

SUPREME COURT PENDING CASES

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

STATE *v.* ANDRE DAWSON, SC 20361
Judicial District of Stamford-Norwalk

Criminal; Whether Evidence Sufficient to Support Defendant's Conviction of Criminal Possession of a Firearm. Police officers were patrolling a housing complex when they entered a courtyard where they saw six individuals, including the defendant. While two officers conversed with the defendant and three others who were seated at a picnic table near a corner formed by the cement walls of a planter, a third officer stepped onto the wall behind the defendant and immediately saw in plain view a gun lying in the corner by the bushes, about four to five feet away from the defendant. Subsequently, a state forensics laboratory examiner was able to generate a partial DNA profile from the "touch DNA" extracted from the gun and ammunition. "Touch DNA" comes from skin cells left behind when someone touches an object directly, through a secondary transfer or through aerosolization. Further testing showed that the defendant was the only person at the picnic table who could not be eliminated as a contributor to the DNA profile. The defendant was subsequently convicted of criminal possession of a firearm. On appeal, he claimed that the evidence was insufficient to support his conviction of criminal possession of a firearm because there was insufficient evidence to establish that he had constructive possession of the gun. In order to establish constructive possession, the state must prove that the defendant had knowledge of the gun and intended to exercise dominion or control over it. The Appellate Court (188 Conn. App. 532) rejected the defendant's claim and affirmed his conviction, ruling that there was sufficient circumstantial evidence by which the jury reasonably could have inferred that the defendant was in possession of the gun when he entered the courtyard, that he put it near the bushes when the police arrived so that it would not be found on his person, and that he intended to retrieve the gun when the police left. The court determined that the state did not rely on DNA evidence alone to prove that the defendant knew of the gun's presence on the wall near the bushes, observing that the defendant was in close proximity to it. Further, although the defendant claimed that the DNA evidence was insufficient due to the questionable reliability of testing a small sample, the court concluded that the size of the DNA sample went to the weight of the evidence and not its admissibility. The court also found that the defendant could not prevail on his claim the state failed

to adduce any evidence of his intent to exercise dominion or control of the gun. The court determined that the jury reasonably could have inferred that the defendant had stashed the gun but remained in close proximity to it, such that he intended to exercise dominion or control over it, where the evidence demonstrated that the gun had been recently placed on the wall near the bushes, that the defendant had been near it, and that it had provided a DNA profile from which only the defendant could not be excluded with respect to those present. The defendant was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the evidence was sufficient to support the defendant's conviction of criminal possession of a firearm.

STATE *v.* JAMAAL COLTHERST, SC 20401
Judicial District of Hartford

Criminal; Juvenile Sentencing; Whether the Appellate Court Correctly Concluded That the Trial Court Had Followed the Statutory Requirements Set Forth in General Statutes § 54-91g in Resentencing the Defendant to Eighty Years of Incarceration. In 2001, the defendant was sentenced to life imprisonment without the possibility of release followed by seventy-one years of imprisonment for several crimes, including capital felony and murder, committed when he was seventeen years old. Subsequently, the legislature enacted P.A. 15-84. Section 1 of P.A. 15-84, codified at General Statutes § 54-125a, ensures that all juveniles who are sentenced to more than ten years imprisonment are eligible for parole. Section 2 of P.A. 15-84, codified as amended at General Statutes § 54-91g, requires a sentencing judge to consider a juvenile's age and any youth related mitigating factors before imposing a sentence following a juvenile's conviction of any class A or class B felony. The defendant filed a motion to correct an illegal sentence in light of the passage of § 54-91g, and the trial court granted the motion. After the resentencing hearing, the trial court sentenced the defendant to a total effective sentence of eighty years incarceration, noting that he would be eligible for parole after a meaningful period of time. On appeal, the defendant claimed that § 54-91g created a presumption against imposing a life sentence or its functional equivalent on a juvenile defendant and that the sentencing court was required to overcome this burden by finding that the juvenile defendant was "irreparably corrupt" before imposing such a sentence. Here, because the trial court did not make such a finding, the defendant contended that the trial court erred in imposing a sentence that was the functional

