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DEREK J. DELEO *v.* EQUALE & CIRONE, LLP, ET AL.

The defendants' petition for certification to appeal from the Appellate Court, 202 Conn. App. 650 (AC 42383), is denied.

Daniel J. Krisch and *Kevin J. Greene*, in support of the petition.

Michael S. Taylor and *Brendon P. Levesque*, in opposition.

Decided March 30, 2021

STATE OF CONNECTICUT *v.* JULIE A. FERRAZZANO-MAZZA

The defendant's petition for certification to appeal from the Appellate Court, 202 Conn. App. 411 (AC 42481), is denied.

Vishal K. Garg, assigned counsel, in support of the petition.

Timothy F. Costello, senior assistant state's attorney, in opposition.

Decided March 30, 2021

INTERNATIONAL INVESTORS *v.* TOWN PLAN AND ZONING COMMISSION OF THE TOWN OF FAIRFIELD ET AL.

The petition by the defendant Fairfield Commons, LLC, for certification to appeal from the Appellate Court, 202 Conn. App. 582 (AC 43035), is granted, limited to the following issues:

"1. Did the Appellate Court correctly conclude that General Statutes § 8-2 (a) permits a municipal zoning commission to condition approval of a property developer's special permit on the completion of development within a specified time period, subject to extensions?

"2. Did the Appellate Court correctly conclude that the special permit and site plan approval issued in 2006 to the defendant Fairfield Commons, LLC, to construct a 36,000 square foot retail building, which approval

became effective in 2009, had expired in 2011, two years after the effective date, because, as of 2011, construction had not been started or completed, and the extension of the special permit and site plan, granted by the named defendant, the Town Plan and Zoning Commission of the Town of Fairfield, in 2018 under authority of General Statutes § 8-3 (m), was invalid?"

Timothy S. Hollister, in support of the petition.

Ann Marie Willinger, in opposition.

Decided March 30, 2021

STATE OF CONNECTICUT *v.* DWAYNE SAYLES

The defendant's petition for certification to appeal from the Appellate Court, 202 Conn. App. 736 (AC 43500), is granted, limited to the following issues:

"1. Did the Appellate Court properly uphold the trial court's denial of the defendant's motion to suppress the contents of his iPhone in reliance on *United States* v. *Patane*, 542 U.S. 630, 124 S. Ct. 2620, 159 L. Ed. 2d 667 (2004), and *State* v. *Mangual*, 311 Conn. 182, 85 A.3d 627 (2014), when the seizure of those contents was the result of questioning after he had invoked his *Miranda* rights, on the basis that a cell phone and its stored data constitute 'physical' (i.e., nontestimonial) evidence that need not be suppressed if seized as the result of a *Miranda* violation?

"2. Did the Appellate Court properly reject the defendant's claim that the holding in *Patane* does not comport with the broader protections against compelled self-incrimination afforded under article first, § 8, of the Connecticut constitution?"

KAHN, J., did not participate in the consideration of or decision on this petition.

Dina S. Fisher, assigned counsel, in support of the petition.

Timothy J. Sugrue, assistant state's attorney, in opposition.

Decided March 30, 2021

CATALINO MORALES *v.* COMMISSIONER OF CORRECTION

The petitioner Catalino Morales' petition for certification to appeal from the Appellate Court, 202 Conn. App. 906 (AC 43557), is denied.

Justine F. Miller, assigned counsel, in support of the petition.

Thai Chhay, deputy assistant state's attorney, in opposition.

Decided March 30, 2021

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CONNECTICUT APPELLATE REPORTS

Vol. 203

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

STATE OF CONNECTICUT *v.* CHERYL J.*
(AC 43233)

Elgo, Cradle and Alexander, Js.

Syllabus

Convicted of the crime of criminal violation of a protective order, the defendant appealed to this court. The trial court had issued a protective order against the defendant, which provided that she must, inter alia, stay away from the home of the victim, her former husband, and wherever the victim shall reside. The protective order listed the victim's address as a certain property, which he had obtained through divorce proceedings with the defendant. At the time the court issued the order, the defendant requested further clarification of the order from the court. The court orally advised the defendant to stay away from the residence of the victim, wherever it may be, including the residence listed on the protective order. Thereafter, as the defendant was driving by the

* In accordance with our policy of protecting the privacy interests of the victims of domestic violence, we decline to identify the defendant, the victim, or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018); we decline to identify any party protected or sought to be protected under a protective order or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

property, she noticed a real estate agent's car in the driveway and pulled up to the driveway, telling the agent that she could not list or sell the property because of pending legal proceedings and a court order relating to the property. The agent notified the victim of this interaction. *Held*:

1. The defendant could not prevail on her claim that the evidence was insufficient to prove that she had the requisite intent to be convicted of criminal violation of a protective order, as that crime is not a specific intent crime; the state was not required to prove that the defendant specifically intended to violate a condition of the protective order, only that she intended to perform the activities constituting the violation of the protective order, specifically, that she intended to go to the property, and it was undisputed that she went to the property.
2. The defendant could not prevail on her claim that the criminal violation of protective order statute (§ 53a-223) was void for vagueness as applied to her because the language of the protective order, as explained to her by the trial court, did not provide adequate notice of what was prohibited; the terms of the protective order provided adequate notice that going to the property would constitute a violation of the order, the court's oral instruction to the defendant specifically warned her to avoid the victim's residence, the address of the property clearly was listed as the victim's address on the protective order, the language contained in the order required the defendant to stay away from the property even if the victim was not residing there, and the court's oral instructions did not alter the restrictions of the protective order in any way.

Argued December 8, 2020—officially released April 13, 2021

Procedural History

Information charging the defendant with the crime of criminal violation of a protective order, brought to the Superior Court in the judicial district of Stamford-Norwalk, geographical area number twenty, and tried to the court, *McLaughlin, J.*; judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

Stephan E. Seeger, for the appellant (defendant).

Sarah Hanna, senior assistant state's attorney, with whom, on the brief were *Paul J. Ferencek*, state's attorney, and *Justina Moore*, assistant state's attorney, for the appellee (state).

Opinion

CRADLE, J. The defendant, Cheryl J., appeals from the judgment of the trial court finding her guilty of criminal violation of a protective order in violation of

General Statutes § 53a-223. On appeal, the defendant claims that (1) the evidence before the trial court was insufficient to prove that she had the requisite intent to violate the protective order and (2) § 53a-223 is unconstitutionally vague as applied. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this decision. On May 17, 2016, the trial court, *Hon. Jack L. Grogins*, judge trial referee, issued a protective order against the defendant pursuant to General Statutes § 46b-38c (e).[1] The order identified the protected person as the defendant's former husband, "[M. J.]" and listed his home address and mailing address as "[R Street]." The protective order instructed the defendant to "not assault, threaten, abuse, harass, follow, interfere with, or stalk the protected person"; to "stay away from the home of the protected person and wherever the protected person shall reside"; and to "not contact the protected person in any manner, including by written, electronic or telephone contact, and [to] not contact the protected person's home, workplace or others with whom the contact would be likely to cause annoyance or alarm to the protected person." Upon issuing the protective order, the court reviewed the conditions with the defendant. The defendant does not dispute that she received a copy of the protective order issued by the court.

At the time the court issued the order, the defendant sought clarification regarding the order from the court. Judge Grogins specifically instructed the defendant that

[1] General Statutes § 46b-38c (e) provides in relevant part: "A protective order issued under this section may include provisions necessary to protect the victim from threats, harassment, injury or intimidation by the defendant, including, but not limited to, an order enjoining the defendant from (1) imposing any restraint upon the person or liberty of the victim, (2) threatening, harassing, assaulting, molesting or sexually assaulting the victim, or (3) entering the family dwelling or the dwelling of the victim. . . ."

"as long as she stays away from the workplace of [M], from his residence, or any contact with him, she'll be in compliance" with the protective order. Defense counsel responded, "[t]hat's our understanding." Judge Grogins further advised the defendant "to stay away from the residence of [M], wherever it may be, *including the residence that's listed on the protective order*." (Emphasis added).

M had obtained the R Street property through divorce proceedings with the defendant in February, 2016. At the time the protective order was issued, M was the sole owner of the R Street property. The defendant had a pending appeal challenging the award of the R Street property, which prohibited M from selling or otherwise disposing of this property without court permission. Although M spent several nights sleeping at the R Street property, he did not ultimately move into the R Street property. Instead, M hired a real estate agent to list the property for sale or for rent in August, 2016. The agent had known both the defendant and M for many years and had represented them in real estate transactions in the past.

On September 22, 2016, the agent held an open house at the R Street property. After the open house, the agent closed the property and put a lockbox on the front door. Simultaneously, the defendant was travelling to pick up her mail at an address located near the R Street property. As the defendant was driving by R Street, she noticed the agent's car in the driveway and pulled up to the driveway. The defendant told the agent that she could not list or sell the R Street property because of the pending proceedings and court order relating to the property. The agent removed the lockbox and sent M a text message informing him of the exchange. On October 1, 2016, M notified the police that the defendant had violated the protective order based on her interaction with the agent at the R Street property. The police

obtained an arrest warrant for violation of a protective order and served the warrant on the defendant on October 17, 2016.

The state charged the defendant by way of a long form information with one count of criminal violation of a protective order.[2] A two day court trial was held in May, 2019, before *McLaughlin*, *J*. At trial, the state presented evidence that the defendant had violated the protective order by going to the R Street property and additionally, by causing annoyance or alarm to M. After the state's case-in-chief, the defendant moved for a judgment of acquittal. The defendant argued that she did not have the requisite general intent to violate the protective order based on her adherence to Judge Grogins' instruction to stay away from M's residence, and her knowledge that M did not reside at the R Street property. Thus, the defendant argued that any violation of the order was based on a mistake and, therefore, she could not be found guilty of violating the protective order. The court denied the defendant's motion. Following the close of all of the evidence, the defendant once again moved for a judgment of acquittal based upon insufficient evidence. She argued that § 53a-223 was void for vagueness because Judge Grogins' oral instruction did not provide notice of what was prohibited by the protective order. The court rejected the defendant's arguments and found the defendant guilty of criminal violation of the protective order stating, "[b]ased on all of the evidence, in particular . . . the May 17th, 2016 protective order in this matter and . . . the transcript of Judge Grogins entering that protective order, and canvassing [the defendant] about the same, in addition to this court's assessment of the witnesses' credibility, the

[2] The state alleged that the defendant was in violation of General Statutes § 53a-223, which provides in relevant part: "(a) A person is guilty of criminal violation of a protective order when an order issued pursuant to subsection (e) of section 46b-38c . . . has been issued against such person, and such person violates such order. . . ."

court finds [the defendant] guilty of criminal violation of the May 17th, 2016 protective order." This appeal followed.

I

The defendant first claims that the evidence was insufficient to prove that she had the requisite intent to be convicted of criminal violation of a protective order. We disagree.

"The standard of review we apply to a claim of insufficient evidence is well established. In reviewing the sufficiency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . . [I]n [our] process of review, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct." (Citation omitted; internal quotation marks omitted.) *State* v. *Carter*, 151 Conn. App. 527, 533, 95 A.3d 1201 (2014), appeal dismissed, 320 Conn. 564, 132 A.3d 729 (2016).

"[T]he [trier of fact] must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense . . . . [P]roof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the trier, would have resulted in acquittal. . . . On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that

supports the . . . verdict of guilty." (Citation omitted; internal quotation marks omitted.) Id.

"It is within the province of the [trier of fact] to draw reasonable and logical inferences from the facts proven. . . . The [trier of fact] may draw reasonable inferences based on other inferences drawn from the evidence presented. . . . [I]n viewing evidence which could yield contrary inferences, the [trier of fact] is not barred from drawing those inferences consistent with guilt and is not required to draw only those inferences consistent with innocence. The rule is that the [trier of fact's] function is to draw whatever inferences from evidence or facts established by the evidence it deems to be reasonable and logical. . . . Our review is a fact based inquiry limited to determining whether the inferences drawn by the [trier of fact] are so unreasonable as to be unjustifiable." (Citations omitted; internal quotation marks omitted.) Id., 534.

Section 53a-223 (a) provides in relevant part that "[a] person is guilty of criminal violation of a protective order when an order . . . has been issued against such person, and such person violates such order." The defendant does not dispute the first element, that a protective order had been issued against her. The defendant claims that the evidence was insufficient to prove that she had the requisite intent to violate the protective order. "[T]he violation of a protective order statute is not a specific intent crime." (Internal quotation marks omitted.) *State* v. *Opio-Oguta*, 153 Conn. App. 107, 119, 100 A.3d 461, cert. denied, 314 Conn. 945, 102 A.3d 1115 (2014). "All that is necessary is a general intent that one intend to perform the activities that constitute the violation." (Internal quotation marks omitted.) *State* v. *Binnette*, 86 Conn. App. 491, 497, 861 A.2d 1197 (2004), cert. denied, 273 Conn. 902, 868 A.2d 745 (2005).

In arguing that there was insufficient evidence to prove that she had the requisite intent to violate the

protective order, the defendant argues that she had relied on the court's oral clarification of the protective order instructing her only that she must avoid M's residence, not that she was prohibited from going to the R Street property. She further argues that, because she knew that M did not reside there, she was under "an erroneous perception of the facts as they actually exist" based on the court's instruction, which "negate[s] the criminal nature" of her presence at the R Street property.[3] (Internal quotation marks omitted.)

The defendant's reliance on Judge Grogins' oral instruction to support her claim that she did not have the requisite intent to violate the protective order is misplaced. The state was not required to prove that the defendant specifically intended to violate a condition of the protective order. The state had the burden to prove only that she intended to perform the activities constituting the violation of the protective order, specifically, that she intended to go to the R Street property. It is undisputed that the defendant went to the R Street property, and the defendant herself testified that she intended to go to the property in order to speak to the agent. Because the plain language of the protective order prohibited the defendant from going to the R Street property, and the only requisite intent needed to find the defendant guilty of criminal violation of the protective order is intent to perform the activities that constitute the violation, we conclude that there was sufficient evidence before the trial court to find that the defendant violated the protective order.

[3] The parties, in their appellate briefs, also address whether the defendant violated the protective order by causing M annoyance or alarm. Because the information charges the defendant with only one count of criminal violation of a protective order and we agree with the trial court that the defendant violated the protective order by appearing at the R Street property, we decline to address the issue of whether or not the defendant caused M annoyance or alarm.

II

The defendant next argues that the criminal violation of protective order statute is void for vagueness as applied to her because the language of the protective order, as explained to her by the court, did not provide adequate notice of what was prohibited. We are not persuaded.

"The determination of whether a statutory provision is unconstitutionally vague is a question of law over which we exercise de novo review. . . . In undertaking such review, we are mindful that [a] statute is not void for vagueness unless it clearly and unequivocally is unconstitutional, making every presumption in favor of its validity. . . . To demonstrate that [a statute] is unconstitutionally vague as applied to [her], the [defendant] therefore must . . . demonstrate beyond a reasonable doubt that [she] had inadequate notice of what was prohibited or that [she was] the victim of arbitrary and discriminatory enforcement. . . . [T]he void for vagueness doctrine embodies two central precepts: the right to fair warning of the effect of a governing statute . . . and the guarantee against standardless law enforcement. . . . If the meaning of a statute can be fairly ascertained a statute will not be void for vagueness since [m]any statutes will have some inherent vagueness, for [i]n most English words and phrases there lurk uncertainties." (Internal quotation marks omitted.) *State* v. *Legrand*, 129 Conn. App. 239, 269–70, 20 A.3d 52, cert. denied, 302 Conn. 912, 27 A.3d 371 (2011).

Section 53a-223 (a) provides in relevant part: "A person is guilty of criminal violation of a protective order when an order . . . has been issued against such person, and such person violates such order." We note that the defendant makes no claim that the statute is facially vague, but rather that it is vague as applied to her in

these factual circumstances. In other words, the defendant does not argue that the language of § 53a-233 is unconstitutionally vague, but rather that the defendant relied on "a last instruction from the court, as only limiting her to avoiding [M's] residence, work and contact with him. . . . Consequently, in light of the language in the protective order as explained to her by the court, [the defendant] had inadequate notice of what was prohibited."

We conclude that the terms of the protective order issued in this case provided adequate notice that going to the R Street property would constitute a violation of the order. The court's oral instruction to the defendant specifically warned her to avoid M's residence. Although M was not permanently residing at R Street when the defendant went to the property, the protective order clearly prohibited the defendant from going to the R Street property "*and* wherever the protected person shall reside." (Emphasis added.) The R Street address clearly was listed as M's address on the protective order. The language contained in the protective order required the defendant to stay away from the R Street property even if M was not, in fact, residing there. The court's oral instructions did not alter the restrictions of the protective order in any way. If the defendant wanted permission to go the R Street property, she was obligated to file a motion to seek a modification of the order in court, not alter the terms of the protective order on her own.[4] Accordingly, the defendant's argument that she lacked adequate notice of the condition of the

[4] See *State* v. *Wright*, 273 Conn. 418, 426, 870 A.2d 1039 (2005) ("[T]he defendant had no privilege to violate that order. If the defendant believed that the order did not comport with the statutory requirements of § 46b-38c (e), he had two lawful remedies available to him. He could have (1) sought to have the order modified or vacated by a judge of the Superior Court pursuant to Practice Book § 38-13; or (2) appealed the terms of the order to the Appellate Court in accordance with General Statutes § 54-63g." (Footnote omitted.))

protective order or that the statute is unconstitutionally vague as applied to her fails.

The judgment is affirmed.

In this opinion the other judges concurred.

EDWIN SANCHEZ *v.* COMMISSIONER OF CORRECTION (AC 43047)

Moll, Alexander and DiPentima, Js.

