifiable Victim, Imminent Harm Exception to Discretionary Act Immunity Did Not Apply.** The plaintiff was operating a dirt bike on a New Haven street, and he crashed into a tree when he swerved to avoid a collision with a police cruiser. The plaintiff brought this personal injury action against the police officer and the city of New Haven, alleging that the officer negligently caused his injuries by driving her cruiser into oncoming traffic and that the city is liable for the officer's negligence pursuant to General Statutes § 7-465. Generally, a municipal employee is liable for the misperformance of ministerial acts that are to be performed in a prescribed manner, but has a qualified immunity in the performance of discretionary acts requiring the exercise of judgment. The plaintiff claimed that that the officer was not entitled to discretionary act immunity here because she breached a ministerial duty imposed on her by state traffic laws and the police department's general order prohibiting officers from executing a roadblock while in pursuit of a suspect. The trial court rendered summary judgment in favor of the defendants, ruling that the police officer enjoyed discretionary act immunity from the plaintiff's claims under General Statutes § 52-557n (a) (2) (B) and that the imminent harm, identifiable victim exception to discretionary act immunity—which applies when the circumstances make it apparent to the municipal employee that her failure to act would be likely to subject an identifiable person to imminent harm—did not apply here. The court rejected the plaintiff's claim that the traffic laws and the department's general order regarding police pursuits imposed a ministerial duty on the officer to not drive her cruiser in the manner alleged. The court found that the officer had not initiated a pursuit at the time of the accident, but rather that she was on patrol in her cruiser performing the typical functions of a police officer, which involve the exercise of discretion. The plaintiff appeals, claiming that the trial court erred in rejecting his claims that the traffic laws and the department's general order imposed a ministerial duty on the officer not to drive her cruiser into oncoming traffic. He also claims that the trial court erred in rejecting his claim that the imminent harm, identifiable victim exception to discretionary act immunity applied under the facts here.

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DENNIS COOKISH *v.* COMMISSIONER OF  
CORRECTION, SC 20433  
*Judicial District of Tolland*

**Habeas Corpus; Summary Disposition; Whether Habeas Court Properly Dismissed Petition Sua Sponte under Practice Book § 23-29 Prior to Appointment of Counsel and Without Notice and an Opportunity to be Heard; Whether Habeas Petition Could Be Treated as Petition for Writ of Error Coram Nobis.** In 1974, the petitioner pleaded guilty to and was convicted of sexual contact in the first degree, and he received a sentence of one and a half to six years of incarceration. In 2018, while incarcerated in federal prison, the petitioner filed a petition for a writ of a habeas corpus as a self-represented litigant, claiming that he was actually innocent of the sexual contact charge and that his guilty plea had not been voluntary. The habeas court granted the petitioner's request for the appointment of counsel and a waiver of fees. It then sua sponte dismissed the petition without holding a hearing, however, concluding that it lacked subject matter jurisdiction under Practice Book § 23-29 (1) because, at the time the petition was filed, the petitioner was no longer in custody for the conviction that he challenged. Section 23-29 (1) provides that "the judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition . . . if it determines that . . . the court lacks jurisdiction." The petitioner filed a petition for certification to appeal the habeas court's judgment of dismissal, which the habeas court denied. The petitioner appeals, and the Supreme Court will decide whether the habeas court abused its discretion in denying certification to appeal and whether it erred in sua sponte dismissing the habeas petition under Practice Book § 23-29 (1) prior to appointing counsel for the petitioner and without providing him with notice and an opportunity to be heard. The Supreme Court will also decide whether, after dismissing the habeas petition under § 23-29 (1), the habeas court should nonetheless have treated the habeas petition as a petition for a writ of error coram nobis and decided it on the merits on that basis. Finally, the Supreme Court may consider the commissioner's claim that the habeas court's judgment can be affirmed on the alternative ground that the habeas court should have declined to issue the writ of habeas corpus under Practice Book § 23-24 (a) (1), which provides in relevant part that a habeas court "shall issue the writ unless it appears that . . . the court lacks jurisdiction."

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*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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