equivalent of a life sentence. The Appellate Court (192 Conn. App. 738), however, concluded that § 54-91g does not create a presumption against the imposition of a life sentence or its functional equivalent on a juvenile defendant, citing *State v. Riley*, 190 Conn. App. 1, cert. denied, 333 Conn. 923 (2019). It further concluded that because the defendant was granted parole eligibility in his resentencing, the trial court was not required to make a finding that the defendant was incorrigible, irreparably corrupt, or irretrievably depraved before it properly could sentence him to life imprisonment or its equivalent. Next, the defendant claimed that the trial court improperly failed to account adequately for his youth at the time he committed the underlying crimes in resentencing him, as required by § 54-91g. The Appellate Court rejected the claim, ruling that the trial court's sentence was supported by the record from the resentencing hearing and the court adequately considered the factors set forth in § 54-91g. In so ruling, the court noted that, consistent with § 54-91g, the trial court resentenced the defendant after taking into account his age, environment, criminal history and family and home environment at the time of the crimes, as well as a personality functioning test of the defendant administered by a clinical neuropsychologist and evidence concerning adolescent brain development. Accordingly, the Appellate Court affirmed the trial court's judgment. The defendant was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the trial court had followed the statutory requirements set forth in § 54-91g in resentencing the defendant to eighty years of incarceration.

SUMMIT SAUGATUCK, LLC *v.* WATER POLLUTION CONTROL
AUTHORITY OF THE TOWN OF WESTPORT, SC 20431

Judicial District of Hartford

Administrative Appeal; Whether Trial Court Improperly Substituted Its Judgment for Defendant Agency's Discretion By Ordering Conditional Approval of Plaintiff's Sewer Extension Application; Whether Defendant May Decline to Approve Proposed Sewer Extension Solely Because Town's Planning and Zoning Commission Issued Negative Report on General Statutes § 8-24 Referral. The plaintiff filed with the defendant water pollution control authority an application for a sewer extension to service its proposed affordable housing development. The plaintiff requested that its application be conditionally approved subject to the completion of the town's project to upgrade and improve its sewer system. The defen-

dant denied the application, noting that there had not been compliance with General Statutes § 8-24—which provides that a sewer extension proposal shall be referred to a town’s planning and zoning commission and that, if the commission disapproves the proposal, the proposal shall be adopted by the town only after subsequent approval by two thirds of the representative town meeting—because the town planning and zoning commission had issued a negative report upon statutory referral and the plaintiff had not obtained the subsequent approval of the representative town meeting. The plaintiff appealed to the trial court, which sustained the appeal on the ground that § 8-24 is advisory in nature and not binding on the defendant. The trial court remanded the matter to the defendant for a new hearing. After that hearing, the defendant again denied the application, stating that (1) there was insufficient capacity in the sewer system to accommodate the proposed sewer extension at that time and (2) conditional approvals were not granted as a matter of policy. The trial court sustained the plaintiff’s subsequent appeal. It concluded that the defendant’s denial was arbitrary and an abuse of discretion where, instead of rendering a decision on the merits of the plaintiff’s application, the defendant had decided that the application was premature and that a conditional approval was against established policy. The court remanded the matter to the defendant with direction to conditionally approve the application. The defendant appealed, and the Appellate Court (193 Conn. App. 823) reversed the trial court’s judgment, ruling that the decision to grant a conditional approval was properly left to the defendant’s discretion and that the trial court had impermissibly substituted its judgment by ordering a conditional approval. It determined that the record did not support a conclusion that the defendant’s decision was arbitrary or an abuse of discretion. It also concluded that the defendant was entitled to a presumption of regularity in its decision-making process, given its settled policy of not granting conditional approvals. In light of its disposition, the court concluded that it need not decide the defendant’s additional claim regarding § 8-24. The plaintiff was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly determined that the trial court had improperly substituted its own judgment for the discretion of the defendant by ordering it to conditionally approve the plaintiff’s sewer extension application. The Supreme Court will also decide whether the defendant may decline to approve a proposed sewer extension for the sole reason that the town’s planning and zoning commission issued a negative report on a referral under § 8-24 and the applicant did not appeal to the representative town meeting and obtain a reversal.

