

## SUPREME COURT PENDING CASES

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

STATE *v.* KARIN ZIOLKOWSKI, SC 20801

*Judicial District of New Haven*

**Criminal; Whether Defendant’s Amnesia Prevented Her From Receiving a Fair Trial; Whether Evidence Was Sufficient to Support Defendant’s Convictions for Murder and Second-Degree Arson; Whether Trial Court Erred in Allowing Into Evidence Tweets Purportedly Sent From Defendant’s Twitter Account.** On the morning of November 14, 2016, the firefighters carried the defendant and the body of her deceased eight-year-old son (victim) out of their burning home. An autopsy of the victim revealed that his death was not caused by smoke inhalation but rather by asphyxia. In addition, the fire marshal determined that the fires in the home were intentionally set. Based in part on this evidence, the defendant was charged with murder and arson in the second degree in violation of General Statutes § 53a-112 (a) (1) (B). Prior to trial, defense counsel requested a competency evaluation pursuant to General Statutes § 54-56d, stating that she was concerned that the defendant would not be able to assist in her own defense because she did not have any memories of the events surrounding the charged crimes. During the subsequent competency hearing, Dr. Nadia Gilbo, a forensic psychiatrist appointed by the court to examine the defendant, opined that the defendant “could fully exercise her cognitive ability” and was thus able to assist in her own defense. Thereafter, Dr. David Lovejoy, a neuropsychologist, testified for the defense and opined that the defendant was not competent to stand trial because her memory deficits created an inability to assist in her own defense. Applying the factors set forth in *State v. Gilbert*, 229 Conn. 228 (1994), for determining whether amnesia renders a defendant incompetent to stand trial, the trial court concluded that the defendant’s amnesia did not so impact the fairness of the proceedings as to render her incompetent. At trial, the state sought to introduce into evidence three “tweets” purportedly sent from the defendant’s Twitter account with the username “I am not Eliza” through the testimony of her aunt, A.G. A.G. testified, inter alia, that the defendant had told her that “I am not Eliza” was her Twitter account. The defendant objected to the admission of the tweets on the basis of lack of authentication. Specifically, the defendant claimed that “anyone else who had a user ID and password” for the Twitter account could have sent the tweets in question. The trial

court overruled the objection, concluding that a “prima facie” showing existed that the tweets were made by the defendant. After the trial, the jury found the defendant guilty of the charged crimes. The defendant directly appealed from the judgment of conviction to the Supreme Court pursuant to General Statutes § 51-199 (b) (3). On appeal, the defendant claims that her trial was inherently unfair because her amnesia prevented her from assisting in her own defense. In support thereof, she argues that her memory was crucial to the construction and presentation of a defense, and hence, her amnesia had a significant effect on the outcome of the trial. In addition, the defendant claims that her murder conviction should be reversed because the evidence was insufficient to establish (1) the identity of the victim’s killer and (2) that she had the specific intent to cause death. She also claims that her second-degree arson conviction should be reversed because the evidence was insufficient to establish (1) that she was responsible for setting the fires and (2) that she specifically intended to commit arson to conceal the crime of murder. Finally, the defendant claims that the trial court erred in overruling her authentication objection to the admission of the tweets purportedly sent from her Twitter account.

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STATE OF CONNECTICUT *v.* MARCUS HURDLE, SC 20827

*Judicial District of Ansonia-Milford*

**Criminal; Whether Trial Court Correctly Determined That It Lacked Authority to Award Defendant Presentence Confinement Credit at Sentencing; Whether Plea Agreement Included Presentence Confinement Credit.** While the defendant was incarcerated on other convictions, he entered into an agreement with the state to plead guilty to charges of robbery in the first degree and conspiracy to commit robbery in the first degree in exchange for the state’s agreement to enter a nolle prosequi on all remaining charges. The trial court canvassed the defendant, who verbally indicated he understood the terms of the agreement. At sentencing, however, the defendant for the first time raised to the court his belief that he was entitled to certain presentence confinement credit. The state responded by saying that presentence credit was not part of the plea agreement and that the court’s past practice was to defer to the Department of Correction regarding the calculation of jail credit. The defendant subsequently filed a motion asking the trial court to order that presentence credit be applied to his sentence, or alternatively, to allow him to withdraw his plea. The trial court denied the motion, finding that it did not have the discretion to award presentence confinement