Syllabus

The petitioner, who had been convicted of the crimes of murder and conspiracy to commit murder, filed a second petition for a writ of habeas corpus, claiming, inter alia, that his prior habeas counsel, V, had provided ineffective assistance, his due process rights had been violated at his criminal trial, and he was actually innocent. Specifically, the petitioner claimed that the state had withheld evidence of a plea agreement between the state and a cooperating witness, and that V rendered ineffective assistance because he, inter alia, failed to investigate and present the testimony of another witness, P. The habeas court rendered judgment denying the petitioner's ineffective assistance of habeas counsel claim and dismissing his due process and actual innocence claims, from which the petitioner, on the granting of certification, appealed to this court. *Held*:

1. The judgment of the habeas court dismissing the petitioner's due process claim was affirmed on the alternative ground that the claim was barred by the doctrine of res judicata; the petitioner's claim that the state failed to reveal the existence of a plea agreement between the state and a cooperating witness was fully litigated and adjudicated on the merits during both the petitioner's direct appeal and his first habeas trial, and he failed to make a showing that any new factual allegations were unavailable to him when he filed his direct appeal or first habeas petition.
2. The habeas court properly dismissed the petitioner's actual innocence claim because it was barred by the doctrine of res judicata; the legal ground and relief sought in the petitioner's actual innocence claim were identical to those in his first habeas petition and the petitioner failed to demonstrate that the claim was based on evidence not reasonably available at the time of the first petition.
3. The habeas court properly denied the petitioner's ineffective assistance of habeas counsel claim because the petitioner failed to establish that V's performance was deficient; V did not testify at the petitioner's second

habeas trial and, with no evidence to show what information was available to him, what decisions he made, and why he made them, the petitioner could not overcome the presumption of V's competence as to his trial strategy.

Argued December 1, 2020—officially released April 13, 2021

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Newson, J.*; judgment denying in part and dismissing in part the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

James E. Mortimer, assigned counsel, for the appellant (petitioner).

Nancy L. Walker, assistant state's attorney, with whom, on the brief, were *Brian W. Preleski*, state's attorney, and *Angela R. Macchiarulo*, senior assistant state's attorney, for the appellee (respondent).

Opinion

DiPENTIMA, J. The petitioner, Edwin Sanchez, appeals from the judgment of the habeas court, *Newson, J.*, dismissing counts three and four of his second amended petition for a writ of habeas corpus and denying count two of his petition. On appeal, the petitioner claims that the court improperly (1) dismissed his due process claim as procedurally defaulted, (2) dismissed his actual innocence claim on the ground of res judicata, and (3) denied his ineffective assistance of habeas counsel claim. We disagree and affirm the judgment of the habeas court.

The following recitation of facts as to the underlying offense was set forth by this court in the petitioner's direct appeal from his conviction. "Darence Delgado was murdered on May 2, 1995, on North Street in New Britain. Prior to the murder, Jose Pabon was with the [petitioner] on Willow Street, across the street from a

basketball court where Delgado and [Juan Vazquez][1] were talking. Pabon was a neighbor of the [petitioner]. That afternoon, the [petitioner] asked Pabon to retrieve a gun that [Juan Vazquez] had left at Pabon's house. After returning with the gun, Pabon noticed that Delgado was no longer at the basketball court. Pabon offered the gun to the [petitioner], but the [petitioner] told him to hold on to it. The [petitioner] then told Pabon to walk with him to the corner of North and Willow Streets.

"When they arrived at the corner, the [petitioner] told Pabon, 'When I start shooting, you shoot.' Turning onto North Street, they saw [Juan Vazquez] and Delgado, who was sitting on a bicycle, approximately twenty-five feet away. The [petitioner] approached them while Pabon remained at the corner. The [petitioner] looked at Pabon and nodded his head. He then pulled out a black nine millimeter handgun, aimed it at Delgado's upper body and opened fire from close range. Delgado fell to the ground and the [petitioner] continued to shoot him. The [petitioner] turned around, looked at Pabon and spread his arms. Pabon pulled out the gun he had retrieved and fired four shots at Delgado. The [petitioner] turned toward Delgado and again fired at him. The [petitioner] and Pabon then ran from the scene and hid their guns.

"A week or so after the shooting, Pabon saw Miguel Colon carrying the gun that the [petitioner] had used to shoot Delgado. Pabon and Colon smashed it with hammers and wrenches, destroying all but the barrel

[1] The criminal trial court referred to this individual as Jay Vasquez. He did not testify at the petitioner's criminal trial. He introduced himself as Juan Vazquez at the petitioner's first and second habeas trials and explained that he also went by Jay, which was his middle name. Angel Vasquez also testified at the petitioner's criminal trial and second habeas trial, but not at his first habeas trial. The spelling of Juan's and Angel's last names is inconsistent throughout the record. To avoid confusion, we will refer to Jay as "Juan Vazquez" and to Angel as "Angel Vasquez."

of the gun. They wrapped the barrel in bags and buried it in Pabon's backyard. The police later seized that barrel. Forensic testing revealed that it was a nine millimeter barrel and that the intact nine millimeter bullet removed from Delgado's body during the autopsy was consistent with having been fired from this barrel.

"On September 23, 1997, the [petitioner] was charged by information with murder and conspiracy to commit murder. After a trial by jury, the [petitioner] was convicted of both charges and sentenced to a total effective term of sixty years imprisonment. The [petitioner] filed motions for acquittal and a new trial, which the court denied." (Footnote added and omitted.) *State* v. *Sanchez*, 84 Conn. App. 583, 585–86, 854 A.2d 778, cert. denied, 271 Conn. 929, 859 A.2d 585 (2004).

This court affirmed the trial court's judgment on appeal. Id., 594. The petitioner made four arguments in his direct appeal, one of which is relevant to the operative petition in the present matter. Id., 584–85. The petitioner claimed that the state improperly withheld exculpatory evidence regarding the credibility and culpability of Pabon, who testified for the state at trial. Id., 586. In particular, the petitioner claimed that the state had failed to disclose the consideration that Pabon had been promised in exchange for his testimony. Id., 586–87. This court concluded that there was no evidence that the state had improperly withheld exculpatory information and affirmed the petitioner's conviction. Id., 587.

The petitioner filed his first petition for a writ of habeas corpus on November 2, 2004. That petition contained a due process claim, alleging that the state had failed to disclose the details of the deal it made with Pabon. It also included an actual innocence claim, alleging that the murder actually was carried out by Pabon and "one or more other persons . . . ." Following a trial, the habeas court, *Newson*, *J.*, denied the petition.

This court subsequently dismissed the appeal. *Sanchez* v. *Commissioner of Correction*, 147 Conn. App. 903, 80 A.3d 934 (2013).

The petitioner filed his second petition for habeas corpus, which is the subject of this appeal, in December, 2013. The October 29, 2018 second amended petition contained four counts, of which counts two through four are relevant to this appeal.[2] In the second count, the petitioner alleged that his prior habeas counsel had been ineffective for failing to investigate and present the testimony of Efrain Padua and to question Juan Vazquez properly. The petitioner alleged that they would have testified to the true identity of the shooter and the petitioner's whereabouts on the day of the shooting. In the third count, the petitioner alleged actual innocence on the basis that new testimony would establish that he was not the shooter. In the fourth count, the petitioner alleged a violation of his right to due process at his criminal trial, specifically alleging that the state had failed to disclose all relevant details surrounding the pretrial cooperation agreement with Pabon.[3]

A trial was held before the habeas court, *Newson*, *J.*, on October 30, 2018. On April 4, 2019, the habeas court issued a memorandum of decision dismissing or denying each of the petitioner's claims. As to the second count, the court denied the claim that the petitioner's first habeas counsel rendered ineffective assistance, referring to the general presumption of competence afforded

[2] The second amended habeas petition included claims of ineffective assistance of trial counsel, ineffective assistance of habeas counsel, actual innocence, and a due process violation. The habeas court dismissed or denied all four counts and the petitioner on appeal has not challenged the dismissal of count one, the ineffective assistance of trial counsel claim.

[3] The fourth count also included a claim that the jury had been instructed improperly regarding double jeopardy. This claim has not been advanced on appeal.

to counsel in trial strategy and noting credibility concerns with the petitioner's witnesses. As to the third count, the court dismissed the actual innocence claim on the ground of res judicata, concluding that it was nearly identical to the one advanced in the petitioner's first habeas trial and that it was based on facts and evidence that could have been discovered through reasonable diligence at the time of the first petition. Lastly, as to the fourth count, the court dismissed the due process claim on the ground of procedural default. Thereafter, the petitioner filed a petition for certification to appeal from the judgment denying and dismissing his petition for a writ of habeas corpus. The habeas court granted the petition for certification to appeal. This appeal followed. Additional facts will be set forth as necessary.

I

We begin with the two counts that the court dismissed: the petitioner's due process and actual innocence claims. We conclude that both of these claims are subject to dismissal pursuant to res judicata. Accordingly, we affirm the judgment of the habeas court dismissing the petitioner's due process and actual innocence claims.

Before we turn to the petitioner's claims, we briefly set forth the appropriate standard of review for a dismissal of a habeas petition. "The conclusions reached by the trial court in its decision to dismiss [a] habeas petition are matters of law, subject to plenary review. . . . [When] the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct . . . and whether they find support in the facts that appear in the record." (Internal quotation marks omitted.) *Johnson* v. *Commissioner of Correction*, 285 Conn. 556, 566, 941 A.2d 248 (2008).

A

The petitioner first argues that the habeas court erred in dismissing his due process claim as procedurally defaulted. The respondent, the Commissioner of Correction, counters that we should affirm the habeas court's ruling on the alternative ground of res judicata. We agree with the respondent.

The following additional facts and procedural history are relevant to our resolution of this claim. Pabon testified on behalf of the state at the petitioner's criminal trial. *State* v. *Sanchez*, supra, 84 Conn. App. 586. Pabon "testified that he personally had not been promised anything by the prosecution for his testimony, and that he was hoping to be given consideration for his cooperation." Id., 586–87. He also testified that his attorney had told him that he would receive consideration for cooperating. Id., 587. A week after the petitioner had been sentenced, the murder and conspiracy to commit murder charges against Pabon were dismissed, and Pabon pleaded guilty to the charge of assault in the first degree. Id. The petitioner, whose appeal from his conviction initially had been filed with our Supreme Court, filed a motion for rectification and augmentation of the trial court record in which he sought an evidentiary hearing pursuant to *State* v. *Floyd*, 253 Conn. 700, 756 A.2d 799 (2000) (*Floyd* hearing),[4] to determine

[4] "Pursuant to *State* v. *Floyd*, supra, 253 Conn. 700, a trial court may conduct a posttrial evidentiary hearing to explore claims of potential *Brady* [v. *Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)] violations when a defendant was precluded from perfecting the record due to new information obtained after judgment." (Internal quotation marks omitted.) *State* v. *Ouellette*, 295 Conn. 173, 182 n.7, 989 A.2d 1048 (2010). *Brady* held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady* v. *Maryland*, supra, 373 U.S. 87. "In order to warrant [a *Floyd* hearing], a defendant must produce prima facie evidence, direct or circumstantial, of a *Brady* violation unascertainable at trial. . . . The trial court's decision with respect to whether to hold a *Floyd* hearing is reviewable by motion for review pursuant to Practice Book § 66-7 . . . ."

whether the state had "failed in its constitutional duty to disclose exculpatory information." (Internal quotation marks omitted.) *State* v. *Sanchez*, supra, 586 n.4. The trial court denied the motion, and our Supreme Court upheld the denial on review. Id. In its memorandum of decision on the motion, the trial court concluded that "[t]here is no evidence that the prosecution failed to reveal a plea agreement, express or implied, between Pabon and/or his attorney and the state. . . . [T]he actions of the prosecutor appear to be no more than a proper exercise of prosecutorial discretion in the disposition of Pabon's case." (Internal quotation marks omitted.) Id., 587. In his direct appeal, which our Supreme Court transferred to this court, the petitioner argued that "the state improperly withheld exculpatory evidence regarding the credibility and culpability of Pabon." Id., 586. This court affirmed the trial court's rejection of the defendant's due process claim. Id., 587.

In his first petition for a writ of habeas corpus, the petitioner alleged that "[p]rior to the trial the prosecuting authority, or an agent of the prosecuting authority, did not disclose exculpatory information to [the petitioner] or his counsel, including that [Pabon] would be receiving extraordinary considerations for his testimony against [the petitioner]," thereby violating his due process rights. The first habeas court denied the claim in an oral ruling, explaining: "The state denied that there was any specific agreement, and more notably here, as of today, again, we're some ten years down the road, there's been no evidence presented that any of that was untrue . . . . Obviously, I don't think—I think it goes without saying that everybody in [a] courtroom knows that an individual who is allegedly involved in a crime then turns over and decides to testify to the state, at least in their own mind, is expecting

(Citation omitted; internal quotation marks omitted.) *State* v. *Ouellette*, supra, 182 n.7.

something in return for that, and without a showing that there was anything other than what was presented at trial, which is that he expected to get something, that there was nothing specific promised, there is no violation. He was cross-examined on it. He indicated there was no deal, and again, it's [the] petitioner's burden to be able to prove that that violation existed, and again, there hasn't been anything here presented to show that there was any such [violation], that there was any such specific deal, even if it appears he got significant consideration for his testimony and a very small sentence, again, the claim isn't here, and it wasn't unknown that he was going to get some consideration. The claim here [is] that there was a specified deal beforehand, and that was hidden. There's been no evidence here to support that claim."

The petitioner alleges in the present petition that he "was denied his right to a fair trial when the prosecutor failed to disclose all of the relevant details surrounding the pretrial cooperation agreement between the [state] and [Pabon]." The court dismissed this count on the ground of procedural default.[5]

1

Preliminarily, we address our ability to affirm a habeas court's dismissal on an alternative ground. "[I]t is axiomatic that [w]e may affirm a proper result of the

[5] The court concluded that res judicata did not apply to the petitioner's due process claim because the substance of his claim was different from that on direct appeal. We agree with the respondent that in reaching that conclusion, the court was mistaken in its reading of this court's opinion in the direct appeal. The habeas court stated that "the actual substance of the petitioner's attack on the state's deal with his coconspirator was whether allowing the coconspirator, also a cooperating witness, to plead to a nonconspiracy offense undermined the legal ability to prosecute him for 'conspiracy.' " The court appears to have examined part IV of this court's opinion instead of part I, wherein we discussed the petitioner's claim that the state withheld exculpatory evidence regarding Pabon. *State* v. *Sanchez*, supra, 84 Conn. App. 586–93.

trial court for a different reason." (Internal quotation marks omitted.) *Coleman* v. *Commissioner of Correction*, 111 Conn. App. 138, 140 n.1, 958 A.2d 790 (2008), cert. denied, 290 Conn. 905, 962 A.2d 793 (2009). "Dismissal of a claim on alternative grounds is proper when those grounds present pure questions of law, the record is adequate for review, and the petitioner will suffer no prejudice because he has the opportunity to respond to proposed alternative grounds in the reply brief." *Johnson* v. *Commissioner of Correction*, 168 Conn. App. 294, 308 n.8, 145 A.3d 416, cert. denied, 323 Conn. 937, 151 A.3d 385 (2016). This court has repeatedly affirmed habeas court rulings on alternative grounds. See, e.g., *Woods* v. *Commissioner of Correction*, 197 Conn. App. 597, 627–28, 232 A.3d 63 (2020); *Boria* v. *Commissioner of Correction*, 186 Conn. App. 332, 348, 199 A.3d 1127 (2018), cert. granted, 335 Conn. 901, 225 A.3d 685 (2020); *Toccaline* v. *Commissioner of Correction*, 177 Conn. App. 480, 494, 172 A.3d 821, cert. denied, 327 Conn. 986, 175 A.3d 45 (2017).

In the present case, the respondent raised res judicata in his brief as an alternative ground to affirm the judgment of the habeas court. The petitioner had the opportunity to respond to that ground in his reply brief. Moreover, the habeas court raised the issue of whether the claim should be dismissed on the ground of res judicata on the morning of the trial, October 30, 2018. On November 1, 2018, the habeas court ordered the parties to submit briefs addressing whether this count "should be dismissed on grounds of res judicata, because the petitioner raised the same claim in his direct appeal." Because the court did not rule on these issues until *after* the trial, the petitioner was aware of the possibility that res judicata might preclude his claims. As such, the petitioner had every opportunity to present at trial the evidence he felt necessary to prove his due process claim and any evidence necessary to demonstrate that

the claim was based on evidence not reasonably available at the time of the earlier proceedings.[6] Thus, applying res judicata to the petitioner's due process claim would not result in prejudice to the petitioner. Accordingly, we will consider the alternative ground for affirmance advanced by the respondent.

2

In determining whether res judicata bars the petitioner's due process claim, we begin our analysis by reviewing that doctrine as it applies to successive petitions in habeas corpus proceedings. "The doctrine of res judicata provides that a former judgment serves as an absolute bar to a subsequent action involving any claims relating to such cause of action which were actually made or which might have been made. . . . The doctrine . . . applies to criminal as well as civil proceedings and to state habeas corpus proceedings. . . . However, [u]nique policy considerations must be taken into account in applying the doctrine of res judicata to a constitutional claim raised by a habeas petitioner. . . . Specifically, in the habeas context, in the interest of ensuring that no one is deprived of liberty in violation of his or her constitutional rights . . . the application of the doctrine of res judicata . . . [is limited] to claims that actually have been raised and litigated in an earlier proceeding." (Internal quotation marks omitted.) *Carter* v. *Commissioner of Correction*, 133 Conn. App. 387, 393,

[6] The petitioner argues that he might have created a different record if the issue of res judicata had been raised earlier, and that the record is inadequate for review as a result. We are not persuaded. Our role in determining whether a claim should have been dismissed on the ground of res judicata is to examine whether the present claim alleges grounds not actually litigated in the earlier proceeding and whether it alleges new facts or proffers new evidence not reasonably available at the time of the earlier proceeding. See *Johnson* v. *Commissioner of Correction*, supra, 168 Conn. App. 306. The record therefore is adequate to determine whether the present claim rests on the same legal grounds and evidence as the due process claim in the first petition and on direct appeal.

