SUPREME COURT PENDING CASES

STATE *v.* JOEL ALEXANDER, SC 20316
Judicial District of New Haven

Criminal; Whether Trial Court Properly Concluded That Defendant Was Not Entitled to New Trial Because Improper Admission of His Statements to Police in Violation of *State* v. *Purcell* Was Not Harmful. The victim, Durell Law, was shot and killed during an attempted robbery in 2014. Thereafter, the defendant, who was a suspect in the shooting, was interviewed by detectives after signing a written waiver of his *Miranda* rights. During the interview, the defendant denied any involvement in the crime. He was subsequently arrested and charged with felony murder, attempt to commit robbery, and conspiracy to commit robbery in 2016. The defendant elected a court trial before a three-judge panel on the felony murder charge and a court trial before the presiding judge of the panel on the remaining charges. The defendant moved to suppress his interview statements, claiming that the statements were obtained in violation of *Davis* v. *United States*, 512 U.S. 452 (1994), because the detectives continued to interrogate him after he made an unambiguous request for the assistance of counsel. The trial court, however, denied the motion to suppress. After trial, the defendant was found guilty of all charges in 2019. The trial court reconsidered its decision on the defendant's motion to suppress, however, after the Supreme Court issued its opinion in *State* v. *Purcell*, 331 Conn. 318 (2019). In *Purcell*, the Supreme Court concluded that *Davis*' standard does not adequately safeguard *Miranda*'s right to the advice of counsel during a custodial interrogation and held that, under the state constitution, "if a suspect makes an equivocal statement that arguably can be construed as a request for counsel, interrogation must cease except for narrow questions designed to clarify the earlier statement and the suspect's desire for counsel." Here, the trial court found that the defendant had made a statement during his police interview that could arguably be construed as a request for counsel and that any additional statements should have been suppressed under *Purcell* because the detectives failed to clarify the defendant's ambiguous request for counsel before continuing with the interrogation. The court, however, determined that the defendant was not entitled to a new trial because the improper admission of his interview statements was harmless in light of the fact that (1) the court did not consider the statements in determining the defendant's guilt and (2) the statements were not inculpatory. The defendant appeals directly from his conviction to the Supreme Court

under General Statutes § 51-199 (b) (3) and claims that the trial court erred in determining that he was not entitled to a new trial. In support, the defendant argues that the trial court improperly applied *Purcell* to its own deliberations, that the improper admission of his interview statements permeated the entire trial proceedings and impacted the defense, and that, even if harmless error analysis is appropriate, the state cannot demonstrate beyond a reasonable doubt that the improper admission of his interview statements was harmless because (1) the testimony of its witnesses was weak and (2) the statements were generally inculpatory.

PETER BORIA *v.* COMMISSIONER OF CORRECTION, SC 20459
Judicial District of Tolland

Habeas; Whether Appellate Court Properly Upheld Habeas Court's Sua Sponte Dismissal of Habeas Petition under Practice Book § 23-29 Prior to Appointment of Counsel for Self-Represented Petitioner and Without Notice and Opportunity to Be Heard. The petitioner was convicted and sentenced to twenty years of incarceration after pleading guilty to charges of robbery in the first degree and being a persistent dangerous felony offender in 2009. On August 8, 2016, he filed his third petition for a writ of habeas corpus, as a self-represented litigant. He claimed that he had not voluntarily entered his guilty plea and that legislative amendments in 2013 and 2015 limiting the scope of the risk reduction earned credit (RREC) statutes, which provided that certain prisoners may be eligible to earn risk reduction credits to reduce their sentences and advance their parole eligibility dates, constituted a violation of the ex post facto clause of the federal constitution. The habeas petition was completed on a standard form on which the petitioner requested a fee waiver and the appointment of counsel; the trial court granted the request. On September 7, 2016, however, the habeas court rendered a judgment of dismissal without a hearing and notice to the parties. The habeas court dismissed the petitioner's RREC claim for lack of jurisdiction under Practice Book § 23-29 (1) because the petitioner had no cognizable liberty interest in parole eligibility. It further dismissed the petitioner's guilty plea claim under Practice Book § 23-29 (3) because the claim had been presented in a prior habeas petition that was denied and the petition before it did not state new facts or proof of new evidence that was not reasonably available at the time of the prior petition. The petitioner appealed upon the habeas court's grant of certification. He alleged in relevant part that the habeas court improp-