STATE *v.* WILLIAM HYDE BRADLEY, SC 20450*Judicial District of Middlesex at G.A. 9*

Criminal; Standing; Whether Appellate Court Properly Held Caucasian Defendant Convicted under General Statutes § 21a-277 (b) Did Not Have Standing to Bring Due Process Challenge Based on Claim That Statute Was Enacted to Discriminate Against Minority Groups; If Not, Whether § 21a-277 (b) Was Enacted to Discriminate Against African Americans and/or Mexican Americans. The defendant was charged in two separate informations with, inter alia, violation of probation and possession of a controlled substance with intent to sell in violation of General Statutes § 21a-277 (b) after approximately thirty ounces of marijuana were found in his home during a visit by probation officers. The defendant moved to dismiss the charges on the ground that his prosecution under § 21a-277 (b) was unconstitutional because the statute was enacted to discriminate against persons of African American and Mexican descent in violation of equal protection principles. The trial court ordered the parties to file supplemental memoranda addressing whether the defendant, whom the court had found to be Caucasian, had standing to make his equal protection claim. In its memorandum of decision, the trial court found that the defendant had standing to bring an equal protection challenge to § 21a-277 (b), under which he was charged, because there was a genuine likelihood that he would be convicted under the statute. The trial court nonetheless denied the defendant's motions to dismiss on the merits, concluding that he had failed to prove that the legislature's true purpose in enacting the statute was to discriminate against persons of African American or Mexican descent. The defendant thereafter entered conditional pleas of *nolo contendere* so that he could appeal the trial court's denials of his motions to dismiss. On appeal, the defendant claimed that the trial court erred in denying his motions to dismiss because state cannabis laws are based on a racially discriminatory purpose in violation of the Equal Protection Clause. The Appellate Court (195 Conn. App. 36) affirmed the trial court, albeit on the alternative ground that the defendant lacked standing to make his equal protection claim. The court distinguished the law on which the trial court relied to find that the defendant had standing and determined that such law provides that parties with individual standing may challenge not only ongoing but also future violations of their constitutional rights that are reasonably likely to occur. The court further determined, however, that the law did not empower the defendant to bring an equal protection challenge in his individual capacity based on alleged violations of the rights of persons of African American or

Mexican descent, groups to which he did not belong. The court also concluded that the defendant had not established classical aggrievement in a representative capacity or third-party standing. It accordingly affirmed the trial court's judgment. The defendant has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the defendant did not have standing to raise a due process challenge to his prosecution under General Statutes § 21a-277 (b), which he claims was enacted for the purpose of discriminating against minority groups to which he does not belong. If the answer to that question is "no," the court will also decide whether § 21a-277 (b) was enacted for the purpose of discriminating against African Americans and/or Mexican Americans.