35 A.3d 1088, cert. denied, 307 Conn. 901, 53 A.3d 217 (2012).

"In the context of a habeas action, a court must determine whether a petitioner actually has raised a new legal ground for relief or only has alleged different factual allegations in support of a previously litigated claim." *Johnson* v. *Commissioner of Correction*, supra, 168 Conn. App. 305. "Identical grounds may be proven by different factual allegations, supported by different legal arguments or articulated in different language. . . . They raise, however, the same generic legal basis for the same relief. Put differently, two grounds are not identical if they seek different relief." (Citations omitted.) *James L.* v. *Commissioner of Correction*, 245 Conn. 132, 141, 712 A.2d 947 (1998).

"[T]he doctrine of res judicata in the habeas context must be read in conjunction with Practice Book § 23-29 (3), which narrows its application. . . . Practice Book § 23-29 states in relevant part: The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that . . . (3) the petition presents the same ground as a prior petition previously denied and fails to state new facts or to proffer new evidence not reasonably available at the time of the prior petition. . . . Thus, a subsequent petition alleging the same ground as a previously denied petition will elude dismissal if it alleges grounds not actually litigated in the earlier petition and if it alleges new facts or proffers new evidence not reasonably available at the time of the earlier petition. . . . In this context, a ground has been defined as sufficient legal basis for granting the relief sought." (Citations omitted; internal quotation marks omitted.) *Johnson* v. *Commissioner of Correction*, supra, 168 Conn. App. 305–306. "Simply put, an applicant must show that his application does, indeed, involve a different legal ground, not merely

a verbal reformulation of the same ground." (Internal quotation marks omitted.) *Carter* v. *Commissioner of Correction*, supra, 133 Conn. App. 394. Further, this doctrine applies equally to claims litigated on direct appeal, not just to claims raised in prior habeas petitions. See *Faraday* v. *Commissioner of Correction*, 107 Conn. App. 769, 776–77, 946 A.2d 891 (2008); *Fernandez* v. *Commissioner of Correction*, 86 Conn. App. 42, 45–46, 859 A.2d 948 (2004).

Here, the petitioner has sought habeas review of a claim that was unequivocally raised, litigated, and decided on direct appeal and in his first habeas petition. With respect to the claim on direct appeal, the petitioner claimed that "the state improperly withheld exculpatory evidence regarding the credibility and culpability of Pabon." *State* v. *Sanchez*, supra, 84 Conn. App. 586. The operative petition claims that the petitioner "was denied his right to a fair trial when the prosecutor failed to disclose all of the relevant details surrounding the pretrial cooperation agreement between the [state] and [Pabon]." The present claim is identical in substance and law to the claim advanced on direct appeal. Both claims are ultimately premised on the same alleged violation of the due process rights established in *Brady* v. *Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). On direct appeal, this court agreed with the criminal trial court that there was no evidence that the state improperly withheld exculpatory evidence. *State* v. *Sanchez*, supra, 586.

Nevertheless, the petitioner argues that he did not have an opportunity to fully litigate this claim on direct appeal because the trial court denied the petitioner a *Floyd* hearing to introduce further evidence. However, a defendant is not guaranteed a *Floyd* hearing. "[The court] will order a *Floyd* hearing to develop a potential *Brady* violation only in the unusual situation in which a defendant was precluded from perfecting the record

due to new information obtained after judgment. . . . A *Floyd* hearing is not a license to engage in a posttrial fishing expedition, as the court will not hold a hearing in the absence of sufficient prima face evidence, direct or circumstantial, of a *Brady* violation unascertainable at trial." (Citation omitted; internal quotation marks omitted.) *State* v. *Ortiz*, 280 Conn. 686, 712 n.17, 911 A.2d 1055 (2006). The petitioner thus had the opportunity to present prima face evidence of the alleged deal between the state and Pabon in his motion for a *Floyd* hearing. After the trial court denied the petitioner's motion for a *Floyd* hearing, the petitioner filed a motion for review of that denial with our Supreme Court. *State* v. *Sanchez*, supra, 586 n.4. Our Supreme Court granted review, but denied the relief requested, finding that the trial court did not abuse its discretion in denying the motion and that the requested evidentiary hearing was unnecessary. Id. Then, on direct appeal, despite the denial of the motion, the petitioner "argue[d] that the record [was] nevertheless sufficient for our review of his claim." Id., 587. This court agreed with the trial court that there was no evidence that the state failed to reveal a plea agreement between Pabon and the state. Id. The petitioner thus had an opportunity to fully litigate this claim on direct appeal.

As for the first habeas petition, the petitioner claimed in that proceeding that the state "did not disclose exculpatory information to [the petitioner] or his counsel, including that [Pabon] would be receiving extraordinary considerations for his testimony against [the petitioner]." This claim also is identical to the present claim in substance and, again, is premised on a violation of *Brady*. The petitioner, in both his principal appellate brief and reply brief, even concedes that a similar due process claim was raised in his first habeas petition, stating that "[i]t is indisputable that the petitioner did, in fact, raise a nearly identical *Brady* claim concerning

Pabon in his first habeas petition." Nevertheless, the petitioner insists that res judicata should not apply to the present claim because it is based on new evidence: "[I]n the underlying proceeding the petitioner presented the testimony of Juan Vazquez, who testified that the state approached him with the possibility of leniency in exchange for testifying against the petitioner. . . . That the state was offering consideration to other witnesses in exchange for their testimony is certainly relevant evidence for a court to draw the inference that Pabon and the state also had an understanding prior to his testimony." New evidence alone is insufficient to escape res judicata. The petitioner must "proffer new evidence *not reasonably available* at the time of the prior petition . . . ." (Emphasis added.) Practice Book § 23-29 (3); see *Johnson* v. *Commissioner of Correction*, supra, 168 Conn. App. 306. Juan Vazquez testified at the trial on the first habeas petition. Therefore, this evidence was clearly available at the time of the prior petition. Our review of the trial transcript for the present petition reveals no other potential new evidence relating to any deals that Pabon may have received in exchange for his testimony.

Because the petitioner has asserted a claim that previously was adjudicated fully on the merits and has made no showing that any new factual allegations were unavailable to him when he filed his direct appeal or his earlier petition, we agree with the respondent that the petitioner's due process claim is barred by the doctrine of res judicata. We conclude, therefore, that the habeas court properly dismissed this claim, albeit on different grounds.

B

The petitioner next claims that the habeas court erred by dismissing his actual innocence claim on the ground of res judicata. The petitioner argues that his "claim of

actual innocence was predicated on newly discovered evidence, not reasonably available through the exercise of due diligence by prior counsel. Specifically, the petitioner's claim of actual innocence was predicated on the recantation testimony of Angel Vasquez and the testimony of Efrain Padua." In turn, the respondent argues that the petitioner's claim is based on evidence that was reasonably available at the time of the first habeas petition. We agree with the respondent.

The following additional facts and procedural history are relevant to our resolution of this claim. The petitioner's first habeas petition contained an actual innocence claim, specifically alleging that the shooting was carried out by Pabon and "one or more other persons" and that the petitioner had nothing to do with the shooting. The petitioner stated that he would present "new evidence, establishing his innocence to the standard required by law, including certain witnesses who were available from the Roosevelt School nearby who were privy to information that another individual was involved in the shooting as well as information that the true motive for the shooting was a retaliation hit by [a rival] gang . . . ." (Emphasis omitted.)

To support this claim, the petitioner offered the testimony of himself and Juan Vazquez. The habeas court denied the claim, explaining that the claim was not based on newly discovered evidence and, even if it was, the court did not find the testimony of the petitioner or Juan Vazquez to be credible.

The petitioner again alleged an actual innocence count in the present petition, which alleged that Angel Vasquez, Efrain Padua, and Juan Vazquez would testify that the petitioner was not the shooter. Specifically, the petition stated that Angel Vasquez would recant his testimony from the criminal trial, that Efrain Padua would testify that he and the petitioner were hiding in

a store vestibule at the time of the shooting, and that Juan Vazquez would testify that the petitioner was not the shooter. The court dismissed the count on the ground of res judicata, finding that "the present allegations fail to offer new facts or evidence that could not have been discovered through reasonable diligence at the time of the prior habeas trial" and that "the petitioner . . . seeks the same relief now as he did in [the prior petition] . . . ."

We rely on the legal principles regarding res judicata set forth previously in this opinion. We iterate that, in order to elude dismissal, a subsequent petition alleging the same ground as a previously denied petition *must* allege new facts or evidence not reasonably available at the time of the earlier petition. *Johnson* v. *Commissioner of Correction*, supra, 168 Conn. App. 306. Additionally, "[t]he conclusions reached by the trial court in its decision to dismiss [a] habeas petition are matters of law, subject to plenary review. . . . [When] the legal conclusions of the court are challenged, [the reviewing court] must determine whether they are legally and logically correct . . . and whether they find support in the facts that appear in the record. . . . To the extent that factual findings are challenged, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous . . . ." (Citation omitted; internal quotation marks omitted.) *Carter* v. *Commissioner of Correction*, supra, 133 Conn. App. 392.

We agree with the court that the actual innocence claims in the present and first habeas petitions seek the same relief and are premised on the same legal grounds and similar factual bases. Both petitions seek to vacate the petitioner's conviction. The first petition claimed that Pabon falsely testified at the criminal trial and that "Pabon and one or more other persons" killed

the victim. The present petition claims that Angel Vasquez falsely testified at the criminal trial and that "Ian Tardiff and [Pabon] were the actual shooters . . . ." The determinative question is whether the proffered testimony was reasonably available at the time of the first petition. See *McClendon* v. *Commissioner of Correction*, 93 Conn. App. 228, 231, 888 A.2d 183 ("where successive petitions are premised on the same legal grounds and seek the same relief, the second petition will not survive a motion to dismiss unless the petition is supported by allegations and facts *not reasonably available* to the petitioner at the time of the original petition" (emphasis added)), cert. denied, 277 Conn. 917, 895 A.2d 789 (2006).

To the extent that the petitioner's claim is based on the testimony of Juan Vazquez, he testified at the first habeas trial. The petitioner concedes that at the first habeas trial Juan Vazquez "testified in a manner similar [to his testimony at] the underlying proceedings." This evidence was available to the petitioner at the time of the first petition.

As for Angel Vasquez, the court concluded that "any information offered through Angel [Vasquez] would easily have been discovered through due diligence, since he was a witness who testified against the petitioner at his criminal trial . . . ." The petitioner argues that Angel Vasquez' testimony was not reasonably available prior to this petition because it consists of a recantation of his testimony at the criminal trial: "[T]he court overlooks the fact that [Angel Vasquez'] testimony constituted recantation testimony, so such by its very nature would *not* have been available at trial. . . . [Angel Vasquez] testified that his testimony at the petitioner's criminal trial was all lies. . . . Thus, such recantation testimony was *not* reasonably available at the time of the petitioner's criminal trial. Additionally, [Angel Vasquez]

testified that he was never contacted until the underlying proceedings about the petitioner's case and that he did not 'know what was going on' with this matter." However, the determinative issue is not whether Angel Vasquez' recantation was available at the petitioner's criminal trial, but whether it was reasonably available *at the time of the first habeas petition.*[7]

It is incumbent on the petitioner to establish that evidence would not have been reasonably available at the time of a prior petition. See *Gudino* v. *Commissioner of Correction*, 191 Conn. App. 263, 274, 214 A.3d 383 (explaining that when petitioner "[brings] a claim on the same legal ground and seeking the same relief, he can avoid dismissal only by *alleging* and *demonstrating* that evidence necessary to support the newly asserted facts was not reasonably available at the time of the prior petition" (emphasis added)), cert. denied, 333 Conn. 924, 218 A.3d 67 (2019). The petitioner has failed to allege any facts that suggest that Angel Vasquez would not have been similarly willing to recant his testimony at the time of the first habeas trial. The petitioner points out that Angel Vasquez testified that it was not until he was approached by counsel for the present petition that he decided to recant his testimony, but it does not necessarily follow that he would not

[7] The petitioner appears to conflate the standard for res judicata with the standard for actual innocence when the claim is addressed on the merits. As we have stated, for a successive habeas petition to survive a motion to dismiss, it must be premised on allegations and facts not reasonably available to the petitioner at the time of the original petition. See *McClendon* v. *Commissioner of Correction*, supra, 93 Conn. App. 231. However, if a claim of actual innocence is addressed on the merits, this court has held that the claim must be based on newly discovered evidence that could not have been discovered prior to the petitioner's *criminal trial* by the exercise of due diligence. *Vazquez* v. *Commissioner of Correction*, 128 Conn. App. 425, 444, 17 A.3d 1089, cert. denied, 301 Conn. 926, 22 A.3d 1277 (2011). Because the habeas court did not reach the merits of the actual innocence claim, and neither do we, it is immaterial whether the testimony of Angel Vasquez and Padua offered at the present petition was available at the time of the criminal trial.

have done so for the first habeas trial. The petitioner stresses that Angel Vasquez wanted to recant his testimony because it was "[weighing] on [him] heavy . . . all these years," but that testimony alone is insufficient to establish that the recantation was not reasonably available in 2011, at the time of the first habeas trial, particularly since the witness' original trial testimony was in 2000. Lastly, as the court and the respondent point out, the petitioner himself referenced Angel Vasquez' allegedly false trial testimony during the first habeas trial. We agree with the court that the petitioner has failed to establish that any information offered through Angel Vasquez would not have been reasonably available at the time of the first habeas trial.

As for Padua, the petitioner similarly offers no evidence that Padua was not reasonably available to testify at the first habeas trial. The petitioner again stresses that this witness was not available for the criminal trial: "Following the shooting, Padua returned to Puerto Rico to deal with his own mother's death. . . . Padua did not return to Connecticut until 2003, well after the petitioner's criminal trial." This evidence does not suggest that Padua would have been unavailable to testify at the first habeas trial in 2011.[8] In fact, Padua testified at trial for the present petition that he would have offered the same testimony if he had been called to testify previously. As with Angel Vasquez, the petitioner has failed to demonstrate that Padua was not available to testify at the trial of the first petition.[9]

[8] Additionally, we note that the petitioner has alleged that his prior habeas counsel was ineffective for failing to investigate and present the testimony of Padua in the prior habeas trial; see part II of this opinion; which implicitly suggests that Padua *was* in fact available in 2011.

[9] The court also stated that "to the extent this 'actual innocence' claim relies on testimony from [Padua] that the petitioner was hiding in a store vestibule at the time of the shooting, this also is not 'newly discovered evidence,' it is merely the petitioner offering information he testified to in [the first petition] through a different witness." The petitioner argues that this finding is clearly erroneous, but as the respondent points out, we need not address this finding if we agree with and find support for the court's

Accordingly, we agree with the habeas court that res judicata bars relitigation of the petitioner's actual innocence claim. The legal ground and relief sought in the petitioner's actual innocence claim are identical to those in his first petition, and the petitioner has failed to demonstrate that the claim is based on evidence not reasonably available at the time of the first petition.

II

Lastly, we address the petitioner's ineffective assistance of habeas counsel claim. The petitioner argues that the court erred in concluding that his prior habeas counsel, Attorney Joseph Visone, did not render ineffective assistance by failing to investigate and present the testimony of Padua and failing to properly question Juan Vazquez about the identity of the shooters.[10]

We first set forth the general principles surrounding ineffective assistance of counsel claims and our standard of review. "In *Strickland* v. *Washington*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)], the United States Supreme Court established that for a petitioner to prevail on a claim of ineffective assistance of counsel, he must show that counsel's assistance was so defective as to require reversal of [the] conviction

ultimate legal conclusion that the petitioner has failed to demonstrate that his actual innocence claim is based on evidence not reasonably available at the time of the first petition.

In his reply brief, the petitioner characterizes this outcome as affirming the ruling on "alternative grounds," but we are merely applying the well established standard of review for a dismissal on the ground of res judicata in the context of a habeas petition. See part I A of this opinion. Our agreement with the court that res judicata bars relitigation of the claim, but for a different reason, does not constitute an affirmance on alternative grounds. See *Negron* v. *Warden*, 180 Conn. 153, 158, 429 A.2d 841 (1980) (characterizing " 'ground' " as legal basis for ruling).

[10] The second amended petition also included claims that Visone was ineffective for failing to call the victim's mother and for failing to present evidence that the shooting was a gang-related retaliation. The court summarily disposed of these claims. The petitioner has not challenged these conclusions.

. . . . That requires the petitioner to show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defense. . . . Unless a [petitioner] makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable. . . . Because both prongs . . . must be established for a habeas petitioner to prevail, a court may dismiss a petitioner's claim if he fails to meet either prong." (Internal quotation marks omitted.) *Vazquez* v. *Commissioner of Correction*, 128 Conn. App. 425, 430, 17 A.3d 1089, cert. denied, 301 Conn. 926, 22 A.3d 1277 (2011).

"To satisfy the performance prong [of the *Strickland* test] the petitioner must demonstrate that his attorney's representation was not reasonably competent or within the range of competence displayed by lawyers with ordinary training and skill in the criminal law. . . . [A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the [petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." (Internal quotation marks omitted.) *Mukhtaar* v. *Commissioner of Correction*, 158 Conn. App. 431, 437–38, 119 A.3d 607 (2015).

"To satisfy the second prong of *Strickland*, that his counsel's deficient performance prejudiced his defense, the petitioner must establish that, as a result of his trial counsel's deficient performance, there remains a probability sufficient to undermine confidence in the verdict that resulted in his appeal. . . . The second prong is thus satisfied if the petitioner can demonstrate that there is a reasonable probability that, but for that ineffectiveness, the outcome would have been different." (Internal quotation marks omitted.) *Horn* v. *Commissioner of Correction*, 321 Conn. 767, 776, 138 A.3d 908 (2016).