erly dismissed his RREC claim for lack of jurisdiction under Practice Book § 23-29 (1) because it did so without first holding a hearing at which he was present in violation of Practice Book § 23-40, which provides in relevant part that "[t]he petitioner . . . shall have the right to be present at any evidentiary hearing and at any hearing or oral argument on a question of law which may be dispositive of the case." The Appellate Court (186 Conn. App. 332) disagreed, noting its own precedent establishing that a hearing is not required under Practice Book § 23-40 where the habeas court is acting pursuant to its authority under Practice Book § 23-29 to dismiss a petition on its own motion. The court determined that the habeas court properly concluded that it lacked jurisdiction over the petitioner's RREC claim and therefore further determined that it properly dismissed the petition as to the claim without first holding a hearing at which the petitioner was present. The Appellate Court rejected the remainder of the petitioner's claims and affirmed the habeas court's judgment. The petitioner has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court properly upheld the habeas court's sua sponte dismissal of the petition for a writ of habeas corpus under Practice Book § 23-29 prior to the appointment of counsel for the self-represented petitioner and without providing the petitioner with notice and an opportunity to be heard.

JUDSON BROWN *v.* COMMISSIONER OF CORRECTION, SC 20474
Judicial District of Tolland

Habeas; Whether Appellate Court Properly Dismissed Appeal from Habeas Court's Sua Sponte Dismissal of Habeas Petition under Practice Book § 23-29 Prior to Appointment of Counsel and Without Notice and an Opportunity to Be Heard. This appeal arises from the petitioner's fourth state petition for a writ of habeas corpus, which he filed as a self-represented litigant on October 29, 2018. He claimed that he was not properly canvassed when he indicated to the trial court in his criminal trial that he wished to forgo a hearing to challenge its determination that he was ineligible for public defender services. The habeas petition was completed on a standard form on which the petitioner requested a fee waiver and the appointment of counsel. The fee waiver was granted, but counsel was not appointed before the habeas court sua sponte dismissed the petition without a hearing and notice to the parties on November 19, 2018. The habeas court entered an order stating that the petition was dismissed pursuant to Practice Book § 23-29 (3), which provides in

relevant part that "[t]he judicial authority may, at any time, upon its own motion . . . dismiss the petition . . . if it determines that . . . 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." The habeas court determined that the petitioner's claim was precluded under the doctrine of res judicata because it had been previously litigated in two of the prior habeas actions. The habeas court further denied the petitioner's petition for certification to appeal its dismissal. The petitioner appealed, and the Appellate Court (196 Conn. App. 902) dismissed the appeal in a per curiam decision. In this certified appeal by the petitioner from the Appellate Court's decision, the Supreme Court will decide whether the Appellate Court properly dismissed the petitioner's appeal challenging the propriety of the habeas court's sua sponte dismissal of the petition for a writ of habeas corpus under Practice Book § 23-29 prior to the appointment of counsel for the self-represented petitioner and without providing the petitioner with notice and an opportunity to be heard.

THOMAS PRIORE *v.* STEPHANIE HAIG, SC 20511
Judicial District of Stamford-Norwalk at Stamford

Absolute Litigation Immunity; Defamation; Whether Defendant's Public Statements About Plaintiff at Town Planning and Zoning Commission Meeting Were Entitled to Absolute Litigation Immunity. The plaintiff brought the underlying defamation action based on allegedly defamatory statements made by the defendant at a public hearing before the Greenwich Planning and Zoning Commission (commission) on the plaintiff's application for a special permit to construct a new residence and new sewer line on his property. At the hearing, the defendant addressed the commission to share her concerns regarding the plaintiff's application. In addition to her concerns regarding the effects of the proposed construction, she stated that the plaintiff had not been "trustworthy," had a "serious criminal past," and had paid more than $40,000,000 in fines to the Securities and Exchange Commission. Parts of the defendant's statements were later published in a local newspaper. The defendant filed a motion to dismiss the action, claiming that the trial court lacked subject matter jurisdiction because her statements were entitled to absolute litigation immunity. The trial court agreed and granted the motion to dismiss. The plaintiff appealed, claiming that the defendant's statements were not entitled to absolute litigation immunity and arguing that, contrary

