

SUPREME COURT PENDING CASES

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

STATE *v.* HIRAL M. PATEL, SC 20446
Judicial District of Litchfield

Criminal; Whether Admission of Codefendant’s “Dual Inculpatory Statement” Violated Defendant’s Federal and State Constitutional Confrontation Rights; Whether Codefendant’s “Dual Inculpatory Statement” Was Admissible as Statement Against Penal Interest; Whether Codefendant’s Statement against Penal Interest That Exculpated Defendant Was Inadmissible. The defendant was charged with several offenses, including murder, robbery, and home invasion, in connection with the shooting death of the victim, Luke Vitalis. At trial, the trial court, over the defendant’s objection, permitted the state to introduce into evidence a recording of a conversation between the defendant’s coconspirator, Michael Calabrese, and a jailhouse informant, Wayne Early, during which Calabrese made statements inculpatory of himself and the defendant in the victim’s murder. The court determined that Calabrese’s statements were admissible as dual inculpatory statements against penal interest pursuant to § 8-6 (4) of the Connecticut Code of Evidence. The defendant was convicted, and he appealed, claiming that the introduction of the recording of Calabrese’s “testimonial” statements into evidence violated his federal constitutional right to confrontation under *Crawford v. Washington*, 541 U.S. 36 (2004). The Appellate Court (194 Conn. App. 245) rejected the claim, noting that there was no indication that Calabrese had knowledge that he was speaking with a confidential jailhouse informant and concluding that his statements did not constitute testimonial hearsay under *Crawford* because the circumstances did not suggest that a person in his position would intend his statements to be a substitute for trial testimony. The court also found unavailing the defendant’s claim that Calabrese’s statements were “testimonial” under the confrontation clause of the state constitution. In addition, the court determined that the trial court did not abuse its discretion in admitting Calabrese’s statements pursuant to § 8-6 (4) because its findings adequately supported its conclusion that the statements presented sufficient indicia of reliability. Next, the court rejected the defendant’s claim that the trial court improperly precluded Salony Majmudar, the defendant’s sister, from testifying that Shyam Patel, a cousin of the defendant, had confessed to her that he, and not the defendant, had accompanied Calabrese into the victim’s home. It agreed with the trial

court's conclusion that Shyam's statement was not trustworthy and thus not admissible as a statement against penal interest under § 8-6 (4). Accordingly, the court affirmed the defendant's conviction. The defendant was granted certification to appeal, and the Supreme Court will determine whether the Appellate Court correctly concluded that (1) the introduction into evidence of a codefendant's "dual inculpatory statement" did not violate the defendant's confrontation rights under *Crawford*, (2) the introduction into evidence of a codefendant's "dual inculpatory statement" did not violate the defendant's confrontation rights under the state constitution, (3) a codefendant's "dual inculpatory statement" was properly admissible as a statement against penal interest under § 8-6 (4), and (4) the trial court properly excluded from evidence, under § 8-6 (4), a codefendant's statement against penal interest that exculpated the defendant.

JOHN L. THORNTON et al. v. BRADLEY JACOBS et al., SC 20457
Judicial District of Stamford/Norwalk at Stamford

Appellate Procedure; Whether Appellate Court Properly Dismissed, as Frivolous, Appeal of Nonparty Witness from Trial Court's Order Enforcing Subpoena for Out-of-State Lawsuit.

John L. Thornton and Margaret Thornton are involved in ongoing litigation in Florida with 100 Emerald Beach Way, LC (the LC) concerning a dispute over their abutting properties. In connection with the Florida litigation, the Thorntons issued a subpoena duces tecum commanding Lamia Jacobs to appear for a video deposition and produce more than sixty categories of documents. Jacobs is a Connecticut resident who spends a few weeks each year on the property owned by the LC that is a subject of the Florida litigation. Jacobs is also the sole member of the LC. Jacobs filed an application in Connecticut Superior Court seeking to quash the subpoena duces tecum. The trial court ordered the deposition of Jacobs to proceed and ordered her to produce documents in response to more than forty of the requests in the subpoena. Jacobs appealed from the ruling, and the Thorntons filed a motion to dismiss the appeal as frivolous. No appellate briefs had been filed at the time, but Jacobs stated in her preliminary statement of issues that she intended to raise the following issues on appeal: "1. Did the trial court abuse its discretion in compelling discovery from Lamia Jacobs when such discovery should more properly be directed to 100 Emerald, a legally separate entity and an actual party to the Florida Action? 2. Did the trial court abuse its discretion in compelling unduly burdensome discovery from Lamia Jacobs, including the pro-

duction of certain documents dating back to the 1950s, particularly in light of the Thorntons' contemporaneous arguments to the Florida court that no further discovery was needed? 3. Did the trial court err in applying a novel 'litigation . . . decision-maker' test to determine the propriety of the non-party subpoenas at issue in this case?" The Appellate Court granted the motion to dismiss, and Jacobs filed a petition for certification to appeal from the ruling. The Supreme Court granted certification as to the question of whether the Appellate Court properly dismissed, as frivolous, the appeal of a nonparty witness from the trial court's order enforcing a subpoena for an out-of-state lawsuit.