"[When] applied to a claim of ineffective assistance of prior habeas counsel, the *Strickland* standard requires the petitioner to demonstrate that his prior habeas counsel's performance was ineffective and that this ineffectiveness prejudiced the petitioner's prior habeas proceeding. . . . [T]he petitioner will have to prove that one or both of the prior habeas counsel, in presenting his claims, was ineffective and that effective representation by habeas counsel establishes a reasonable probability that the habeas court would have found that he was entitled to reversal of the conviction and a new trial . . . ." (Emphasis omitted; footnote omitted.) *Harris* v. *Commissioner of Correction*, 108 Conn. App. 201, 209–10, 947 A.2d 435, cert. denied, 288 Conn. 911, 953 A.2d 652 (2008). "Therefore, as explained by our Supreme Court in *Lozada* v. *Warden*, 223 Conn. 834, 613 A.2d 818 (1992), a petitioner claiming ineffective assistance of habeas counsel on the basis of ineffective assistance of [trial] counsel must essentially satisfy *Strickland* twice: he must prove both (1) that his appointed habeas counsel was ineffective, and (2) that his [trial] counsel was ineffective." (Internal quotation marks omitted.) *Ham* v. *Commissioner of Correction*, 152 Conn. App. 212, 230, 98 A.3d 81, cert. denied, 314 Conn. 932, 102 A.3d 83 (2014). "We have characterized this burden as presenting a herculean task . . . ." (Internal quotation marks omitted.) *Alterisi* v. *Commissioner of Correction*, 145 Conn. App. 218, 227, 77 A.3d 748, cert. denied, 310 Conn. 933, 78 A.3d 859 (2013).

"In a habeas appeal, although this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, our review of whether the facts as found by the habeas court constituted a violation of the petitioner's constitutional right to effective assistance of counsel is plenary." (Internal quotation marks omitted.) *Griffin* v. *Commissioner of Correction*, 119 Conn. App. 239, 241, 987 A.2d 1037, cert.

denied, 295 Conn. 912, 989 A.2d 1074 (2010). With the foregoing principles in mind, we now address the merits of the petitioner's claim.

As for the claim that Visone failed to question Juan Vazquez properly regarding the identity of the shooters, the court disposed of that claim on the prejudice prong. The court found no substantive difference between Juan Vazquez' testimony in the two habeas trials and did not find him to be a credible witness.[11] The petitioner has not challenged this finding.

As for the failure to investigate and present the testimony of Padua, the court ultimately denied the claim, but did not include an explicit discussion of the grounds supporting its ruling. The court's failure to explicitly discuss each of Visone's alleged deficiencies does not prevent us from reaching the merits of the issue. See *Ricardo R.* v. *Commissioner of Correction*, 185 Conn. App. 787, 789 n.1, 198 A.3d 630 (2018) (concluding that where habeas court did not explicitly address petitioner's claim, but implicitly rejected claim in its final determination, reviewing court can reach merits of allegation if record is sufficient for review), cert. denied, 330 Conn. 959, 199 A.3d 560 (2019). We affirm the court's ruling on the ground that the petitioner failed to establish that Attorney Visone's performance was deficient.

Attorney Visone did not testify at the second habeas trial. Although not fatal to a claim of ineffective assistance of counsel, the habeas court appropriately noted the difficulty in overcoming the presumption of competence when a petitioner fails to call the attorney in question: "While calling the attorney in question is not a legal requirement in pursuing a claim of ineffectiveness, the trial court recognizes the general presumption of competence and deference afforded to trial counsel in the strategic decisions on which witnesses to call and

[11] Judge Newson presided over both the first and second habeas trials.

the questions to ask those witnesses. '[T]here is a strong presumption that the trial strategy employed by . . . counsel is reasonable and is a result of the exercise of professional judgment. . . . It is well established that [a] reviewing court must view counsel's conduct with a strong presumption that it falls within the wide range of reasonable professional assistance and that a tactic that appears ineffective in hindsight may have been sound trial strategy at the time.' . . . *Boyd* v. *Commissioner of Correction*, 130 Conn. App. 291, 297–98, 21 A.3d 969, cert. denied, 302 Conn. 926, 28 A.3d 337 (2011)."

"The law presumes that counsel is competent until evidence has been introduced to the contrary. . . . It is elementary jurisprudence that the determination of whether counsel's conduct was ineffective is a peculiarly fact bound inquiry. . . . Moreover, [i]t is well established that a petitioner in a habeas proceeding cannot rely on mere conjecture or speculation to satisfy either the performance or prejudice prong [of *Strickland*] but must instead offer demonstrable evidence in support of his claim." (Citations omitted; internal quotation marks omitted.) *Martinez* v. *Commissioner of Correction*, 147 Conn. App. 307, 315–16, 82 A.3d 666 (2013), cert. denied, 311 Conn. 917, 85 A.3d 652 (2014).

The petitioner has failed to sustain his burden to offer evidence in support of his claim. While Padua did testify that he would have offered the same testimony if contacted for the first habeas trial, there is no other evidence to support a finding of deficiency. The petitioner testified that he spoke with his trial counsel about Padua, but there is no testimony that the petitioner told Visone to contact Padua or discussed the importance of Padua's testimony with Visone. Accordingly, the petitioner is unable to overcome the presumption of Visone's competence as to his trial strategy. "Although [counsel's]

testimony is not necessary to [a] determination that a particular decision might be considered sound trial strategy . . . [a] habeas petitioner's failure to present [counsel's] testimony as to the strategy employed . . . hampers both the court at the habeas trial and the reviewing court in their assessments of [strategy]." (Citation omitted; internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 197 Conn. App. 822, 862, 234 A.3d 78, cert. granted, 335 Conn. 931, 236 A.3d 218 (2020). The petitioner cannot establish that Visone rendered deficient performance when he has failed to show what information was available to Visone, what decisions he made, and why he made them. We thus agree with the court's ultimate decision to deny the petitioner's ineffective assistance of habeas counsel claim.

The judgment is affirmed.

In this opinion the other judges concurred.

JON PETERSON ET AL. *v.* ICARE MANAGEMENT, LLC, ET AL.
(AC 42885)

KAREN MUNDLE ET AL. *v.* ICARE MANAGEMENT, LLC, ET AL.
(AC 42886)

Bright, C. J., and Cradle and Bear, Js.

Syllabus

The plaintiff property owners in Rocky Hill sought to recover damages from the defendants for, inter alia, alleged private nuisance, in connection with the defendants' operation of a nursing home facility for prison inmates on a neighboring property. The town of Rocky Hill had brought several prior related actions against the defendants based on their proposed use of the property as a nursing care facility for prison inmates, seeking declaratory and injunctive relief and alleging violations of the

town's zoning regulations. Those actions were consolidated and tried to the court, which rendered judgment in favor of the defendants, holding that the defendants' use of the property was a preexisting, nonconforming use and was not in violation of the zoning regulations. The plaintiffs thereafter commenced the underlying actions, seeking damages and a declaration from the court that the defendant could not operate the nursing home facility at the property. The defendants moved for summary judgment, claiming that the plaintiffs' claims were barred by the principles of res judicata and/or collateral estoppel based on the court's prior judgment rendered in the litigation involving the town. The trial court denied the defendants' motions for summary judgment, holding that neither res judicata nor collateral estoppel applied because the claims and issues previously litigated were not sufficiently identical to those presented in the underlying actions. From the judgments rendered thereon, the defendants appealed to this court. *Held*:

1. The defendants could not prevail on their claim that the trial court erred in denying their motions for summary judgment because the plaintiffs' claims were barred by res judicata: the trial court aptly rejected the defendants' argument that the court's conclusion in the prior litigation that the defendants did not violate the town's zoning regulations bars the plaintiffs' claims in the underlying actions, because, as that court stated, the claims are fundamentally different; in the present cases, the plaintiffs asserted tort claims arising not out of an alleged zoning violation, but, rather, from the alleged loss of value, use and enjoyment of their real properties, and the plaintiffs also alleged recklessness and intentional conduct, which require an analysis of the defendants' mental states, as well as causation and damages, and these elements were not discussed or determined in the prior litigation; because these tort claims have fundamentally different legal elements from the previously litigated zoning violation claim, they are not sufficiently identical to the claims that were previously litigated; accordingly, the trial court correctly concluded that the elements and analysis of the tort claims differ from the elements and analysis at issue in the prior litigation, and, therefore, res judicata did not bar the plaintiffs' claims.
2. The trial court correctly concluded that collateral estoppel did not preclude the plaintiffs from litigating the issue of whether the defendants' use of the property negatively impacted the plaintiffs: the town did not allege a nuisance claim in the prior litigation nor could it have asserted the rights the plaintiffs seek to protect in the underlying actions, and the court in the prior litigation was not asked to resolve the question of whether the defendants' operation of the nursing home facility constituted a nuisance for which the plaintiffs in the present cases would be entitled to damages; moreover, the court's comment in the prior litigation regarding whether there was any substantial difference in effect on the neighborhood resulting from the activities at the defendants' property was not necessary to its resolution of the zoning issue before it, and,

therefore, the trial court correctly concluded that the court's comment in the prior litigation was dictum because it was not essential to that court's conclusion.

Argued October 14, 2020—officially released April 13, 2021

Procedural History

Action, in each case, for a declaratory judgment regarding the operation of a nursing home facility and to recover damages for, inter alia, private nuisance, and for other relief, brought to the Superior Court in the judicial district of New Britain and transferred to the judicial district of Hartford, where the court, *Wahla*, *J.*, granted the plaintiffs' motions to consolidate the cases; thereafter, the court, *Noble*, *J.*, denied the defendants' motion for summary judgment in each case and rendered judgments thereon, from which the defendants appealed to this court; subsequently, this court granted in part the plaintiffs' motion to dismiss the appeals. *Affirmed.*

Jonathan M. Starble, for the appellants (defendants in each case).

Kevin P. Walsh, for the appellees (plaintiffs in each case).

Opinion

CRADLE, J. These two appeals arise from consolidated cases.[1] The defendants in both actions, iCare Man-

[1] In *Peterson* v. *iCare Management, LLC*, Docket No. AC 42885, the plaintiffs are Antonio Fabi, Katherine Fabi, Joshua Egan, Lauren Egan, Anthony Coco and Tonilynn Coco. Jon Peterson, Amber Peterson, Brian Crawford and Nicole Crawford were named as plaintiffs, but they subsequently withdrew their claims in June, 2017. In *Mundle* v. *iCare Management, LLC*, Docket No. AC 42886, the plaintiffs are Karen Mundle, Raymond Prevedini and Judith Prevedini. The underlying actions in each appeal were brought against the same three defendants, iCare Management, LLC, SecureCare Realty, LLC, and SecureCare Options, LLC. The cases were consolidated in October, 2016.

Unless otherwise noted, all references in this opinion to the plaintiffs are to the plaintiffs in both the *Peterson* and *Mundle* actions. Similarly, all references in this opinion to the defendants are to SecureCare Realty, LLC, SecureCare Options, LLC, and iCare Management, LLC.

agement, LLC, SecureCare Realty, LLC, and SecureCare Options, LLC (defendants), appeal from the judgments of the trial court denying their motions for summary judgment, in which they argued that the plaintiffs' claims were barred by res judicata and/or collateral estoppel.[2] On appeal, the defendants claim that the trial court erred in denying their motions because the plaintiffs' claims were previously litigated in an earlier action.[3] We affirm the judgments of the trial court.

The following undisputed facts are relevant to this appeal. The plaintiffs own residential properties neighboring the property owned by SecureCare Realty, LLC, located at 60 West Street in Rocky Hill (60 West).[4] From 2012 through 2015, the town of Rocky Hill (town) brought several related actions against the defendants based on their proposed use of 60 West as a nursing care facility for prison inmates. On December 21, 2012, the town brought an action against SecureCare Realty, LLC, and iCare Management, LLC, seeking a declaratory

In each appeal, the defendants assert identical underlying facts, legal claims, and challenges. In addition, the pleadings filed with both the trial court and this court are identical. Although these appeals have not been consolidated by this court, we write one opinion for purposes of judicial economy in which we assess the claims made in both appeals.

[2] We note that, although "[t]he denial of a motion for summary judgment is not ordinarily appealable because it is not a final judgment . . . an appeal may be taken from the denial of a motion for summary judgment when such motion raises the defense of collateral estoppel." (Citations omitted; internal quotation marks omitted.) *Young* v. *Metropolitan Property & Casualty Ins. Co.*, 60 Conn. App. 107, 112, 758 A.2d 452, cert. denied, 255 Conn. 906, 762 A.2d 912 (2000).

[3] See *Rocky Hill* v. *SecureCare Realty, LLC*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket Nos. CV-13-6037949, CV-15-6057942-S, CV-15-6062010-S, and CV-15-6062012-S (March 14, 2018) (66 Conn. L. Rptr. 437), which involved four consolidated cases all related to the use of the defendants' facility.

[4] SecureCare Realty, LLC, is the owner of 60 West. SecureCare Options, LLC, is an entity formed by iCare Management, LLC, to lease 60 West from SecureCare Realty, LLC, and to operate the nursing home, and iCare Management, LLC, provides management services to the other defendants.

judgment and injunctive relief. See *Rocky Hill* v. *SecureCare Realty, LLC*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket No. CV-13-6037949-S (*SecureCare I*). In *SecureCare I*, the town asserted that the defendants' proposed use of 60 West, to house prison inmates in a residential zone, violates the town's zoning regulations. The defendants in *SecureCare I* moved to dismiss that action. On April 23, 2013, the court, *Robaina, J.*, dismissed *SecureCare I*, reasoning that "the defendants are entitled to sovereign immunity . . . [because they] . . . are engaging in government functions on behalf of the state."

In February, 2013, the plaintiffs in *Peterson*, Docket No. AC 42885; see footnote 1 of this opinion; brought the first underlying action against the defendants alleging private nuisance and recklessness, and seeking a declaration from the court that the defendants "cannot . . . operate a nursing home facility at 60 West . . . ." On June 15, 2015, the plaintiffs amended their complaint to include an allegation of intentional conduct in connection with the defendants' proposed use of 60 West. The plaintiffs alleged that the defendants' intended use of the property, to house inmates who have been convicted of felonies, violates the town's zoning regulations and amounts to a private nuisance negatively impacting their real property values and their use and enjoyment of their properties. The plaintiffs sought a judgment declaring that the defendants cannot operate a nursing care facility for inmates at 60 West, as well as damages for the diminution of their property values. On September 25, 2014, the plaintiffs in *Mundle*, Docket No. AC 42886; see footnote 1 of this opinion; commenced the second underlying action, which contained allegations identical to those in the February, 2013 action brought by the *Peterson* plaintiffs.

On January 6, 2015, our Supreme Court reversed the trial court's judgment in *SecureCare I*, and remanded

that case to the trial court for a determination of whether the use proposed by the defendants complied with the town's zoning regulations. See *Rocky Hill* v. *SecureCare Realty, LLC*, 315 Conn. 265, 267, 299, 105 A.3d 857 (2015). On January 21, 2015, after the defendants began operating the facility, the town[5] brought a second action against SecureCare Realty, LLC, and SecureCare Options, LLC, alleging that the use of 60 West violates the town's zoning regulations. *Rocky Hill* v. *SecureCare Realty, LLC*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket No. CV-15-6057942-S (*SecureCare II*). That complaint sought an injunction ordering the defendants to cease and desist from using 60 West "as a prison/penitentiary, nursing home and/or as an assisting living facility." The defendants in *SecureCare II* moved to dismiss the action based on the pending action in *SecureCare I*. On March 12, 2015, the court, *Hon. Joseph Shortall*, judge trial referee, denied the defendants' motion to dismiss *SecureCare II*, and consolidated the two cases. The town withdrew its complaint in *SecureCare I* on March 17, 2015, and all issues therein were subsumed in *SecureCare II*.

In August, 2015, the defendants filed two administrative appeals in connection with decisions of the Zoning Board of Appeals of the Town of Rocky Hill (board).[6] *SecureCare Realty, LLC* v. *Zoning Board of Appeals*,

[5] Kimberly Ricci, assistant zoning enforcement officer, was also a named plaintiff.

[6] While *SecureCare I* was pending before our Supreme Court, the defendants were issued two "Notice of [V]iolation, Cease and Desist" orders on May 29, 2013, by the town's zoning enforcement officer. The defendants responded, in writing, that these orders were in violation of the trial court's orders in *SecureCare I*. On January 23, 2015, seventeen days after our Supreme Court's decision remanding *SecureCare I* and two days after *SecureCare II* was filed, the defendants appealed the cease and desist orders to the board. The board dismissed the appeals on July 15, 2015, stating that it lacked jurisdiction. The appeals dated August 12, 2015, were filed in response to the dismissal of the appeals by the board dated January 23, 2015.

Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket No. CV-15-6062010-S; *SecureCare Options, LLC* v. *Zoning Board of Appeals*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket No. CV-15-6062012-S. *SecureCare II* and the two administrative appeals were consolidated and tried to the court, *Hon. Marshall Berger*, judge trial referee, from August 29 through September 1, 2017. In a memorandum of decision dated March 14, 2018, the court held that the defendants' use of the property was a preexisting, nonconforming use and was not in violation of the local zoning regulations.[7] Therefore, the court rendered judgment for the defendants in *SecureCare II*. The town did not file an appeal.