ROBERT GOGUEN *v.* COMMISSIONER OF
CORRECTION, SC 20482

Judicial District of Tolland

Habeas; Whether Appellate Court Properly Dismissed Self-Represented Petitioner's Appeal Because He Failed to Brief Whether Habeas Court Abused Its Discretion in Denying His Petition for Certification to Appeal. The self-represented petitioner, Robert Goguen, filed a petition for a writ of habeas corpus alleging that he did not voluntarily enter his guilty plea to sexual assault in the second degree and that he received ineffective assistance in connection with the guilty plea. The habeas court declined to issue the writ pursuant to Practice Book § 23-24 on the ground that it lacked jurisdiction because the petitioner was not in the custody of the Commissioner of Correction at the time of the filing. The petitioner filed a petition for certification to appeal from the ruling, which the habeas court denied. The petitioner then filed an appeal in the Appellate Court. The Appellate Court (195 Conn. App. 502) noted that, when 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 a writ of habeas corpus only by satisfying the two-pronged test enunciated by the Supreme Court in *Simms v. Warden*, 229 Conn. 178 (1994), and adopted in *Simms v. Warden*, 230 Conn. 608 (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 an abuse of discretion, the petitioner must show 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. Based on its review of the petitioner's appellate briefs, the Appellate Court found he failed to brief the threshold issue of whether the habeas court abused its discretion in denying certification to appeal. The Appellate Court, therefore, dismissed the appeal based on its determination that the petitioner was not entitled to review because he failed to meet the first prong of *Simms* by demonstrating that the denial of his petition for certification to appeal constituted an abuse of discretion by the habeas court. The petitioner sought certification to appeal from the Appellate Court's judgment, which the Supreme Court granted as to the question of whether the Appellate Court properly dismissed the self-represented petitioner's appeal because he failed to brief whether the habeas court had abused its discretion in denying his petition for certification to appeal.

STATE *v.* AUSTIN GRANT HAUGHWOUT, SC 20547

Judicial District of Middlesex

Criminal; Search & Seizure; Whether Conviction for Interfering with, and Disobeying, Officer Violates Fourth Amendment Where Defendant Argues That He Was Unlawfully Detained; Whether New Crime Exception to Exclusionary Rule Applies. The defendant was convicted of disobeying an officer, interfering with an officer and two counts of assault of an officer as a result of two incidents occurring in July, 2015. On July 19th, Clinton police officer Alexieff Adrian Santiago observed the defendant standing in front of a car in a dark corner of the parking lot of the town library, which was closed at the time. As Santiago approached, the defendant got into the car and started to drive away. Santiago activated the lights on his patrol car and signaled for the defendant to pull over. The defendant complied and asked if he was suspected of committing a crime. Santiago asked the defendant what he was doing, and the defendant replied that he was using the public Wi-Fi available at the library. Santiago instructed the defendant to remain where he was, but the defendant drove away. Santiago pulled up behind the defendant's car, which was stopped at a traffic light, and activated the lights on his patrol car. The defendant again drove away. Santiago stopped the defendant a short distance away and asked that he put his car in park and produce his motor vehicle documentation. The defendant refused. Santiago did not arrest the defendant that night but rather subsequently obtained a warrant for his arrest. On July 22nd, the defendant

went to the police station to voluntarily surrender himself. When he arrived, he was carrying a GoPro camera in his hand. An officer notified him that he was under arrest and that could not bring the camera into the secure area. The defendant refused to surrender the camera, became argumentative and attempted to leave the police station. A physical struggle ensued, during which the defendant kicked the officer in the face, neck and arm. Another officer joined in to assist and, after some time, they were able to obtain control of the defendant. The defendant appeals, claiming that his conviction for disobeying an officer and interfering with an officer must be reversed because (1) he was not lawfully detained pursuant to a valid stop under *Terry v. Ohio*, 392 U.S. 1 (1968) and, as a result, all evidence derived from the stop should have been suppressed by the trial court; (2) a conviction for failing to comply with a police officer's requests during an illegal seizure violates the fourth amendment; and (3) the "new crime exception" to the fourth amendment's exclusionary rule does not apply under the circumstances here. The defendant also claims that (1) the prosecutor engaged in impropriety during closing argument by vouching for the reasonableness of the police conduct and use of force and by offering a personal opinion that the officers were acting in the performance of their duties; (2) the trial court improperly failed to instruct the jury on the element of assault on an officer that the defendant's conduct must be the proximate cause of the injuries; and (3) the evidence was insufficient to support a conviction on any of the charges.

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
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