credit pursuant to General Statutes § 18-98d and that there was no evidence that the defendant entered his plea involuntarily or unknowingly for purposes of allowing him to withdraw it. The trial court then imposed the agreed upon sentence. The defendant appealed, and the Appellate Court (217 Conn. App. 453) affirmed the trial court’s decision. The Appellate Court first held that the trial court did not have the authority or discretion to account for presentence confinement credit at sentencing because § 18-98d (c) expressly mandates that the Commissioner of Correction is responsible for calculating and applying such credit. The Appellate Court rejected the defendant’s argument analogizing a sentencing court’s discretion to award presentence credit with its discretion to determine whether sentences will run concurrently or consecutively. The court observed that a sentencing court’s authority to determine whether two sentences will run concurrently or consecutively has long been recognized at common law and expressly authorized by § 53a-37 whereas presentence credit is a “creature of statute,” such that the legislature could have include statutory language expressly authorizing sentencing courts to calculate and apply presentence credit if it wanted to do so. The Appellate Court also rejected the defendant’s reliance on case law such as *James v. Commissioner of Correction*, 327 Conn. 24 (2017), to demonstrate the trial court’s exercise of discretion to award presentence credit, noting that the sole issue in *James*, a habeas action, was whether the commissioner properly calculated and applied the credit. The court further determined that, although trial courts have expressed differing views in addressing presentence credit issues raised at sentencing, it is the commissioner and not the sentencing court who has the authority to determine a defendant’s eligibility for such credit. The Appellate Court additionally held that the trial court did not improperly accept, and later refuse to withdraw, the defendant’s guilty plea because the record did not support the defendant’s claim that the plea was invalid where there was no “meeting of the minds” on the terms of the plea agreement as to presentence credit. The defendant has been granted certification to appeal from the Appellate Court’s decision, and the Supreme Court will decide whether the Appellate Court correctly concluded that (1) the trial court lacked authority to award the defendant presentence confinement credit at the time of sentencing, and (2) the plea agreement did not include presentence confinement credit.

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STATE OF CONNECTICUT *v.* KELLY NIXON, SC 20848

*Judicial District of New Britain*

**Criminal; Whether Trial Court Correctly Determined that It Lacked Jurisdiction to Hear Defendant’s Motion to Correct**

**Illegal Sentence Pursuant to *State v. Hurdle*, 217 Conn. App. 453 (2023); Whether Defendant Is Entitled to Presentence Confinement Credit or Permitted to Withdraw His Plea.** The defendant had pending criminal cases in several jurisdictions. He was originally arrested on October 27, 2020, and was continuously held thereafter. While incarcerated, the defendant was served with an arrest warrant on September 15, 2021, for attempted robbery in the first degree and on June 3, 2021, for burglary in the third degree. As part of a global disposition with the state, the defendant agreed to plead guilty to all charges with concurrent sentences imposed on April 1, 2022. At sentencing, the trial court left the application of any presentence confinement credit to the Department of Correction and sentenced the defendant to ten years of imprisonment followed by five years of special parole. The Department of Correction applied presentence credit to the defendant's sentence for the time served from September 15, 2021 to April 1, 2022, and from June 3, 2021 to April 1, 2022. The defendant subsequently filed a motion with the trial court to correct an illegal sentence, arguing that a central part of the global disposition was that he receive presentence credit for the time served from his original date of arrest, October 27, 2020. Additionally, the defendant believed that he would serve a definite period of ten years imprisonment followed by five years of special parole in exchange for his guilty pleas and that the Department of Correction's application of presentence credit resulted in him serving more than ten years. The motion requested that the trial court order the Department of Correction to apply such presentence credit. The trial court dismissed the motion for lack of jurisdiction, citing *State v. Hurdle*, 217 Conn. App. 453, cert. granted, 346 Conn. 923 (2023). In *Hurdle*, the defendant pleaded guilty to certain charges against him and expressed at sentencing his belief that he was entitled to presentence confinement credit. The trial court found that it did not have the authority or discretion to apply presentence credit to his sentence, and the Appellate Court affirmed the trial court's determination on appeal. The Supreme Court granted the *Hurdle* defendant's petition for certification to appeal the Appellate Court's decision and will decide, *inter alia*, whether the Appellate Court correctly concluded that the trial court lacked authority to award the defendant presentence confinement credit at the time of sentencing. The defendant here appealed the trial court's dismissal to the Appellate Court, challenging *Hurdle*, and the Supreme Court transferred the appeal to its own docket pursuant to Practice Book § 65-2. The Supreme Court will decide the defendant's claims of whether (1) *State v. Hurdle* was wrongly decided, such that the trial court

improperly dismissed the defendant's motion to correct his illegal sentence, and (2) the defendant is entitled to receive presentence confinement credit if the plea bargain explicitly included it, or alternatively, whether he is allowed to withdraw his plea.

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THOMAS NAPOLITANO *v.* ACE AMERICAN INSURANCE COMPANY  
et al., SC 20922  
*Judicial District of Hartford*