to the trial court's conclusion, the commission's proceeding was not quasi-judicial in nature. The Appellate Court (196 Conn. App. 675) disagreed, explaining that the commission's proceeding was quasi-judicial in nature because the commission, among other things, exercised its discretion, engaged in fact-finding, and heard witness testimony. Moreover, the court determined that public policy interests in encouraging citizen participation in local government decision-making supported a finding that the proceeding was quasi-judicial in nature. The plaintiff further argued that, even if the commission's proceeding was quasi-judicial in nature, the trial court erred in concluding that the defendant's statements about the plaintiff's criminal past and trustworthiness were pertinent to the subject matter of the commission's proceeding. The court rejected the claim and determined that the defendant's statements were pertinent on the subject of the plaintiff's credibility, which he put into issue by submitting a special permit application that contained representations on which the commission would rely in its review. Accordingly, the Appellate Court affirmed the trial court's judgment. The plaintiff was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the defendant's public statements about the plaintiff at the meeting of the commission were entitled to absolute immunity, thereby depriving the trial court of subject matter jurisdiction over the plaintiff's defamation action.

RAY BOYD *v.* COMMISSIONER OF CORRECTION, SC 20515
Judicial District of Tolland at Rockville

Habeas; Statutory Interpretation; Whether the Language of General Statutes §§ 18-7a (c) and 54-125a (f) Supports the Petitioner's Claim that His Earned Statutory Good Time Credit Reduces the Sentence Used to Calculate His Parole Eligibility Date. In 1992, the petitioner was convicted of murder and sentenced to fifty years incarceration without the possibility of parole for a crime he committed when he was seventeen years old. Under Public Acts 2015, No. 15-84, now codified at General Statutes § 54-125a (f) (1), the petitioner will become parole eligible after serving 60 percent of his fifty year sentence on September 13, 2022. In calculating the petitioner's parole eligibility date, the respondent Commissioner of Correction subtracted sixty-seven days of presentence confinement credit from the fifty year sentence and multiplied the difference by 60 percent pursuant to § 54-125a (f). The petitioner subsequently brought a habeas action claiming that the respondent improperly calculated his parole eligibility

date by failing to apply the statutory good time credit he had earned under General Statutes § 18-7a (c) to reduce the sentence used to calculate his parole eligibility date under § 54-125a. The respondent moved to dismiss the action pursuant to Practice Book § 23-29 (2) for failure to state a claim upon which habeas relief could be granted. The habeas court granted the motion to dismiss, finding that the petitioner's statutory construction claim failed to state a claim upon which habeas relief could be granted because the language of §§ 18-7a and 54-125a (f) does not support his claim. On the granting of his petition for certification, the petitioner appealed and claimed that the court wrongly determined that the statutory language does not support his claim. He argued that, if the legislature had intended to exclude statutory good time credit from the juvenile parole procedures, it would have stated that intention expressly. The Appellate Court (199 Conn. App. 575) rejected his claim and affirmed the judgment of the habeas court. The court found no language in §§ 18-7a and 54-125a to indicate that the legislature intended that an inmate's sentence should be reduced by good time credit before calculating his parole eligibility date. The court reasoned that, because a person has no constitutional or inherent right to be conditionally released before the expiration of his sentence, the legislature would have stated explicitly its intention to apply statutory good time credit to reduce a person's parole eligibility date. The court also noted that, while the legislature expressly stated in General Statutes §§ 54-125a (a) and (d) and 54-125 whether good time credit applied to reduce a person's sentence before that sentence was used to calculate his parole eligibility date, it did not do so in §§ 18-7a and 54-125a (f). The Supreme Court granted the petitioner certification to appeal and will decide whether the language of §§ 18-7a (c) and 54-125a supports the petitioner's claim that his good time credit reduces the sentence used to calculate his parole eligibility date.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

Jessie Opinion
Chief Staff Attorney