On June 22, 2018, the defendants in the present cases moved for summary judgment, claiming that the plaintiffs' claims were now barred by the principles of res judicata or collateral estoppel, based on the court's March 14, 2018 decision in *SecureCare II*. The defendants argued that the plaintiffs were in privity with the town for purposes of res judicata and that the plaintiffs' claims were the same as those brought in *SecureCare II*. In addition, the defendants argued that, even if the plaintiffs' claims were not precluded by res judicata, their nuisance, recklessness, and intentional tort claims were barred by collateral estoppel because those claims rely on the defendants' use of the property being in

[7] In reaching this conclusion, Judge Berger acknowledged the history of the property at 60 West, stating that "[u]se of the property as a 'convalescent home and hospital' was approved by the Planning and Zoning Commission of the Town of Rocky Hill on April 12, 1965. . . . It was continuously used as a licensed chronic and convalescent nursing home . . . from 1967, to August 24, 2011, when the facility was closed and the license became inactive. . . . The Connecticut Department of Public Health issued the defendants a new . . . license for its facility, 60 West, on or around May 2, 2013. . . . The license was the same type of license that was in effect for the property continuously from 1967 until 2011, but allowed for 95 beds instead of 120." (Citations omitted; footnote omitted.)

violation of local zoning regulations, which already had been litigated in *SecureCare II*. The plaintiffs objected to the motions for summary judgment, arguing that res judicata and collateral estoppel did not bar their claims because they are not in privity with the town and their legal claims are different from those litigated in *SecureCare II*.

In a memorandum of decision dated April 12, 2019, the trial court, *Noble*, *J.*, denied the defendants' motions for summary judgment, holding that neither res judicata nor collateral estoppel applied because the claims and issues litigated in *SecureCare II* were not "sufficiently identical to those presented" in the underlying actions. The trial court stated that the "sole question before the court in [*SecureCare II*] was whether the defendants' use of 60 West was a violation of Rocky Hill zoning regulations. . . . [T]he trial court was tasked with making a determination of whether the facility complied with the zoning regulations. . . . This in turn involved the determination of whether the property was in use as a nursing home . . . and whether the use of the property by the defendants was an illegal expansion of a prior nonconforming use. . . . Judge Berger found that the defendants were using the property as a nursing home and that this use was not an illegal expansion of the prior nonconforming use. The latter conclusion requires the consideration of three factors: (1) the extent to which the current use reflects the nature and purpose of the original use; (2) any differences in the character, nature and kind of use involved; and (3) *any substantial difference in effect upon the neighborhood resulting from differences in the activities conducted on the property*. . . . The court found consideration of the first two factors militated in favor of a determination that the defendants' use of the property was not an illegal expansion of a nonconforming use. . . . As a consequence, the court held that it did not need to

address whether there was a substantial difference in effect upon the neighborhood resulting from differences in the activities conducted at the property." (Citations omitted; emphasis in original; footnote omitted; internal quotation marks omitted.)

The court differentiated the claims in the present cases from the claims litigated in *SecureCare II* by observing that the "present claims are not that the defendants violated zoning regulations, but that the defendants are liable for nuisance, recklessness and intentional conduct. These claims differ from a pure consideration of whether the use of the property violates zoning regulations in that a common-law private nuisance is a nontrespassory invasion of another's interest in the private use and enjoyment of land. . . . Moreover, there can be no doubt that a use which does not violate zoning restrictions may nonetheless create a common-law nuisance." (Citations omitted; internal quotation marks omitted.)

Because the underlying claims were not the same in both actions, the court concluded that the judgment in *SecureCare II* "cannot serve as the basis for res judicata" and that there "is nothing in [the *SecureCare II*] decision that dispositively addresses the plaintiffs' use and enjoyment of their properties, a necessary element of a nuisance claim." Accordingly, the court held that the plaintiffs' claims were not barred by res judicata or collateral estoppel. These appeals followed.

On appeal, the defendants claim that the trial court erred in failing to grant their motions for summary judgment on the grounds of res judicata or collateral estoppel because the plaintiffs are in privity with the town, the underlying claims are the same as the claims in *SecureCare II*, and an essential element of the plaintiffs' claims was decided by the trial court in that case. The plaintiffs argue that they are not in privity with the

town and that they are asserting fundamentally different claims from those litigated in *SecureCare II*. We agree with the plaintiffs and affirm the judgments of the trial court.

The standard of review of a trial court's decision on a motion for summary judgment is well established. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The courts are in entire agreement that the moving party . . . has the burden of showing the absence of any genuine issue as to all the material facts . . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the [nonmoving] party must present evidence that demonstrates the existence of some disputed factual issue. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary. . . . On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court." (Citations omitted; internal quotation marks omitted.) *Lucenti* v. *Laviero*, 327 Conn. 764, 772–73, 176 A.3d 1 (2018).

I

The defendants first claim that the trial court erred in denying their motions for summary judgment because the

plaintiffs' claims, as a matter of law, were barred by res judicata. We disagree.

"The applicability of the doctrine of res judicata presents a question of law that we review de novo. . . . Res judicata, or claim preclusion, express[es] no more than the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest. . . . Generally, for res judicata to apply, four elements must be met: (1) the judgment must have been rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate opportunity to litigate the matter fully; and (4) the same underlying claim must be at issue. . . .

"Res judicata bars the relitigation of claims actually made in the prior action as well as any claims that might have been made there. . . . Public policy supports the principle that a party should not be allowed to relitigate a matter which it already has had an opportunity to litigate." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Wheeler* v. *Beachcroft, LLC*, 320 Conn. 146, 156–57, 129 A.3d 677 (2016).

"To determine whether claims are the same for res judicata purposes, this court has adopted the transactional test. . . . Under the transactional test, res judicata extinguishes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. . . . What factual grouping constitutes a transaction, and what groupings constitute a series, are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their

treatment as a unit conforms to the parties' expectations or business understanding or usage. . . . In applying the transactional test, we compare the complaint in the [present] action with the pleadings and the judgment in the earlier action." (Citations omitted; internal quotation marks omitted). Id., 159–60.

Although the defendants raise arguments in support of both the second and fourth elements, it is the fourth element—that the same underlying claim must be at issue—that is central to our discussion. The defendants argue, as they did before the trial court, that the court's conclusion in *SecureCare II* that the defendants did not violate the town's zoning regulations bars the plaintiffs from pursuing their claims in the present cases because the allegation of a zoning violation is essential to the plaintiffs' claims.[8] Consequently, they contend that the plaintiffs' tort claims are functionally the same as the claims asserted by the town in *SecureCare II*. The trial court aptly rejected this argument, stating that the claims are fundamentally different.

In *SecureCare II*, the town alleged that the defendants' operation at 60 West violated two provisions of the zoning regulations and sought declaratory and injunctive relief to prohibit the defendants from operating the facility. In order to prevail, the town had to prove that the defendants' activities were an illegal extension or change of the nonconforming use. In determining whether the town met this burden, the court in *SecureCare II* focused on "the use [of 60 West

[8] The defendants also argue, as they did before the trial court, that the plaintiffs are in privity with the town. The trial court declined to address the issue of privity, concluding that "[t]he court need not address the issue of privity because it does not find that the claims and issues litigated in [*SecureCare II*] are sufficiently identical to those presented in the present action," and that all four elements of res judicata are essential for the doctrine to apply. Because we agree with the trial court's conclusion that the plaintiffs' claims are not identical to those already litigated by the town, we likewise need not address the defendants' privity argument.

as a convalescent home and hospital] and any expansion or intensification of that use." The court performed an extensive analysis of the language of the zoning regulations, as well as the defendants' particular operation, to conclude that the use was a legal continuation of a prior nonconforming use.

By contrast, the plaintiffs in the present cases assert tort claims, including a claim of private nuisance, arising not out of an alleged zoning violation but, rather, from the alleged loss of value, use and enjoyment of their real property. As the trial court aptly noted, Connecticut courts have long held that "a use which does not violate zoning restrictions may nonetheless create a common-law nuisance." *Herbert* v. *Smyth*, 155 Conn. 78, 83, 230 A.2d 235 (1967). "The essence of a private nuisance is an interference with the use and enjoyment of land." (Internal quotation marks omitted.) *Wellswood Columbia, LLC* v. *Hebron*, 327 Conn. 53, 80, 171 A.3d 409 (2017). In order to succeed on a claim of private nuisance, the plaintiff "must prove that: (1) there was an invasion of the plaintiff's use and enjoyment of his or her property; (2) the defendant's conduct was the proximate cause of the invasion; and (3) the invasion was either intentional and unreasonable, or unintentional and the defendant's conduct was negligent or reckless. . . . [S]howing unreasonableness is an essential element of a private nuisance cause of action based on . . . recklessness." (Citation omitted.) *Pestey* v. *Cushman*, 259 Conn. 345, 358, 788 A.2d 496 (2002). A use which is in accordance with zoning regulations can, nonetheless, be unreasonable. See *Maykut* v. *Plasko*, 170 Conn. 310, 317, 365 A.2d 1114 (1976).

The plaintiffs also allege recklessness and intentional conduct, which require an analysis of the defendants' mental states, as well as causation and damages. These elements were not discussed in *SecureCare II* because the town was solely seeking injunctive relief and a

declaratory judgment as a result of the alleged zoning violations. The court in *SecureCare II* neither discussed nor determined whether any of the elements of private nuisance, recklessness, or intentional conduct were met. Because these tort claims have fundamentally different legal elements from the previously litigated zoning violation claim, they are not sufficiently identical to the claims that were litigated in *SecureCare II*. The plaintiffs' claims are not predicated on the existence of a zoning violation but, rather, on alleged tortious conduct. The plaintiffs seek relief, including compensatory and punitive damages,[9] that is materially different from the relief sought in *SecureCare II*. Accordingly, we agree with the trial court's conclusion that the elements and the analysis of the tort claims differ from the elements and analysis litigated in *SecureCare II*, and, therefore, res judicata does not bar the plaintiffs' claims.

II

The defendants also argue that, even if the plaintiffs' claims are not precluded by res judicata, collateral estoppel precludes the plaintiffs from relitigating the issue of whether the defendants' use of 60 West negatively impacts the plaintiffs.

"Collateral estoppel, or issue preclusion, is that aspect of res judicata which prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim. . . . For an issue to be subject to collateral estoppel, it must have been *fully and fairly litigated* in the first action. It also must have been actually decided and the decision must have been necessary to the judgment. . . .

[9] Specifically, the plaintiffs claim compensatory damages, punitive damages, a declaration that the defendants cannot operate a nursing home facility at 60 West, attorney's fees and costs.

"An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined. . . . An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered. . . . If an issue has been determined, but the judgment is not dependent [on] the determination of the issue, the parties may relitigate the issue in a subsequent action. . . . Before collateral estoppel applies [however] there must be an identity of issues between the prior and subsequent proceedings. To invoke collateral estoppel the issues sought to be litigated in the new proceeding must be identical to those considered in the prior proceeding. . . . In other words, collateral estoppel has no application in the absence of an identical issue. . . . Further, an overlap in issues does not necessitate a finding of identity of issues for the purposes of collateral estoppel." (Emphasis in original; internal quotation marks omitted.) *Independent Party of CT–State Central* v. *Merrill*, 330 Conn. 681, 7114, 200 A.3d 1118 (2019).

In their motions for summary judgment, the defendants asserted that the plaintiffs were precluded from relitigating whether the defendants' use of the property violates local zoning regulations and whether the operation of 60 West had an impact on the plaintiffs' properties. The defendants argue on appeal that the court in *SecureCare II* already determined that the operation at 60 West did not negatively affect the plaintiffs' properties and, as a result, the plaintiffs are precluded by collateral estoppel from raising this issue again in their nuisance claims. The plaintiffs argue that the trial court's discussion regarding the impact to the neighborhood was dictum because it was a "[f]inding on [a] nonessential [issue]," and, therefore, the trial court did not make any conclusive determination as to the

impact, if any, of the defendants' conduct on the plaintiffs' properties for purposes of collateral estoppel.

The court in *SecureCare II*, in concluding that the defendants' use of the property was not in violation of the zoning regulations, found that the defendants' use of 60 West was not an illegal expansion of the prior nonconforming use. In reaching its conclusion, that court found that a consideration of the first two factors, "(1) the extent to which the current use reflects the nature and purpose of the original use . . . and (2) any differences in the character, nature and kind of use involved," supported the determination that the use was not an illegal expansion of a nonconforming use. (Internal quotation marks omitted.) The court in *SecureCare II* did not reach the third factor, whether the use resulted in "any substantial difference in effect upon the neighborhood resulting from differences in the activities conducted on the property," because the first two factors supported a conclusion that the defendants' use was a legal expansion of a prior nonconforming use. (Internal quotation marks omitted.) That court merely noted that the town presented evidence regarding some neighbors' fears of the "individuals [housed at 60 West] and the impact of the fear on their families' lives." The court then stated, in a footnote, that "any evidence presented on the negative effects on the neighborhood [was] based on speculation and the perceived change in the patient population not upon the activities on the property."

In rejecting the defendants' collateral estoppel argument in the present cases, the trial court held that the comment made by the court in *SecureCare II* in a footnote regarding the negative effects on the neighborhood was "clearly dict[um]" and that that there was "nothing in [the court's] decision that dispositively addresses the plaintiffs' use and enjoyment of their properties, a necessary element of a nuisance claim."

On appeal, the defendants argue that the plaintiffs' claims are premised on the alleged zoning violations and the alleged negative impact that these violations have had on the plaintiffs. The defendants argue that *SecureCare II* established that the defendants' use of 60 West did not violate zoning regulations, did not negatively impact the plaintiffs' lives or properties, and that Judge Berger's comment was not dictum, but, rather, a statement that the plaintiffs in that case "had so clearly failed to prove negative effects, that the issue could be disposed of summarily without significant additional discussion." We disagree with the defendants.

The town neither alleged a nuisance claim in *SecureCare II* nor could it have asserted the rights that the plaintiffs seek to protect in the present action. Consequently, the court in that case was not asked to resolve, and did not resolve, the question of whether the defendants' operation at 60 West constituted a nuisance for which the plaintiffs in the present cases would be entitled to damages. Furthermore, the court's comment in *SecureCare II* regarding whether there was any substantial difference in effect on the neighborhood resulting from the activities at 60 West was not necessary to its resolution of the zoning issue before it. Rather, the court in *SecureCare II* adjudicated the zoning issue without determining whether the defendants' activities had a negative impact on the plaintiffs' properties and lives, because, as the trial court in the present cases stated, "consideration of the first two factors militated in favor of a determination that the defendants' use of the property was not an illegal expansion of a nonconforming use." Because the first two elements supported that conclusion without a consideration of the third element of whether the change in operations had a negative impact on the surrounding neighborhood, the court did not need to reach that

issue. We therefore agree with Judge Noble's characterization of the court's statement in the footnote as dictum because it was not essential to the court's conclusion. See *Board of Police Commissioners* v. *Stanley*, 92 Conn. App. 723, 736, 887 A.2d 394 (2005) ("[d]ictum includes those discussions that are merely passing commentary . . . those that go beyond the facts at issue . . . and those that are unnecessary to the holding in the case" (internal quotation marks omitted)).[10]

The judgments are affirmed.

In this opinion the other judges concurred.

ANTHONY CARTER *v.* COMMISSIONER OF CORRECTION (AC 43372)

Bright, C. J., and Cradle and Suarez, Js.

Syllabus

The petitioner, who previously had been convicted of the crimes of assault in the first degree, attempt to commit assault in the first degree, risk of injury to a child and criminal possession of a firearm, sought a fifth writ of habeas corpus, claiming that his trial counsel had provided ineffective assistance and that his right to due process had been violated. The habeas court rendered judgment dismissing the petition in part on the grounds that, pursuant to the applicable rule of practice (§ 23-29 (3)), the petitioner's claims were successive and barred by the doctrines of res judicata or collateral estoppel. Thereafter, the habeas court denied the petition for certification to appeal, and the petitioner appealed to this court. *Held*:

[10] Even if the court in *SecureCare II* needed to reach, and had definitively resolved, the third element, any assessment of the adverse impact on the *neighborhood* for the purpose of determining whether there was a zoning violation would not have involved the same analysis of the adverse impact on the *plaintiffs' lives and values of their properties* in the private nuisance claims. Because an adverse impact to each plaintiff's property is an essential element of each plaintiff's nuisance claim and because such impact clearly was neither actually litigated nor necessarily determined in *SecureCare II*, collateral estoppel would not bar the plaintiffs' claims.

1. The habeas court did not abuse its discretion in denying the petition for certification to appeal, the petitioner having failed to demonstrate that his claims involved issues that were debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions raised were adequate to deserve encouragement to proceed further.
2. The petitioner could not prevail on his claim that the habeas court erred in concluding that his ineffective assistance of counsel claims were barred by the doctrine of res judicata, which was based on his contention that, as a self-represented litigant in his previous habeas actions, he lacked the skill and expertise to ascertain the facts underlying his present claims, and, therefore, they were not reasonably available to him; because the petitioner chose to represent himself through all of his postconviction proceedings rather than exercising his statutory right to counsel, to countenance his contention would be contrary to our jurisprudence and fundamentally unfair to the respondent Commissioner of Correction and to others who have an interest in the finality of the petitioner's conviction.
3. The petitioner's claim that the habeas court erred in concluding that his due process claim was barred by the doctrine of collateral estoppel was unavailing; although the petitioner reworded the nature of his claim and the theory on which it was based, it was clear that he had previously litigated the relevant issue of whether a diagram pertaining to the state's ballistics evidence that was admitted into evidence at his criminal trial was the product of fraud, as the integrity of the ballistics evidence had been the subject of extensive postconviction litigation by the petitioner.

Argued January 11—officially released April 13, 2021

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Newson, J.*, rendered judgment dismissing the petition in part; thereafter, the petitioner withdrew the remaining count of the petition; subsequently, the court denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Justine F. Miller, assigned counsel, for the appellant (petitioner).

Jonathan M. Sousa, deputy assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, executive

assistant state's attorney, and *Jo Anne Sulik*, senior assistant state's attorney, for the appellee (respondent).

Opinion

CRADLE, J. The petitioner, Anthony Carter, appeals following the denial of his petition for certification to appeal from the judgment of the habeas court dismissing in part his fifth petition for a writ of habeas corpus. The petitioner claims that the court abused its discretion in denying his petition for certification to appeal and erred in dismissing in part his habeas petition on the grounds that, pursuant to Practice Book § 23-29,[1] his claims of ineffective assistance of counsel and violation of his right to due process were successive and barred by the doctrines of res judicata or collateral estoppel. We dismiss the appeal.

