

## SUPREME COURT PENDING CASES

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

STATE *v.* PATRICIA DANIELS; SC 20376

*Judicial District of Fairfield*

**Criminal; Double Jeopardy; Whether, Following Its Reversal of Surviving Cumulative Conviction, Appellate Court Should Have Ordered Reinstatement of Conviction that had been Vacated Pursuant to *State v. Polanco*.** The defendant was convicted following a jury trial of the crimes of intentional manslaughter in the first degree, reckless manslaughter in the first degree, and misconduct with a motor vehicle, which involves the criminally negligent operation of a motor vehicle. The charges stemmed from an incident in which the defendant's vehicle hit the victim's vehicle, causing it to hit a tree and resulting in the victim's death. At the sentencing hearing, the state moved that the trial court vacate the defendant's intentional manslaughter conviction pursuant to *State v. Polanco*, 308 Conn. 242 (2013). In *Polanco*, the Supreme Court held that, when cumulative convictions of greater and lesser offenses violate double jeopardy, the appropriate remedy is that one of the convictions be vacated. The trial court vacated the defendant's intentional manslaughter conviction and sentenced the defendant on the remaining convictions. The defendant appealed, claiming that the jury's verdicts were legally inconsistent in that each of the three charged crimes required a mutually exclusive mental state. The Appellate Court (191 Conn. App. 33) reversed in part, ordering that the convictions of reckless manslaughter and criminally negligent operation be vacated and remanding for a new trial on those charges and on the charge of intentional manslaughter. The Appellate Court rejected the state's contention that the case should be remanded with direction to reinstate the intentional manslaughter conviction that had been vacated pursuant to *Polanco*. The state was granted certification to appeal, and the Supreme Court will consider whether the Appellate Court improperly ordered a new trial on all three charges rather than ordering that the defendant's intentional manslaughter conviction, which had been vacated for sentencing purposes under *State v. Polanco*, be reinstated.

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STATE *v.* JEFFREY K. WARD, SC 20427  
*Judicial District of Hartford*

**Criminal; Whether Trial Court Lacked Jurisdiction over Motion to Correct Illegal Sentence Because Defendant Failed to set Forth Colorable Claim that he was Incompetent at Time of Sentencing.** The defendant pleaded guilty to manslaughter in the first degree and assault in the first degree and was sentenced to twenty-five years of incarceration. The defendant filed a motion to correct, claiming that his sentence was imposed in an illegal manner in that (1) he was incompetent at the time of sentencing; and (2) the sentencing court failed to order, *sua sponte*, that a competency evaluation and hearing be conducted before sentencing on the basis of information known to it. The trial court dismissed the motion to correct, finding that it lacked subject matter jurisdiction over it. The defendant appealed, and the Appellate Court (193 Conn. App. 794) affirmed the judgment. The Appellate Court held that the trial court did not err in dismissing the motion to correct for lack of subject matter jurisdiction, as the defendant failed to set forth a colorable claim that his sentence was imposed in an illegal manner. The Appellate Court found that the defendant's motion failed to establish any possibility that he was incompetent at the time of sentencing or that there was sufficient information before the sentencing court requiring a competency examination and hearing prior to sentencing. Specifically, the Appellate Court found that, while the transcripts of several pretrial proceedings and the sentencing hearing that the defendant submitted in support of his motion to correct showed that the parties and the sentencing court were aware that the defendant had a history of mental health issues, nothing indicated that he had been incompetent when he was sentenced or that a competency evaluation and hearing prior to sentencing were required. The Appellate Court further found that the police report, psychiatric report and psychiatric records on which the defendant had also relied in support of his claim could not be viewed reasonably to support a conclusion that he was incompetent at the time of sentencing, as those records suggested that the defendant had a history of mental health issues and was at risk of experiencing symptoms in the future but failed to demonstrate that there was any likelihood that he was incompetent when sentenced. The defendant was granted certification to appeal, and the Supreme Court will consider whether the Appellate Court properly determined that the trial court did not have jurisdiction over the defendant's motion to correct an illegal sentence on the ground that the motion, on its face, did not raise a colorable claim that the defendant was incompetent at the time of his sentencing.

MERIBEAR PRODUCTIONS, INC. v. JOAN E.  
FRANK et al., SC 20473  
*Judicial District of Fairfield*

**Whether California Court Lacked Personal Jurisdiction Over Defendant; Whether Contract to Facilitate Sale of Real Property Exempt From Home Solicitation Sales Act; Whether Trial Court Improperly Awarded Double Damages.** The defendants, Joan Frank and George Frank, were selling their Westport home, and they contracted with the plaintiff, a California corporation, to provide decorating and staging services to make the home more attractive to potential buyers. The plaintiff subsequently brought a breach of contract action against the defendants in California pursuant to a forum selection clause in the contract, and the plaintiff obtained a default judgment against the defendants in that action. The plaintiff then brought this action seeking to enforce the California judgment or, alternatively, damages for breach of contract. The trial court found George Frank liable for the foreign judgment and Joan Frank liable for breach of contract. In enforcing the California judgment against George Frank, the trial court found that he had consented to the California court's jurisdiction because he had signed an addendum that was incorporated into the contract and was therefore subject to the contract's forum selection clause. In finding Joan Frank liable for breach of contract, the trial court rejected her special defense that the contract did not comply with the notice provisions of the Home Solicitation Sales Act, General Statutes § 42-134a et seq. The trial court noted that § 42-134a (a) (5) of the act exempts transactions "pertaining to the sale or rental of real property" from its provisions and concluded that the parties' transaction clearly pertained to the sale of their real property because the sole purpose of the agreement was to facilitate the sale of the defendants' home. The trial court rendered judgment against George Frank in the amount of \$259,746.10 and rendered judgment against Joan Frank in the amount of \$283,106.45. The defendants appeal. They claim that the trial court erred (1) in ruling that George Frank had sufficient minimum contacts with California to warrant that state's exercise of jurisdiction over him; (2) in ruling that the parties' contract was not governed by the Home Solicitation Sales Act; and (3) in awarding the plaintiff damages against both George Frank and Joan Frank.

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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.*

*John DeMeo  
Chief Staff Attorney*

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