**Contracts; Whether Notice of Cancellation of Workers' Compensation Insurance Policy Was Definite, Certain, and Unambiguous Such That Policy Was Effectively Cancelled Under General Statutes § 31-348.** The plaintiff, Thomas Napolitano d/b/a Napolitano Roofing, had a workers' compensation insurance policy issued by the defendant, ACE American Insurance Company (ACE). On March 28, 2018, ACE sent the plaintiff notice that a charge would be imposed if he did not provide certain records needed to complete an audit. On April 5, 2018, ACE sent the plaintiff two notices. The first, titled "Noncooperation of Audit Current Coverage," stated that he had not complied with the records request and that his failure to comply would result in cancellation of his policy if the audit was not conducted prior to the effective date of cancellation. The second, titled "Workers Compensation and Employers Liability Policy Cancellation," stated that the policy "is cancelled in accordance with its terms as of the effective date of cancellation indicated," which was April 25, 2018. On April 10, 2018, an agent for the plaintiff's insurance producer informed him that his tax returns had been received and that he was compliant at that time. On April 16, 2018, an agent for ACE emailed the plaintiff that he still had audit documents missing, but the plaintiff did not respond. On May 29, 2018, one of the plaintiff's employees was injured in the course of his employment and filed a workers' compensation claim. ACE denied the claim and refused to defend or indemnify the plaintiff because the policy had been terminated prior to the date of loss. The plaintiff brought this action seeking a declaratory judgment that the cancellation of the policy was ineffective and damages against ACE for, among other things, breach of contract for refusing to defend or indemnify him under the policy. The plaintiff moved for summary judgment, claiming that the second April 5 notice did not cancel the policy because it was not "certain and unequivocal" when read with the other notices. Pursuant to General Statutes § 31-348, a workers' compensation insurance policy is not effectively cancelled until fifteen days after notice is filed with the chairperson of the Workers' Compen-

sation Commission, and, under *Dengler v. Special Attention Health Services, Inc.*, 62 Conn. App. 440 (2001), the notice must be certain and unequivocal. The trial court granted the motion and awarded the plaintiff damages. The defendant appealed. The Appellate Court (219 Conn. 110) reversed, holding that the trial court erred in rendering summary judgment for the plaintiff because the second April 5 notice cancelled the policy. The Appellate Court found that the requirements of § 31-348, including that the notice be certain and unequivocal, were met because the second April 5 notice expressly stated that the effective date of cancellation was April 25, 2018, and it was filed with the chairperson of the Workers' Compensation Commission at least fifteen days prior to the date of cancellation. The Appellate Court noted that the plaintiff's subjective understanding as to when the policy was cancelled was irrelevant. The plaintiff sought certification to appeal, which the Supreme Court granted as to the question of whether the Appellate Court correctly concluded that the second April 5 notice constituted a definite, certain, and unambiguous notice of cancellation that effectively cancelled the plaintiff's workers' compensation insurance policy under § 31-348.

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KAYLA SUPRYNOWICZ et al. v. NARENDA B. TOHAN, SC 20992  
*Judicial District of Hartford*

**Torts; Wrongful Life; Whether Trial Court Properly Struck Plaintiffs' Claims as Sounding in Wrongful Life; Whether Trial Court Properly Struck Plaintiffs' Claims for Not Alleging "Extraordinary Damages"; Whether Connecticut Law Should Recognize Wrongful Life Claims.** The plaintiff Kayla Suprynowicz was born to parents who received fertility services from the defendant, a reproductive endocrinologist, and believed that only the sperm of Kayla's father was used in the process. As an adult, Suprynowicz took a 23 and Me DNA genetic test that revealed that, even though her father had a European background, her biological father had a South Asian background. Suprynowicz came to the conclusion, based on her test results, the circumstances underlying her birth, and the "striking resemblance" between her and the defendant, that the defendant was likely her biological father and had used his own sperm in providing fertility services to her parents. Months after Suprynowicz received her test results, she was contacted by the plaintiff Reilly Flaherty. Flaherty had taken a 23 and Me test as well, the results of which indicated that Suprynowicz was his half-sister. Flaherty was also born to parents who received fertility services from the defendant and similarly came

to the conclusion that the defendant was likely his biological father and had used his own sperm in providing fertility services to his parents. The plaintiffs brought this action against the defendant, claiming in relevant part that the defendant had been negligent in using his sperm while providing fertility services to their parents. They further alleged that they suffer “mental anguish and physical injury” as a result, and Suprynowicz additionally alleged that she has a genetic cerebral condition and mast cell activation disorder that limits her earning capacity. The defendant filed a motion to strike the plaintiffs’ negligence claims because the defendant did not owe a duty of care to the plaintiffs or, in the alternative, the claims sounded in wrongful life, which is a cause of action not recognized in Connecticut and based on the theory that a child would not have been born but for the defendant’s negligence. The trial court agreed with the defendant, considering his duty argument but granting the motion on the basis of his wrongful life argument. The trial court determined that the plaintiffs’ claims properly sounded in wrongful life rather than ordinary negligence, despite their argument to the contrary. It then noted the lack of Connecticut appellate authority for wrongful life claims and concluded that, even if it were to apply the laws of the jurisdictions that have recognized such claims, the plaintiffs’ claims were not viable because their alleged damages did not rise to the level of “condition[s] that impose extraordinary expenses upon the parents and the child.” The trial court further answered “[t]he question . . . whether Connecticut does or should recognize a cause of action for wrongful life that is free of the limits imposed by . . . [the aforementioned other jurisdictions] . . . in the negative.” The trial court rendered judgment on the stricken complaint, and the plaintiffs filed this appeal in the Appellate Court, which was transferred to the Supreme Court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2. The Supreme Court will decide (1) whether the trial court properly struck the plaintiff’s claims as sounding in wrongful life rather than negligence, (2) whether the trial court properly struck the plaintiffs’ claims for failing to allege “extraordinary damages,” and (3) whether Connecticut law should recognize a wrongful life cause of action.

*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*

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