"This case arises from the terrible consequences of a drug turf war. During a Fourth of July block party in the area of Enfield and Garden Streets in Hartford, a seven year old girl was struck by a stray bullet that caused serious injuries." *State* v. *Carter*, 84 Conn. App. 263, 265, 853 A.2d 565, cert. denied, 271 Conn. 932, 859 A.2d 931 (2004), cert. denied, 544 U.S. 1066, 125 S. Ct. 2529, 161 L. Ed. 2d 1120 (2005). The following facts and procedural history, which were set forth by this court in the petitioner's appeal from the denial of his fourth habeas petition, are relevant to the petitioner's present appeal. "In 2002, after a jury trial, the petitioner was found guilty of assault in the first degree in violation of General Statutes § 53a-59 (a) (5), attempt to commit assault in the first degree in violation of General Statutes §§ 53a-49 (a) (2) and 53a-59 (a) (5), risk of injury

[1] Practice Book § 23-29 provides in relevant part: "The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that . . . (3) the petition presents the same ground as a prior petition previously denied and fails to state new facts or to proffer new evidence not reasonably available at the time of the prior petition . . . ."

to a child in violation of General Statutes [Rev. to 2001] § 53-21 (a) (1) and criminal possession of a firearm in violation of General Statutes [Rev. to 2001] § 53a-217 (a) (1). The trial court rendered judgment accordingly and sentenced the petitioner to a total effective term of twenty-seven years [of] incarceration. A direct appeal to this court followed.

"In affirming the judgment of conviction, this court concluded, inter alia, that the evidence adduced at trial was sufficient to support the conviction of assault in the first degree and risk of injury to a child.[2] More specifically, this court stated that the evidence adduced at trial was sufficient to establish that the petitioner shot the victim. [Id., 270].

"In 2004, the petitioner filed his first petition for a writ of habeas corpus in which he raised fourteen claims.[3] That petition was denied by the habeas court. The petitioner then appealed following the court's denial of his

[2] The petitioner did not challenge the sufficiency of the evidence supporting his conviction of the other crimes.

[3] "The petitioner amended his first petition several times, finally claiming that (1) there was insufficient evidence to prove beyond a reasonable doubt the element of intent for assault in the first degree, (2) the prosecution knowingly elicited perjured testimony during the criminal trial, (3) prosecutorial impropriety transpired, (4) his arrest warrant contained false statements and material omissions in violation of *Franks* v. *Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), (5) the trial court impermissibly amended the information on the charge of assault in the first degree during its instruction to the jury, (6) his arrest was illegal on the charge of attempt to commit assault in the first degree, (7) the trial court improperly instructed the jury on the element of intent, (8) the conviction of assault in the first degree and risk of injury to a child is legally inconsistent, (9) the conviction of assault in the first degree and attempt to commit assault in the first degree violates the constitutional protection against double jeopardy, (10) § 53a-59 is unconstitutionally vague, (11) . . . § 53-21 is unconstitutionally vague, (12) he received ineffective assistance of trial counsel, (13) he received ineffective assistance of appellate counsel and (14) he was actually innocent of the crime of assault in the first degree. See *Carter* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-04-4000182-S (May 4, 2006)." *Carter* v. *Commissioner of Correction*, 133 Conn. App. 387, 389 n.3, 35 A.3d 1088, cert. denied, 307 Conn. 901, 53 A.3d 217 (2012).

petition for certification to appeal, claiming that the court abused its discretion in denying his petition for certification and in denying his petition as unfounded. This court dismissed that appeal in *Carter* v. *Commissioner of Correction*, 106 Conn. App. 464, 942 A.2d 494, cert. denied, 288 Conn. 906, 953 A.2d 651 (2008).

"The petitioner then filed a second petition for a writ of habeas corpus on March 6, 2007. In a supplemental memorandum attached to his petition, the petitioner raised four claims.[4] The court summarily dismissed the petitioner's second petition on its own motion, without an evidentiary hearing and before the respondent, the [C]ommissioner of [C]orrection, had filed her reply. The court stated in its judgment of dismissal that [a]fter having reviewed the . . . petition, the court finds the petition to be res judicata and dismisses the petition pursuant to Practice Book § 23-29 (3). . . . *Carter* v. *Commissioner of Correction*, 109 Conn. App. 300, 304, 950 A.2d 619 (2008). The court subsequently denied the petition for certification to appeal. On appeal, this court concluded that the record was inadequate to review the petitioner's claim and, therefore, dismissed the appeal. Id., 307.

"In October, 2007, the petitioner initiated a third habeas action in which he alleged that the state had withheld exculpatory evidence [specifically, ballistics evidence pertaining to a nine page report prepared by

[4] "In his second petition for a writ of habeas corpus, the petitioner claimed that (1) the prosecuting authority deliberately deceived the court and jurors in order to obtain his conviction, (2) the state's argument on direct appeal deliberately deceived the Appellate Court in order to have his conviction affirmed, (3) his trial counsel rendered ineffective assistance when he failed to call certain adverse witnesses and (4) his trial counsel rendered ineffective assistance when he failed to object to the prosecutor's false or misleading argument to the jury. *Carter* v. *Commissioner of Correction*, [109 Conn. App. 300, 304 n.4, 950 A.2d 619 (2008)]." *Carter* v. *Commissioner of Correction*, 133 Conn. App. 387, 390 n.4, 35 A.3d 1088, cert. denied, 307 Conn. 901, 53 A.3d 217 (2012).

the investigating officer in which he misidentifies an item of evidence marked E-9 as a .45 caliber shell casing] in violation of *Brady* v. *Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). After a full hearing, the habeas court concluded that there was no *Brady* violation and denied the petition. See *Carter* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-07-4002005 (January 22, 2010). The petitioner then appealed following the court's denial of his petition for certification to appeal, and this court subsequently dismissed that appeal in *Carter* v. *Commissioner of Correction*, 131 Conn. App. 905, 28 A.3d 360 (2011).

"On November 21, 2007, the petitioner filed a motion to correct an illegal sentence. In his motion, he argued that the trial court, in rendering its sentence, improperly considered an argument the prosecutor had made to the jury during closing argument that certain evidence suggested that the petitioner had fired a nine millimeter firearm. See *State* v. *Carter*, 122 Conn. App. 527, 529–30, 998 A.2d 1217 (2010), cert. denied, 300 Conn. 915, 13 A.3d 1104 (2011). The trial court denied that motion and, after reviewing the record, this court affirmed the judgment, concluding that there was nothing in the record to indicate that the court relied on any misstated or inaccurate information in sentencing the petitioner. Id., 532.

"On January 29, 2010, the petitioner initiated [his fourth] habeas action." (Footnote added; footnotes in original; internal quotation marks omitted.) *Carter* v. *Commissioner of Correction*, 133 Conn. App. 387, 388–91, 35 A.3d 1088, cert. denied, 307 Conn. 901, 53 A.3d 217 (2012). By an amended petition dated March 1, 2010, the petitioner alleged that his trial counsel rendered ineffective assistance during sentencing by failing to preserve his right of sentence review. Id., 391. He also asserted three arguments that the evidence was insufficient to sustain

his conviction. Id. The habeas court dismissed the petition on the ground that his claims were successive and barred by res judicata. Id., 391–92. The petitioner appealed the dismissal of his habeas petition on the ground that his claims were neither successive nor barred by res judicata because the petition sought a different form of relief than his previous petitions. Id., 392. He further contended that his claims were not barred by the doctrine of res judicata because they were not actually litigated in his prior petitions. Id. This court agreed that the petitioner's sufficiency claims were barred by res judicata; id., 395; but that his ineffective assistance claim regarding his counsel's failure to preserve his right to sentence review was not barred by res judicata because the claim had not been previously litigated. Id., 396–97. Accordingly, this court reversed the judgment of the habeas court as to the petitioner's claim of ineffective assistance of counsel and remanded the case to the habeas court for further proceedings on that claim.[5] Id., 397.

In his previous habeas actions, the petitioner appeared as a self-represented party. In this habeas action—the petitioner's fifth—he was represented by counsel and alleged, by way of his petition dated May 20, 2019, that his trial counsel was ineffective in failing to perfect a third-party culpability defense and failing to formulate an effective theory of defense in response to the state's ballistic evidence. The petitioner also alleged that his right to due process was violated when the state perpetrated "a fraud upon the court" by allegedly altering certain evidence, specifically, a diagram pertaining to the ballistics evidence that was admitted at trial.[6] In

[5] Subsequently, the petitioner's sentence was reviewed by the sentence review division of the Superior Court, which concluded that the petitioner's sentence was appropriate and not disproportionate. *State* v. *Carter*, Superior Court, judicial district of Hartford, Docket No. HHD-CR-01-553550 (June 24, 2014).

[6] In his third amended petition, the petitioner also alleged that his trial counsel was ineffective in not obtaining presentence jail credit for him. He subsequently withdrew this claim.

response, the respondent alleged that the petition was successive pursuant to Practice Book § 23-29 (3) and that the claims raised therein were barred by res judicata or collateral estoppel because they presented the same legal grounds as the petitioner's previously litigated actions, and the petitioner had not shown that any of the claims were based on facts that were not reasonably available to him when the prior habeas actions were filed.

On May 22, 2019, the habeas court, sua sponte, ordered a hearing on whether the petition should be dismissed as successive and whether the petitioner's claims were barred by res judicata or collateral estoppel. Both parties filed memoranda of law in support of their respective positions, and the court held a hearing on June 18, 2019, during which the petitioner argued that, although he previously had litigated claims of ineffective assistance of his trial counsel, the factual bases of those claims were different. Furthermore, he claimed that he previously had been unable to discover the facts underlying his current claims because he represented himself in those actions. He also argued that his due process claim was premised on a legal ground that he had not asserted previously.

The court dismissed the petitioner's claims orally from the bench, expressly rejecting his contention that he should be absolved from the legal requirements prohibiting successive petitions on the ground that he represented himself. The court found that the petitioner had made "a conscious choice" to represent himself in his prior habeas actions and held that his status as a self-represented party did not allow him to engage in "piecemeal litigation" by asserting new factual bases for his ineffective assistance of counsel claims. The court concluded that, because the facts underlying the petitioner's current claims of ineffective assistance of counsel could have been discovered through reasonable

diligence in the petitioner's prior habeas actions, those claims were barred by res judicata. The court also found that the petitioner's claim that his right to due process was violated because a diagram admitted into evidence was fraudulently altered previously had been litigated and was, therefore, barred by res judicata and/or collateral estoppel. Accordingly, the court dismissed in part the petition for writ of habeas corpus and thereafter denied certification to appeal from that judgment. This appeal followed.

"Faced with a habeas court's denial of a petition for certification to appeal, a petitioner can obtain appellate review of the dismissal of his petition for habeas corpus only by satisfying the two-pronged test enunciated by our Supreme Court in *Simms* v. *Warden*, 229 Conn. 178, 640 A.2d 601 (1994), and adopted in *Simms* v. *Warden*, 230 Conn. 608, 612, 646 A.2d 126 (1994). First, [the petitioner] must demonstrate that the denial of his petition for certification constituted an abuse of discretion. . . . Second, if the petitioner can show an abuse of discretion, he must then prove that the decision of the habeas court should be reversed on the merits. . . . To prove that the denial of his petition for certification to appeal constituted an abuse of discretion, the petitioner must demonstrate that the [resolution of the underlying claim involves issues that] are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further. . . .

"In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of the petitioner's underlying claims to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous." (Internal quotation marks omitted.) *Haywood* v. *Commissioner of Correc-*

tion, 194 Conn. App. 757, 763–64, 222 A.3d 545 (2019), cert. denied, 335 Conn. 914, 229 A.3d 729 (2020).

"The conclusions reached by the [habeas] court in its decision to dismiss [a] habeas petition are matters of law, subject to plenary review. . . . [When] the legal conclusions of the court are challenged, [the reviewing court] must determine whether they are legally and logically correct . . . and whether they find support in the facts that appear in the record." (Internal quotation marks omitted.) *Johnson* v. *Commissioner of Correction*, 285 Conn. 556, 566, 941 A.2d 248 (2008). "To the extent that factual findings are challenged, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous . . . ." (Internal quotation marks omitted.) *Grant* v. *Commissioner of Correction*, 121 Conn. App. 295, 298, 995 A.2d 641, cert. denied, 297 Conn. 920, 996 A.2d 1192 (2010). With these principles in mind, we address the petitioner's claims in turn.

I

The petitioner first claims that the habeas court erred in concluding that his ineffective assistance of counsel claims were barred by the doctrine of res judicata. He argues that they are not barred by res judicata because they are based on facts pertaining to a third-party culpability claim that he could not have discovered previously because he was not represented by counsel in his prior habeas actions.[7] We are not persuaded.

"Our courts have repeatedly applied the doctrine of res judicata to claims duplicated in successive habeas petitions filed by the same petitioner. . . . In fact, the ability to dismiss a petition [if] it presents the same ground as a prior petition previously denied and fails

[7] The petitioner does not specify the new facts that he had been unable to ascertain without counsel.

to state new facts or to proffer new evidence not reasonably available at the time of the prior petition is memorialized in Practice Book § 23-29 (3). . . .

"Pursuant to Practice Book § 23-29 (3), [i]f a previous [petition] brought on the same grounds was denied, the pending [petition] may be dismissed without hearing, unless it states new facts or proffers new evidence not reasonably available at the previous hearing. . . . [A] petitioner may bring successive petitions on the same legal grounds if the petitions seek different relief. . . . But where successive petitions are premised on the same legal grounds and seek the same relief, the second petition will not survive a motion to dismiss unless the petition is supported by allegations and facts not reasonably available to the petitioner at the time of the original petition." (Citations omitted; internal quotation marks omitted.) *Gudino* v. *Commissioner of Correction*, 191 Conn. App. 263, 270–71, 214 A.3d 383, cert. denied, 333 Conn. 924, 218 A.3d 67 (2019).

This court has held that, "in the absence of allegations and facts not reasonably available to the petitioner at the time of the original petition or a claim for different relief, a subsequent claim of ineffective assistance directed against the same counsel is subject to dismissal as improperly successive. . . . Identical grounds may be proven by different factual allegations, supported by different legal arguments or articulated in different language. . . . However they are proved, the grounds that the petitioner asserted are identical in that each alleges ineffective assistance of counsel, and, therefore, the habeas petition was properly dismissed." (Citation omitted; internal quotation marks omitted.) Id., 272.

Here, the petitioner concedes that his claims of ineffective assistance of counsel have been litigated. He nevertheless contends that they are not barred by res judicata because, as a self-represented litigant, he

lacked the skill and expertise to ascertain the facts underlying his present claims of ineffective assistance. In other words, he now claims that the facts underlying his present claims were based on facts or evidence not reasonably available to him during prior proceedings because, at the time of those proceedings, he was a self-represented party, and now, with counsel, he is aware of the facts or evidence and wishes to raise them despite having litigated these claims previously.

In support of his argument, the petitioner relies on the following language in *Gaskin* v. *Commissioner of Correction*, 183 Conn. App. 496, 520, 193 A.3d 625 (2018): "[W]e cannot expect an incarcerated individual such as the petitioner, after appellate counsel has been permitted to withdraw by the Superior Court, to then be able to develop new claims from the confines of prison. Such expectations defy reason." That reasoning was applied, however, in the procedural context presented in *Gaskin* where the court permitted the petitioner's counsel to withdraw from his case, leaving the petitioner with no choice but to represent himself. This case is distinguishable from *Gaskin* because the petitioner here chose to represent himself, repeatedly and consistently, over the course of almost two decades, and in numerous proceedings, since the date of his conviction.

This court has explained: "Although we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law. . . . There, however, comes a point at which granting *too much* latitude to self-represented parties can simply be unfair to their adversaries." (Citation omitted; internal quotation marks omitted.) *Woods* v. *Commissioner of Correction*, 197 Conn. App. 597, 608–609, 232 A.3d 63, cert. granted, 335 Conn. 938, A.3d (2020).

It is clear from the extensive history of this case, that the petitioner has been afforded several opportunities to fully and fairly challenge his conviction and that he has been given significant latitude to do so as a self-represented litigant. In particular, he freely admits that he has previously litigated his ineffective assistance of counsel claims. He also all but concedes that, if he were represented by counsel when he previously pursued those claims, his present claims would be barred by res judicata. He claims, however, that we essentially should fashion a new rule that would allow a petitioner who represented himself in one or more habeas cases to reassert claims in a later habeas case in which he is represented by counsel, because he was not able effectively to litigate the claims in the earlier cases because he is not a trained lawyer. Such a rule would permit a petitioner to manipulate the habeas corpus process and would turn the statutory right to counsel in habeas proceedings on its head. The petitioner chose to represent himself through all of his prior postconviction proceedings. He chose not to exercise his statutory right to counsel. To countenance his argument that he has been unable to ascertain the facts underlying his present claims because he chose to represent himself would be contrary to our jurisprudence and fundamentally unfair to the respondent and others who have an interest in the finality of the petitioner's conviction. We therefore reject the petitioner's argument and conclude that the habeas court properly dismissed the petitioner's ineffective assistance of counsel claims as successive.

II

The defendant also claims that the habeas court erred in concluding that his due process claim was barred by the doctrine of collateral estoppel.[8] We disagree.

[8] The habeas court concluded that the petitioner's due process claim was barred by res judicata and/or collateral estoppel. The petitioner has challenged the applicability of both of those doctrines. Because we conclude

The same policy considerations that we have relied on to circumscribe the application of the doctrine of res judicata to habeas proceedings guide us in applying the doctrine of collateral estoppel in this context. "The common-law doctrine of collateral estoppel, or issue preclusion, embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality. . . . Collateral estoppel . . . is that aspect of res judicata [that] prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim. . . . For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in the first action. It also must have been actually decided and the decision must have been necessary to the judgment. . . .

