

SUPREME COURT PENDING CASES

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

LENWORTH CHARLES GRANT *v.* COMMISSIONER OF
CORRECTION, SC 20561

Judicial District of Tolland

Habeas; Whether Habeas Court Properly Rejected Petitioner’s Claim That His Trial Counsel Was Ineffective in Failing to Adequately Advise Him of the Immigration Consequences of His Guilty Plea. The petitioner, a Jamaican citizen and a legal permanent resident of the United States, pleaded guilty to risk of injury to a child and strangulation in the third degree in exchange for a court-indicated sentence. Near the end of the plea colloquy, the petitioner’s counsel, Attorney David Cosgrove, asked the petitioner if he was a United States citizen, and the petitioner responded in the negative. Attorney Cosgrove then informed the petitioner that he “can be deported” as a result of his guilty plea and offered him the opportunity to “pass the matter” and discuss it further. The petitioner, however, declined and proceeded with the plea. The petitioner then brought this habeas action, claiming that Attorney Cosgrove was ineffective in failing to adequately advise him of the immigration consequences of his guilty plea. The habeas court rejected the claim, finding that the petitioner failed to establish that he was prejudiced by his counsel’s alleged deficient performance, and the court denied the habeas petition in part. The petitioner filed this appeal, which the Supreme Court transferred to itself. He claims that the habeas court erred in rejecting his ineffective assistance of counsel claim. He contends that Attorney Cosgrove rendered deficient performance in that he (1) failed to ascertain that the petitioner was not a U.S. citizen until after the petitioner had pleaded guilty on the record, (2) failed to seek a recess or continuance after he learned that the petitioner was not a U.S. citizen, and (3) failed to accurately advise the petitioner of the immigration consequences that could result from his guilty plea. The petitioner further contends that he was prejudiced because, but for Attorney Cosgrove’s deficient performance, he would not have pleaded guilty and the outcome of the case would have been “more favorable” to him. Before deciding the petitioner’s claim on the merits, however, the Supreme Court will decide whether this appeal has been rendered moot in light of the petitioner’s deportation to Jamaica following the issuance of the habeas court’s memorandum of decision. In *State v. Aquino*, 279 Conn. 293 (2006), the Supreme Court held that a deported defendant’s appeal

was moot because the court could not afford the defendant practical relief in the absence of evidence that the challenged conviction was the sole barrier to the defendant's ability to reenter the United States. The state here argues that this appeal is moot under *St. Juste v. Commissioner of Correction*, 328 Conn. 198 (2018), a progeny of *Aquino*, because the petitioner cannot establish that the convictions at issue in this habeas action give rise to a reasonable possibility of prejudicial collateral consequences due to the permanent bar on his reentry into the United States resulting from unchallenged criminal convictions. After this appeal was fully briefed, the Supreme Court decided *State v. Gomes*, ___ Conn. ___ (2021), which overruled *Aquino* and held that a criminal defendant's appeal is not rendered moot by his deportation because the damage to his reputation is a recognized collateral consequence of his conviction.

STATE *v.* NUELITO MOREL-VARGAS, SC 20572
Judicial District of Fairfield

Criminal; Whether Defense Counsel's Waiver of Defendant's Right to Testify was Valid; Whether Prosecutor Engaged in Impropriety by Extensive Use of Leading Questions During Direct Examination of Victim. The defendant was charged with first degree sexual assault. At trial, as the state was deciding whether to rest its case-in-chief, it indicated that it would forgo presenting additional evidence and proceed to closing argument if the defendant was not going to present any evidence. Defense counsel then stated that he had extensive conversations with the defendant about whether the defendant would testify and thought that they had settled on a decision. Defense counsel requested, however, a final opportunity to discuss the matter with the defendant in light of him seeing the evidence presented by the state. After a brief recess, defense counsel represented that he conferred with the defendant and that the defendant was not going to testify. Defense counsel declined the trial court's offer to canvass the defendant in that regard. The defendant was convicted as charged and filed this appeal, which the Supreme Court transferred to itself. The defendant makes two claims on appeal. First, he claims that defense counsel's waiver of his right to testify was constitutionally invalid. Specifically, the defendant argues that the right to testify is a fundamental right that is personal to a defendant, not just a matter of trial strategy, and that a waiver of that right therefore requires an affirmative indication by the defendant himself on the record, not just a waiver by defense counsel regardless of whether it is coupled with