STATE *v.* KEITH BELCHER, SC 20531
Judicial District of Fairfield

Criminal; Juvenile Sentencing; Whether Sixty-Year Sentence Imposed on Defendant For Non-Homicide Offenses Committed When He Was Fourteen Years Old Violates Federal and State Constitutional Bans on Excessive and Disproportionate Punishment; Whether Sentencing Court Relied on Inaccurate Information. In 1997, the defendant was sentenced to sixty years of incarceration for several non-homicide crimes, including sexual assault and kidnapping, committed when he was fourteen years old. The legislature subsequently enacted P.A. 15-183, codified at General Statutes § 46b-127 (a) (1), which raised the age for transfer of a child's case from juvenile court to the regular criminal docket from fourteen to fifteen years old. The defendant filed a motion to correct an illegal sentence, claiming that his sixty-year sentence violated the state constitutional prohibition against cruel and unusual punishment under *State v. Santiago*, 318 Conn. 1 (2015). In *Santiago*, the Supreme Court held that the legislature's prospective repeal of the death penalty demonstrated that contemporary standards of decency had evolved, such that the imposition of the death penalty on inmates convicted under the repealed death penalty statutory scheme violated the state constitutional prohibition against excessive and disproportionate punishment. The defendant here contended that, in light of P.A. 15-183, his sixty-year sentence for non-homicide crimes committed when he was fourteen years old did not comport with contemporary standards of decency and could not be justified by any legitimate penological purpose, such that his sentence violated the state constitutional ban on excessive and disproportionate punishment. The trial court construed the claim as challenging the constitutionality of the transfer of the defendant's juvenile case to adult court and concluded that it lacked

jurisdiction over the claim because it attacked the validity of the conviction rather than the legality of the sentence. Alternatively, the court rejected the claim on the merits, concluding that *Santiago* was distinguishable and that the defendant's sentence with parole eligibility does not constitute cruel and unusual punishment under the state constitution. The defendant also claimed that his sentence violated the eighth amendment's prohibition against cruel and unusual punishment because it was grossly disproportionate to the crimes committed. The court compared the gravity of the defendant's offenses with the harshness of the penalty and concluded that the sentence was not unconstitutionally disproportionate where the defendant will be eligible for parole after serving thirty years of his sentence. The court accordingly denied the federal constitutional claim. On appeal, the defendant claims that his sixty-year sentence for non-homicide crimes committed when he was fourteen years old violates the state constitution as excessive and disproportionate and the eighth amendment as grossly disproportionate. He also claims that the trial court improperly rejected his claim that the sentencing court relied on inaccurate information when it described him as a "superpredator."

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

CATHERINE CRANDLE et al. v. STATE OF CONNECTICUT
EMPLOYEE RETIREMENT COMMISSION, SC 20532
Judicial District of New Britain

Administrative Appeal; Whether Determination by State Employees Retirement Commission Concerning Date on Which Disability Retirement Benefits Become Payable was Proper. The plaintiffs, Catherine Crandle and Ronald Robinson, are former state of Connecticut employees who were awarded disability retirement benefits under the State Employees Retirement Act, General Statutes § 5-152 et seq. In accordance with the long-standing practice of the defendant, the State Employees Retirement Commission, the plaintiffs' benefits became payable on the first day of the month following the date on which each plaintiff submitted a complete application for benefits. Specifically, Crandle's benefits became payable on May 1, 2016, and Robinson's benefits became payable on April 1, 2016. The plaintiffs sought a declaratory ruling from the defendant that the statutory scheme requires that disability retirement benefits become payable on an earlier date, that is, the day after an employee's last day of paid employ-

ment with the state. The last day of paid employment with the state for Crandle was October 16, 2012, and for Robinson was October 31, 2015. The commission denied the plaintiffs' request for a declaratory ruling. The plaintiffs appealed, and the trial court upheld the commission's decision. The trial court found that the statutes and regulations governing disability retirement benefits do not explicitly state when such benefits become payable. The court further found that the commission's interpretation of the statutes and regulations with respect to when retirement disability benefits become payable is entitled to deference because it is time-tested and reasonable. In that regard, the court noted that, although the commission's interpretation has not previously been challenged in court, the commission applied the same interpretation consistently for almost forty years. The trial court also noted that the statutes providing for normal retirement, early retirement and hazardous duty retirement specify that such benefits become payable on the first day of the month after a complete application is filed and that, accordingly, the commission's practice with respect to when disability retirement benefits become payable is consistent with the manner in which it administers other types of retirement benefits. The plaintiffs appeal, claiming that the trial court improperly found that the commission's determination is entitled to deference. The plaintiffs also claim that the trial court erred in upholding the commission's determination that the statutory scheme does not require it to pay disability retirement benefits from the day following the employee's last paid day of employment with the state. The plaintiffs additionally claim that the commission, as a fiduciary, failed to satisfy its burden of proving good faith and fair dealing with respect to its practice of using an unwritten policy concerning the date on which disability retirement benefits become payable.

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.

*Jessie Opinion
Deputy Chief Staff Attorney*