"An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined. . . . An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered. . . . [C]ollateral estoppel [is] based on the public policy that a party should not be able to relitigate a matter which it already has had an opportunity to litigate. . . . Stability in judgments grants to parties and others the certainty in the management of their affairs which results when a controversy is finally laid to rest." (Citation omitted; internal quotation marks omitted.) *Johnson* v. *Commissioner of Correction*, 168 Conn. App. 294, 310–11, 145 A.3d 416, cert. denied, 323 Conn. 937, 151 A.3d 385 (2016).

The petitioner claims that his right to due process was violated because, at trial, a diagram portraying the state's preliminary theory regarding certain ballistics

that the petitioner's claim is barred by collateral estoppel, we need not address his res judicata argument as it relates to this claim.

evidence was admitted into evidence without a label identifying it as having been prepared by the Hartford Police Department. The petitioner argues that the label was removed by the state prior to the diagram's admission into evidence, constituting a fraud on the court and a violation of his constitutional right to due process.[9] The integrity of the state's ballistics evidence has been the subject of extensive postconviction litigation by the petitioner.

Most recently, the petitioner filed a motion to set aside his conviction, claiming " 'after-discovered fraud on the court,' " involving the same ballistics report at issue in this case. *State* v. *Carter*, Superior Court, judicial district of Hartford, Docket No. HHD-CR-01-553550 (October 30, 2017). The trial court, *Schuman*, *J.*, concluded, inter alia, that the petitioner's claim was barred by collateral estoppel and dismissed his motion because the petitioner had previously raised the same issue in a previously filed motion to open and set aside his judgment of conviction. Id. Although the petitioner filed an appeal from Judge Schuman's decision, he did so on other grounds and did not challenge Judge Schuman's collateral estoppel determination on appeal. In affirming that judgment, this court recounted: "On June 20, 2017, the [petitioner] filed a motion to set aside the judgment. Therein, the [petitioner] claimed 'after-discovered fraud on the court.' . . . In his memorandum of law in support of the operative motion, the [petitioner] expounded 'that the prosecution altered, concealed and/or removed from the trial proceedings documents prepared by the Hartford Police Department with purpose to impair its verity and

[9] We note that the diagram at issue, which was disclosed to the petitioner's trial counsel in advance of trial, was admitted into evidence by the petitioner's trial counsel. His trial counsel, therefore, was in possession of the diagram prior to offering it as a trial exhibit and was able to observe that there was no label on the diagram. His due process claim thus stems from a document that his own counsel presented to the jury.

availability, and that the prosecution passed the altered document off to the defense, representing it to be "[simply] a distance" measurement, knowing it to be false.' On August 3, 2017, the state moved to dismiss the operative motion, arguing that the trial court lacked subject matter jurisdiction. The trial court . . . granted the state's motion on October 30, 2017. . . .

"In the court's ruling, it detailed part of the [petitioner's] 'voluminous history' of postconviction litigation, including a motion to open and set aside the judgment of conviction filed in 2010. The [petitioner] based his 2010 motion on 'fraud concerning ballistics evidence and reports prepared by the Hartford Police Department about that evidence.' . . . That motion was denied by the court, *Gold*, *J.*, on two grounds: (1) 'the motion was filed well beyond the four month period after the entry of the criminal conviction and judgment'; and (2) 'the motion was barred by collateral estoppel in that Judge Nazzaro had rejected the same claim in the [petitioner's] third habeas petition.' Applying this history to the operative motion, Judge Schuman concluded that the [petitioner's] claim bore 'only semantic differences from the [petitioner's] claim . . . raised in [the 2010] motion to open.' As that claim had already been considered and rejected multiple times before, most recently by Judge Gold and this court, the trial court concluded that it 'necessarily must grant the state's motion to dismiss . . . .' " (Footnotes omitted.) *State* v. *Carter*, 194 Conn. App. 202, 204–205, 220 A.3d 882 (2019).[10]

[10] In dismissing the petitioner's motion to set aside the judgment, Judge Schuman also noted: "The [petitioner] makes no clear claim or allegation in his motion papers that the conduct of the prosecution in this case was, at the very least, directed at the court itself and, in fact, deceived the court. The [petitioner] has instead merely attempted to fit his previous claim that there was fraud concerning the Hartford police ballistics reports into a doctrine that might possibly circumvent the previous rulings against him. There is no such fit in this case."

In the present case, the petitioner claims that the absence of the label indicating that the diagram had been created by the Hartford Police Department caused the diagram to "[lose] its effectiveness" because it failed to depict the initial theory that the victim was injured by a bullet from a gun that did not belong to the petitioner. He claims that the state perpetrated a fraud on the trial court because it removed the label prior to giving it to his counsel. Although the petitioner has reworded the nature of his claim and the legal theory on which it is based, he cannot escape the fact that he previously has litigated the issue of whether the diagram was the product of fraud. Because the petitioner litigated issues regarding the ballistics evidence in his third habeas action and his two subsequent motions to open and set aside his conviction, the habeas court in this case properly concluded that the issue of fraud as to the diagram pertaining to the ballistics evidence, as set forth in this fifth habeas petition, is barred by collateral estoppel.

On the basis of our analysis and conclusions in parts I and II of this opinion, we conclude that the petitioner has failed to prove that the resolution of the underlying claims involves issues that are debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions are adequate to deserve encouragement to proceed further, and, therefore, the habeas court did not abuse its discretion in denying the petition for certification to appeal.

The appeal is dismissed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* JAMES J. CICARELLA (AC 42788)

Prescott, Moll and Alexander, Js.

Syllabus

Convicted, on a conditional plea of nolo contendere, of the crime of larceny in the first degree, the defendant appealed to this court. He claimed that the trial court improperly denied his motion to dismiss, which alleged that the prosecution had been instituted improperly. *Held* that, because the defendant failed to challenge all of the court's independent bases for denying his motion to dismiss, the court was unable to provide the defendant with any practical relief and, therefore, the appeal was moot and the court was without subject matter jurisdiction; accordingly, the appeal was dismissed.

Argued January 19—officially released April 13, 2021

Procedural History

Information charging the defendant with the crime of larceny in the first degree, brought to the Superior Court in the judicial district of New Haven, geographical area number twenty-three, where the court, *Alander*, *J.*, denied the defendant's motion to dismiss; thereafter, the defendant was presented to the court, *Clifford*, *J.*, on a conditional plea of nolo contendere; judgment of conviction in accordance with the plea, from which the defendant appealed to this court. *Appeal dismissed.*

David V. DeRosa, for the appellant (defendant).

Timothy J. Sugrue, assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, state's attorney, and *Michael R. Denison*, assistant state's attorney, for the appellee (state).

Opinion

PER CURIAM. The defendant, James J. Cicarella, appeals from the judgment of conviction rendered by the trial court following his conditional plea of nolo

contendere[1] to larceny in the first degree in violation of General Statutes § 53a-122 (a) (2). On appeal, the defendant claims that the court improperly denied his motion to dismiss filed pursuant to Practice Book § 41-8 (1)[2] in which he claimed that the Madison Police Department did not have jurisdiction to investigate and arrest him because the alleged crime occurred in Wallingford. The state disagrees and, in addition, contends that the appeal is moot. The state argues that the defendant failed to challenge all of the bases for denying the motion set forth in the court's memorandum of decision. We agree with the state, and, because we cannot afford the defendant any practical relief, we dismiss his appeal as moot.

The following facts, as set forth in the trial court's memorandum of decision, and procedural history are necessary for the resolution of this appeal. In an affidavit attached to an application for an arrest warrant, Christopher Sudock, a Madison police officer, asserted that the defendant, a resident of Madison, participated in a fraudulent scheme resulting in the theft of $578,466 from the victim, Dorothy Minervino. Specifically, the defendant, who had performed maintenance at the victim's residence in Wallingford, falsely informed her that

[1] General Statutes § 54-94a provides in relevant part: "When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's . . . motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law provided a trial court has determined that a ruling on such . . . motion to dismiss would be dispositive of the case. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied . . . the motion to dismiss. A plea of nolo contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution."

[2] Practice Book § 41-8 provides in relevant part: "The following defenses or objections, if capable of determination without a trial of the general issue, shall, if made prior to trial, be raised by a motion to dismiss the information: (1) Defects in the institution of the prosecution . . . ."

he had been diagnosed with a life-threatening illness. At the defendant's request, the victim agreed to give the defendant money to pay for his medical insurance and purported medical procedures. The victim deposited $535,000 into a joint bank account that she had opened with the defendant, with the understanding that the money would be used for these medical expenses. She also deposited $43,000 into the defendant's personal account for that same purpose.

Sudock's affidavit further alleged that the defendant withdrew funds from these accounts and falsely represented to the victim that the money had been used for his medical expenses. The defendant instead used the money to purchase, inter alia, a house in Madison. The defendant was charged with larceny in the first degree, and an arrest warrant was issued on August 1, 2016.

On December 17, 2018, the defendant moved to dismiss the information, arguing that the prosecution had been instituted improperly. The defendant claimed that "the crime(s) alleged in the warrant submitted by the Madison Police Department and the state's long form information were committed in another jurisdiction, Wallingford. Consequently, the defendant was not properly under the jurisdiction of the Madison Police Department inasmuch as no crime has been alleged to have been committed in Madison and as a result, the court does not have jurisdiction." The state countered that larceny constituted a continuing crime and that the subsequent involvement of, and the steps taken by, the state's attorney's office rendered the arrest and prosecution of the defendant proper.

The court, *Alander*, *J.*, held a hearing on January 8, 2019, and issued a memorandum of decision two days later. In denying the defendant's motion to dismiss, the court set forth two bases for its decision. First, the court, citing *State* v. *Benson*, 153 Conn. 209, 218, 214

A.2d 903 (1965), agreed with the state's argument that larceny constituted a continuing crime and rejected the defendant's efforts to draw a distinction between the theft of physical property and that of money. Second, citing *State* v. *Fleming*, 198 Conn. 255, 262–63, 502 A.2d 886, cert. denied, 475 U.S. 1143, 106 S. Ct. 1797, 90 L. Ed. 2d 342 (1986), the court determined that "[a]ny investigation by the Madison police of a crime committed outside their municipality does not invalidate the defendant's prosecution."

On January 16, 2019, the defendant entered a conditional plea of nolo contendere to the charge of larceny in the first degree, which the court, *Clifford*, *J.*, accepted. Pursuant to General Statutes § 54-94a, the court concluded that a ruling in the defendant's favor on the motion to dismiss would be dispositive of the case. See generally *State* v. *Cervantes*, 172 Conn. App. 74, 78, 158 A.3d 430, cert. denied, 325 Conn. 927, 169 A.3d 231 (2017). On April 2, 2019, the court imposed a sentence of twelve years of incarceration, execution suspended after six years, and five years of probation. This appeal followed.

On appeal, the defendant claims that the court improperly denied his motion to dismiss the information charging him with the crime of larceny in the first degree. In support of this claim, he first contends that the municipal police generally may operate only within "their territorial jurisdiction." The defendant then argues that the court improperly concluded that the larceny of money, as compared to that of "physical personal property," constituted a continuing crime.[3] As

[3] Specifically, the defendant set forth the following: "There is, however, a meaningful distinction in larceny by false pretenses with regards to money and larceny of personal property as to the impact that [the crime] has on [municipal] power and jurisdiction as defined by the Connecticut legislature. First, the whole concept of the municipal police jurisdiction as set forth in statute would suddenly be meaningless when money is involved because a complainant could trace any place where the funds were spent by [the

a second argument, the defendant maintains that "[t]he Wallingford police and not the Madison police are the only authority that have the power to arrest the defendant." Finally, his brief concludes with various policy arguments as to why we should reverse the decision of the trial court denying his motion to dismiss.

Absent from the defendant's appellate brief, however, is a challenge to the second basis relied on by the trial court in denying the motion to dismiss, namely, that, pursuant to *State* v. *Fleming*, supra, 198 Conn. 255, an illegal arrest does not invalidate his prosecution and subsequent conviction. In *Fleming*, our Supreme Court stated: "The relationship between an illegal arrest and a subsequent prosecution under federal constitutional law is well settled. In an unbroken line of cases dating back to 1886, the federal rule has been that an illegal arrest will not bar a subsequent prosecution or void a resulting conviction." Id., 259; see also *State* v. *Johnson*, 227 Conn. 534, 539–40, 630 A.2d 1059 (1993); *State* v. *Bagnaschi*, 180 Conn. App. 835, 857, 184 A.3d 1234, cert. denied, 329 Conn. 912, 186 A.3d 1170 (2018).[4] The defendant's failure to challenge this independent basis for the denial of his motion to dismiss renders his appeal moot, as we cannot afford him any practical relief.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates

person alleged to have committed the larceny], and convince that police department that . . . he should be arrested and incarcerated for a larceny."

[4] In *State* v. *Ostroski*, 201 Conn. 534, 555, 518 A.2d 915 (1986), our Supreme Court noted: "We specifically excluded from our holding [in *State* v. *Fleming*, supra, 198 Conn. 262–63] . . . cases . . . where the fairness of the defendant's trial is compromised by the circumstances of his arrest. . . . [A]n illegal arrest may impair the fairness of a subsequent prosecution only where evidence obtained as a direct consequence of that arrest is admitted against the defendant at trial." (Citation omitted; internal quotation marks omitted.) See also *State* v. *Ryerson*, 201 Conn. 333, 338, 514 A.2d 337 (1986). This exception to the rule established in *State* v. *Fleming*, supra, 262–63, does not apply in the present case.

[this] court's subject matter jurisdiction . . . . The fundamental principles underpinning the mootness doctrine are well settled. We begin with the four part test for justiciability . . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by the judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant. . . .

"[I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way. . . .

"Where an appellant fails to challenge all bases for a trial court's adverse ruling on his claim, even if this court were to agree with the appellant on the issues that he does raise, we still would not be able to provide [him] any relief in light of the binding adverse finding[s] [not raised] with respect to those claims. . . . Therefore, when an appellant challenges a trial court's adverse ruling, but does not challenge all independent bases for that ruling, the appeal is moot." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Lester*, 324 Conn. 519, 526–27, 153 A.3d 647 (2017); see also *Sobel* v. *Commissioner of Revenue Services*, 333 Conn. 712, 716–17, 218 A.3d 581 (2019); *In re Phoenix A.*, 202 Conn. App. 827, 838–40, A.3d (2021); *State* v. *Carter*, 194 Conn. App. 202, 206–208, 220 A.3d 882 (2019); *State* v. *Holley*, 174 Conn. App. 488, 503–507, 167 A.3d 1000, cert. denied,

327 Conn. 907, 170 A.3d 3 (2017), cert. denied, U.S. , 138 S. Ct. 1012, 200 L. Ed. 2d 275 (2018).

Here, the defendant failed to challenge the court's independent basis for denying his motion to dismiss that, pursuant to *State* v. *Fleming*, supra, 198 Conn. 255, an illegal arrest does not invalidate his prosecution and subsequent conviction.[5] In his brief, the defendant first argued that the court erred in its finding that the Madison Police Department had the authority to investigate this crime and in its determination that larceny of money, as opposed to larceny of physical property, is a continuing crime such that each municipality where the money is spent has jurisdiction to arrest the defendant. Second, he contended that, even if the investigation by the Madison Police Department was proper, the correct course of action was to dismiss the case and, "if the [state's] attorney in coordination with [the] Wallingford Police Department [commences] a new case and it is within the statute of limitations, then proceed on the new arrest." Accordingly, as a result of the defendant's failure to challenge all of the court's bases for denying his motion to dismiss, we cannot afford him any practical relief, rendering this appeal moot and leaving this court without subject matter jurisdiction.

The appeal is dismissed.

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[5] At oral argument before this court, the defendant claimed, for the first time, that the trial court's reliance on *State* v. *Fleming*, supra, 198 Conn. App. 255, was misplaced. "Appellate courts generally do not consider claims raised for the first time at oral argument. See *State* v. *Wright*, 197 Conn. 588, 595, 500 A.2d 547 (1985); see also *State* v. *Holmes*, 70 Conn. App. 4, 5 n.2, 796 A.2d 561 (2002)." *State* v. *Marcelino S.*, 118 Conn. App. 589, 592 n.4, 984 A.2d 1148 (2009), cert. denied, 295 Conn. 904, 988 A.2d 879 (2010); see also *State* v. *Butler*, 296 Conn. 62, 70 n.10, 993 A.2d 970 (2010) (appellate claims must be briefed adequately and cannot be raised for first time at oral argument).

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Habeas corpus; claim that habeas court abused its discretion in denying petition for certification to appeal; whether habeas court properly dismissed fifth petition for writ of habeas corpus as improper successive petition pursuant to applicable rule of practice (§ 23-29 (3)); claim that habeas court erred in concluding that petitioner's ineffective assistance of counsel claims were barred by doctrine of res judicata; whether facts underlying petitioner's present claims were not reasonably available to petitioner because, as self-represented litigant in his previous habeas actions, he lacked skill and expertise to ascertain them; claim that habeas court erred in concluding that petitioner's due process claim was barred by doctrine of collateral estoppel; whether relevant issue had been previously litigated.

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Derblom *v.* Archdiocese of Hartford 197
Motion to dismiss; standing; constructive trust; whether trial court properly granted defendant's motion to dismiss for lack of standing; whether trial court erred in construing bequest as outright gift rather than charitable trust; whether trial court erred in concluding that special interest exception to rule that attorney general has exclusive authority to bring action to enforce charitable gifts is limited to actions involving charitable trusts.

Disciplinary Counsel *v.* Cannatelli 236
Attorney misconduct; presentment; appeal from judgment of trial court suspending respondent attorney from practice of law; claim that trial court erred in denying respondent's postjudgment motion to dismiss for lack of subject matter jurisdiction; claim that trial court lacked jurisdiction because hearing on respondent's presentment was not held within sixty days of filing thereof, pursuant to applicable rule of practice (§ 2-47 (a)).