the defendant's silence on the matter. The defendant requests that, in the event that the Supreme Court determines that defense counsel's waiver of his right to testify was not constitutionally invalid, it exercise its supervisory authority and require trial courts to canvass defendants to ensure that their decisions to waive their rights to testify are knowing, intelligent and voluntary. The defendant acknowledges that our Supreme Court held in *State v. Paradise*, 213 Conn. 388 (1990), that the trial court had no duty to canvass the defendant regarding the waiver of his right to testify because that decision is a matter of trial strategy to be decided between the defendant and his attorney. The defendant claims, however, that *Paradise* was overruled sub silentio by *State v. Gore*, 288 Conn. 770 (2008), which held that the right to a jury trial may not be waived by counsel because the right is fundamental and personal to the defendant. The defendant acknowledges that his claim involves the right to testify rather the right to a jury trial but argues that *Gore* nonetheless still applies because the Supreme Court in a footnote included the right to testify in a list of the fundamental rights that typically must be waived by the defendant personally. The defendant also notes that the Supreme Court subsequently stated in two appeals involving the waiver of the right to counsel that the right to testify is a fundamental right that cannot be waived by counsel. The defendant's second claim on appeal is that he was deprived of his right to a fair trial due to prosecutorial impropriety resulting from the extensive use of leading questions during the direct examination of the victim.

O.A. v. J.A., SC 20590

Judicial District of Stamford-Norwalk at Stamford

Dissolution; Postnuptial Agreement; Pendente Lite Orders; Whether Trial Court Properly Declined to Address Enforceability of Parties' Postnuptial Agreement before Awarding Pendente Lite Alimony, Attorney's Fees, and Expert Fees to Plaintiff Wife. The plaintiff wife and defendant husband married in 2013 and entered into a postnuptial agreement in 2014. The agreement in relevant part set forth terms for determining property distributions and support awards in the event of a marital dissolution. The plaintiff filed the underlying dissolution action in 2019. The defendant argued in his answer and cross complaint that the trial court should enforce the agreement and incorporate it into the dissolution judgment, and the plaintiff contended in her reply and answer to the cross complaint that the agreement is unenforceable. The plaintiff then filed motions for

pendente lite alimony, attorney's fees, and expert fees. The defendant objected to the motions and further filed a motion to bifurcate, requesting that the trial court determine the validity of the agreement before deciding the plaintiff's motions. The trial court held an evidentiary hearing on the motions and thereafter issued a memorandum of decision. It concluded that it did "not need to make a finding as to the validity and enforceability of the postnuptial agreement before it rule[d] on the plaintiff's pendente lite motions" in accordance with apposite trial court authority and *Fitzgerald v. Fitzgerald*, 169 Conn. 147 (1975), where the Supreme Court held that it was not necessary for the trial court to determine the validity of the parties' separation agreement before deciding motions for pendente lite alimony and child support. The trial court here further concluded that its authority to make pendente lite awards was statutory and that it would be contrary to the purpose of such awards "to preclude pendente lite support in a matter like this where one party has no income, and during the course of the marriage was completely reliant on the other for financial support." The trial court accordingly "decline[d] to enter findings as to the enforceability or validity of the postnuptial agreement at this time" and awarded the plaintiff (1) \$20,000 per month in pendente lite alimony, retroactive to the date of the operative motion, (2) \$114,019.99 for her attorney's fees then due and an additional \$250,000 as a retainer towards her attorney's fees, and (3) \$25,000 as a contribution towards expert fees. The defendant filed this appeal, which the Supreme Court transferred to its docket. The Supreme Court will decide whether the trial court properly awarded the plaintiff pendente lite alimony, counsel fees, and expert fees without first requiring her to demonstrate that the postnuptial agreement to which she was a party was invalid or unenforceable. The Supreme Court will also consider the plaintiff's argument that the trial court's judgment can be affirmed on the alternative ground that enforcement of the postnuptial agreement would be unconscionable.

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*