Donald G. *v.* Commissioner of Correction 58
Habeas corpus; whether trial counsel rendered ineffective assistance by failing to question witnesses about petitioner's attendance at event where some of his alleged criminal conduct occurred; whether petitioner was prejudiced by trial counsel's reference to complainant as victim or by trial counsel's failure to object or to

request curative instruction when state made same reference; whether trial counsel rendered ineffective assistance by failing to investigate claim of uncharged misconduct.

Estate of James E. Fry *v.* Lobbruzzo (Memorandum Decision) 901

Georges *v.* Commissioner of Correction 639

Habeas corpus; whether habeas court improperly concluded that petitioner had not established that trial counsel rendered ineffective assistance in advising him of immigration consequences of plea of nolo contendere; claim that counsel rendered deficient performance by failing to advise petitioner that plea of nolo contendere would result in certain deportation because conviction of reckless manslaughter in first degree in violation of statute (§ 53a-55 (a) (3)) constituted crime of moral turpitude.

Giordano *v.* Giordano 652

Dissolution of marriage; whether trial court properly granted postjudgment motion for contempt; claim that trial court's finding that defendant had wilfully violated court order was erroneous; claim that trial court's determination that defendant had ability to pay appellate attorney's fees of plaintiff was erroneous; claim that trial court erred in awarding plaintiff attorney's fees where plaintiff had ability to pay such fees.

Houghtaling *v.* Commissioner of Correction 246

Habeas corpus; claim that trial counsel provided ineffective assistance during litigation of motion to suppress evidence at criminal trial; whether trial counsel's failure to call witness at hearing on motion to suppress fell below objective standard of reasonableness; claim that trial counsel rendered deficient performance by relying on Baker *v.* Carr *(369 U.S. 186), rather than* Katz *v.* United States *(389 U.S. 347), in memorandum in support of motion to suppress; claim that habeas court deprived petitioner of state and federal constitutional rights to due process of law by analyzing, in its memorandum of decision, exhibit that had been admitted as full exhibit at habeas trial as exhibit admitted only for limited purpose; whether habeas court erroneously excluded certain evidence.*

In re Kiara Liz V.. 613

Termination of parental rights; unpreserved claim that trial court denied respondent father's right to due process when it denied counsel's request for continuance on basis of father's absence from court; whether trial court erred in its determination of minor child's best interest in terminating father's parental rights.

In re Riley B.. 627

Termination of parental rights; reviewability of claim that trial court violated respondent mother's right to substantive due process because there was no compelling reason to sever her liberty interest in integrity of her family while parties waited to learn whether guardianship of minor child could be transferred to maternal relative in another state.

Jacques *v.* Commissioner of Energy & Environmental Protection 419

Administrative appeal; injunction; motion to dismiss; whether trial court erred in determining that plaintiff failed to allege facts sufficient to establish standing under applicable statute (§ 22a-16); whether trial court applied proper rule of law when construing factual allegations in complaint; whether trial court erred in determining that allegations of complaint did not come within exception to sovereign immunity for alleged violations of constitutional rights; whether trial court erred in holding that allegations of complaint did not come within exception to sovereign immunity for substantial allegation of wrongful conduct to promote illegal purpose in excess of state officer's statutory authority; whether trial court erred when it ruled that scoping process/review of environmental impact evaluation was not proceeding for purposes of intervention under applicable statute (§ 22a-19).

Johnson *v.* Johnson 405

Dissolution of marriage; claim that trial court committed plain error by imposing its own findings and interpretation of parties' separation agreement; claim that trial court acted in manner that gave rise to appearance of lack of impartiality; claim that trial court abused its discretion when it issued contradictory findings without changing its modified orders and issued orders that were beyond statutory time frame that defendant did not identify in brief; claim that trial court abused its discretion in finding defendant in contempt.

Lindquist *v.* Freedom of Information Commission 512

Administrative appeal; Freedom of Information Act (§ 1-200 et seq.); whether trial court properly concluded that Freedom of Information Commission did not abuse

its discretion in finding that redacted records were exempt from disclosure under statute (§ 1-210 (b) (1)); whether trial court abused its discretion when it dismissed plaintiff's appeal, concluding that commission had correctly applied § 1-210 (e) (1) to final comments and ratings at issue; whether final version of comments and ratings served as recommendations for purpose of dean's review of faculty member's rating.

Luth *v.* OEM Controls, Inc. 673

Termination of employment; gender discrimination; retaliatory discharge; whether trial court erred in granting defendant's motion for summary judgment; adoption of trial court's memorandum of decision as proper statement and analysis of applicable law on issues.

Mecca *v.* Mecca 541

Dissolution of marriage; motion to open; claim that trial court applied incorrect legal standard with respect to defendant's motion to open; whether trial court assigned duty of due diligence to defendant; whether trial court abused its discretion in finding that there was no fraud on part of plaintiff; claim that trial court abused its discretion by failing to consider pattern of fraudulent conduct on part of plaintiff.

M. S. *v.* P. S. 377

Dissolution of marriage; whether trial court abused its discretion in fashioning support orders that totaled approximately 90 percent of defendant's net weekly income; whether trial court abused its discretion in entering relocation order allowing plaintiff to move across state lines within thirty-five miles of her current residence; whether trial court abused its discretion in amount of attorney's fees pendente lite it awarded to plaintiff.

Mundle *v.* iCare Management, LLC (See Peterson *v.* iCare Management, LLC) 777

Osbourne *v.* Commissioner of Correction (Memorandum Decision) 902

Pascola-Milton *v.* Millard 172

Negligence; underinsured motorist benefits; arbitration; motion for summary judgment; whether trial court erred in denying plaintiff's demand for trial de novo following voluntary arbitration; whether plaintiff's claims were barred by two year statute of limitations (§ 52-584).

Peterson *v.* iCare Management, LLC 777

Private nuisance; recklessness; declaratory judgment; res judicata; collateral estoppel; claim that trial court erred in denying defendants' motions for summary judgment; whether plaintiffs' claims were barred by res judicata; whether trial court correctly concluded that elements and analysis of tort claims differed from previously litigated zoning violation claims; whether trial court correctly concluded that collateral estoppel did not preclude plaintiffs from litigating issue of whether defendants' use of certain real property negatively impacted plaintiffs.

Ricketts *v.* Ricketts 1

Dissolution of marriage; jurisdiction; whether appeal from postdissolution orders of trial court denying plaintiff's motion to transfer matter to Regional Family Trial Docket and appointing guardian ad litem for parties' minor children was from final judgment.

St. Pierre *v.* Commissioner of Correction (Memorandum Decision) 901

Sanchez *v.* Commissioner of Correction 752

Habeas corpus; res judicata; whether habeas court improperly dismissed petitioner's due process claim as procedurally defaulted; whether habeas court properly dismissed petitioner's actual innocence claim as barred by doctrine of res judicata; whether habeas court improperly denied petitioner's ineffective assistance of habeas counsel claim.

Sieranski *v.* TJC Esq, A Professional Services Corp. 75

Wrongful termination of employment; motion to strike; whether plaintiff sufficiently pleaded facts that, if proven, would fall under public policy exception to at-will employment doctrine; whether statutes (§§ 3-94h and 53a-157b) relied on by plaintiff outline public policy against knowingly assisting affiant in submitting false statements to court; whether notary's act of notarizing affidavit that she believed to be false would violate § 3-94h, which prohibits notaries from performing any action with intent to deceive or defraud.

Solek *v.* Commissioner of Correction. 289

Habeas corpus; claim that habeas court improperly determined that petitioner had not established good cause for untimely filing sufficient to rebut statutory (§ 52-470) presumption of unwarranted delay; reviewability on appeal of claim raised for first time in petitioner's reply brief; whether petitioner demonstrated that

habeas court's conclusion that he had not demonstrated good cause for delay was debatable among jurists of reason, court could resolve issue differently or questions raised deserved encouragement to proceed further; whether record was adequate to review claim that petitioner's severe mental health issues provided good cause for delay; whether habeas court failed to provide petitioner with meaningful opportunity to investigate and to present evidence as to good cause for delay in filing petition.

South Windsor *v.* Lanata 89

Zoning; claim that cease and desist order premised on alleged zoning violation was unconstitutionally vague; whether trial court abused its discretion in ordering fines during period in which defendant was under orders not to disturb property; claim that trial court improperly assessed fines for wilful violation of zoning regulations pursuant to statute (§ 8-12).

Starke *v.* Goodwin Estate Assn., Inc. 607

Common Interest Ownership Act (§ 47-200 et seq.); mootness; claim that trial court improperly dismissed complaint as moot because plaintiff's claim for damages included damages to personal property that was not contingent on his continued ownership of condominium unit.

State *v.* Capasso 333

Reckless burning; false reporting of incident in second degree; sufficiency of evidence; whether state was required to prove that building in danger of destruction or damage referenced in reckless burning statute (§ 53a-114) was owned exclusively by someone other than defendant; whether trial court abused its discretion in denying defendant's motion to set aside verdict on ground that conviction for reckless burning was against weight of evidence.

State *v.* Cheryl J.. 742

Criminal violation of protective order; claim that evidence was insufficient to prove that defendant had requisite intent to be convicted of criminal violation of protective order; whether criminal violation of protective order is specific intent crime; claim that criminal violation of protective order statute (§ 53a-223) was void for vagueness as applied to defendant; claim that language of protective order provided inadequate notice of what was prohibited.

State *v.* Cicarella. 811

Larceny in first degree; motion to dismiss; conditional plea of nolo contendere; subject matter jurisdiction; mootness; claim that trial court erred in denying defendant's motion to dismiss, which alleged that prosecution had been instituted improperly.

State *v.* Foster 740

Assault in first degree; criminal possession of firearm; claim that trial court lacked subject matter jurisdiction and personal jurisdiction; sovereign citizen claim that state and federal governments lack constitutional legitimacy and therefore have no authority to regulate defendant's behavior.

State *v.* Geanuracos 359

Burglary in third degree; larceny in third degree; sufficiency of evidence; whether evidence adduced at trial was sufficient to find that defendant had entered or remained in victim's home unlawfully.

State *v.* Gordon (See State *v.* Lyons) 551

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Assault in first degree; carrying pistol without permit; motion to correct illegal sentence; whether trial court improperly denied motion to correct illegal sentence without appointing counsel pursuant to statute (§ 51-296 (a)) and State *v.* Casiano *(282 Conn. 614).*

State *v.* Lyons 551

Possession of controlled substance; sale of controlled substance; possession of drug paraphernalia; possession of controlled substance within 1500 feet of school; possession of drug paraphernalia within 1500 feet of school; operation of drug factory; theft of firearm; negligent storage of firearm; motion to suppress; claim that trial court erred in determining that defendant met his burden of proving expectation of privacy in area searched by law enforcement officers and in determining that defendant had standing to proceed with motion to suppress; claim that trial court erred in granting motion to suppress.

State *v.* Hall-George 219

Robbery in second degree; whether evidence was sufficient to prove beyond reasonable doubt that defendant threatened use of what he represented by his words or

conduct to be deadly weapon or dangerous instrument pursuant to statute (§ 53a-135 (a) (1) (B)).
State *v.* Russaw 123
Manslaughter in second degree; evading responsibility; motion to suppress; whether trial court properly denied motion to suppress statements defendant made to police during custodial interrogation after defendant was not readvised of his Miranda *rights before starting new line of questioning; whether interrogation of defendant on multiple subject matters comprised one continuous interview; whether* Miranda *rights are offense specific; whether waiver of* Miranda *rights was voluntary; whether admission of statements into evidence, if assumed to be improper, would have resulted in harmless error.*
Stephenson *v.* Commissioner of Correction 314
Habeas corpus; subject matter jurisdiction; whether habeas court abused its discretion in denying petition for certification to appeal; whether petitioner sufficiently alleged claim under stigma plus test; whether claim of misapplication of parole eligibility statute (§ 54-125a) gave rise to cognizable liberty interest sufficient to invoke subject matter jurisdiction of habeas court.
U.S. Bank National Assn. *v.* Doe 218
Summary process; whether appeal was moot following defendants' dispossession of property.
U.S. Bank, N.A. *v.* Hickey (Memorandum Decision) 902
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Foreclosure; whether trial court erred in determining that defendants were not entitled to implied admissions on special defenses; claim that plaintiff was not proper owner of debt and therefore lacked standing; whether trial court erred in rejecting statute of limitations special defense for lack of ripeness; whether noncompliance with securitization requirements implicated plaintiff's standing; whether defendants received proper notice of default and acceleration prior to foreclosure; whether trial court abused its discretion in rejecting defendants' special defense of unclean hands; whether trial court erred in admitting payment history on note into evidence under business records exception to hearsay rule.
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Habeas corpus; whether habeas court abused its discretion in dismissing, pursuant to statute (§ 52-470 (e)), successive petition for writ of habeas corpus for failure to show good cause for delay in filing petition beyond deadline for successive petitions set forth in § 52-470 (d) (2); claim that habeas court improperly determined that petitioner failed to prove that his mental deficiencies, as described in 2005 neuropsychological report, contributed to his delay in filing second habeas petition and, thus, failed to rebut presumption of unreasonable delay set forth in § 52-470 (d).
Village Mortgage Co. *v.* Veneziano 154
Declaratory judgment; mootness; motion to dismiss; jurisdiction; claim that trial court erred in its interpretation of parties' stipulation; whether defendant's appellate claims were moot; whether defendant could be afforded practical relief on appeal; whether outcome of appeal had collateral estoppel and res judicata effects as to when plaintiff acquired defendant's stock; whether defendant's ability to bring action for vexatious litigation or fraud in future against plaintiff was dependent on appeal being heard on its merits.
Vossbrinck *v.* Accredited Home Lenders, Inc. (Memorandum Decision) 902
Wells Fargo Bank, N.A. *v.* Robertson (Memorandum Decision) 903

NOTICE OF CONNECTICUT STATE AGENCIES

DEPARTMENT OF SOCIAL SERVICES
DEPARTMENT OF DEVELOPMENTAL SERVICES

NOTICE OF INTENT TO AMEND THE MEDICAID WAIVERS FOR INDIVIDUAL AND FAMILY SUPPORT AND COMPREHENSIVE SUPPORTS

Notice is hereby given that the Commissioner of Social Services intends to submit to the Centers for Medicare and Medicaid Services (''CMS'') an amendment pertaining to routine operational issues of both the Individual and Family Supports Waiver and the Comprehensive Supports Waiver, each to be effective September 1, 2021.

The above-referenced waivers are operated by the Department of Developmental Services.

The Department of Social Services and the Department of Developmental Services are proposing to amend the performance measures in these two Medicaid Waivers to align with those already approved to take effect on April 1, 2021 in the Medicaid Waiver for Employment and Day Supports.

No current enrollees will be negatively impacted by the changes proposed in the application.

Copies of the complete text of the waiver application are available upon request from: Krista Ostaszewski, Health Management Administrator, DDS Central Office, 460 Capitol Avenue, Hartford, CT, 06106, or via email at Krista.Ostaszewski@ct.gov. It is also available on the Department of Social Services' website, www.ct.gov/dss, under ''News and Press,'' as well as the following direct link: http://portal.ct.gov/DSS/Health-And-Home-Care/Medicaid-Waiver-Applications/Medicaid-Waiver-Applications, and the Department of Developmental Services' website, https://portal.ct.gov/dds, under ''Latest News.''

All written comments regarding these applications must be submitted by May 13, 2021 to: Krista Ostaszewski, 460 Capitol Avenue Hartford, Connecticut, 06106, or via email at Krista.Ostaszewski@ct.gov.

NOTICES

CONNECTICUT BAR EXAMINING COMMITTEE

The following individuals applied for admission to the Connecticut bar by Uniform Bar Examination score transfer in January, February, and March 2021. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Kathleen B. Harrington
Deputy Director, Attorney Services

Breslin, Rachel Marie of West Harrison, NY
Doughty, Jessica Paige of West Hartford, CT
Dowd, Ashlyn Emily of Holden, MA
Fink, Elliot Ray of New York, NY
Gerold, Samantha Marie of Thornwood, NY
Harris, Michael James of Stamford, CT
Hepheastou, Sophia of Manhasset Hills, NY
Jackman, Daniel William of Swansea, MA
Khalil, Julia Yehia of Baltimore, MD
Leeds, Naomi Elizabeth of Riverside, CT
Lynch, Kevin Matthew of Scarsdale, NY
Masse, Joseph J. of Enfield, CT
McManus, Stephen D. of Somerville, MA
Poe, Cody Shea of Saraland, AL
Verni, Kailey Elizabeth McKeever of Brighton, MA
Williams Nwaogwugwu, Chantelle Ameka of Queens Village, NY
Youngworth-Wright, Leann of Lebanon, CT

CONNECTICUT BAR EXAMINING COMMITTEE

The following individuals applied for admission to the Connecticut bar without examination in January, February, and March 2021. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Kathleen B. Harrington
Deputy Director, Attorney Services

Abbott, Randall of Orange, CT
Acheampong, Kevin of Edgewater, NJ
Cahalane III, Michael John of Boston, MA
Cowing, Adam of Venice, CA
Dickey, Katherine Webster of Philadelphia, PA
Esposito, Mark J. of Springfield, MA
Fitzgerald, Kathleen M. of Southwick, MA
Garrett, Brian Bradford of Andover, MA
Karpa Schollard, Taylore E. of Framingham, MA
Kohler-Hausmann, Issa of New Haven, CT
Laun, Shannon Ione Smyth of Woodbridge, CT
Leone, Joseph Isidore of Weston, CT
Magnani, Samantha of Simsbury, CT
Manning, Michael Brian of Stamford, CT
McKeon, Colin Sinclair of Norwalk, CT
Niedt, Nancy of New York, NY
Rylander, Jason Arthur of West Hartford, CT
Sugarman, Samantha Bell of West Hartford, CT
Tehrani, Payman of Alexandria, VA
Warshawsky, Steven Michael of Ridgefield, CT
Zornow, David Merrill of Madison, CT