SUPREME COURT

STATE OF CONNECTICUT

PSC-19-0401

JOSE LOPEZ

v.

COMMISSIONER OF CORRECTION

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

The petitioner Jose Lopez's petition for certification to appeal from the Appellate Court, 195 Conn. App. 904 (AC 41414), is denied.

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

David J. Reich, assigned counsel, in support of the petition.
James A. Killen, senior assistant state's attorney, in opposition.

Decided March 11, 2020

By the Court,

/s/
L. Jeanne Dullea
Assistant Clerk-Appellate

Notice Sent: March 11, 2020
Petition Filed: February 27, 2020
Clerk, Superior Court, TSRCV124004401S
Hon. John B. Farley
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record

STATE OF CONNECTICUT
APPELLATE COURT

Date: Hartford, January 28, 2020

To the Chief Clerk of the Appellate Court.
The Appellate Court has decided the following case:

JOSE LOPEZ

v.

Opinion Per Curiam.

COMMISSIONER OF CORRECTION

Docket No. AC 41414
Trial Court Docket No. TSRCV124004401S

The appeal is dismissed.

Chief Judge.

Rescript

A1

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION *v.* JIAN MIAO ET AL.
(AC 42414)

Alvord, Moll and Pellegrino, Js.

Argued January 7—officially released January 28, 2020

Named defendant's appeal from the Superior Court in the judicial district of Stamford-Norwalk, *Genuario, J.*

Per Curiam. The judgment is affirmed.

FIRST NIAGARA BANK, N.A. *v.* JOSEPH L. MAYFIELD ET AL.
(AC 42135)

Prescott, Elgo and Flynn, Js.

Argued January 8—officially released January 28, 2020

Named defendant's appeal from the Superior Court in the judicial district of Stamford-Norwalk, *Genuario, J.*

Per Curiam. The judgment is affirmed and the case is remanded for the purpose of setting a new sale date.

CLANFORD L. PIERCE, JR. *v.* STATE OF CONNECTICUT
(AC 41396)

Alvord, Prescott and Beach, Js.

Argued January 8—officially released January 28, 2020

Plaintiff's appeal from the Superior Court in the judicial district of Hartford, *Dubay, J.*

Per Curiam. The judgment is affirmed.

JOSE LOPEZ *v.* COMMISSIONER OF CORRECTION
(AC 41414)

DiPentima, C. J., and Moll and Bear, Js.

Argued January 9—officially released January 28, 2020

Petitioner's appeal from the Superior Court in the judicial district of Tolland, *Farley, J.*

Per Curiam. The appeal is dismissed.

CARMEN EMMANUELLI *v.* SOUTHWICK AND MEISTER, INC.
(AC 42487)

Lavine, Prescott and Harper, Js.

Submitted on briefs January 6—officially released January 28, 2020

Plaintiff's appeal from the Superior Court in the judicial district of New Haven, *Wahla, J.*

Per Curiam. The judgment is affirmed.

ARGUS FUNDING SOLUTIONS, LLC
v. REI HOLDINGS, LLC, ET AL.
(AC 41940)

Keller, Elgo and Devlin, Js.

Argued January 6—officially released January 28, 2020

Appeal by the proposed intervener Carmelinda Marotta from the Superior Court in the judicial district of Hartford, *Sheridan, J.*

Per Curiam. The appeal is dismissed as moot.

DOCKET NO. TSR-CV12-4004401-S : SUPERIOR COURT

JOSE LOPEZ (#285389) : JUDICIAL DISTRICT OF

VS. : TOLLAND

WARDEN, STATE PRISON : OCTOBER 30, 2017

MEMORANDUM OF DECISION

The petitioner, Jose Lopez, seeks habeas corpus relief based on alleged ineffective assistance of counsel in his criminal proceeding, the lack of knowing, intelligent and voluntary guilty pleas in that proceeding, an illegal sentence and actual innocence. Mr. Lopez was given a total effective sentence of twelve years for his conviction on two counts of risk of injury to a minor (sexual contact) in violation of General Statutes § 53-21(a)(2). He pleaded guilty to those charges on July 16, 2010 and was sentenced on September 10, 2010. His sentence was originally to be suspended after serving six years, with ten years of probation to follow. Mr. Lopez is presently incarcerated due to a violation of probation found on June 9, 2015. The court concludes that the petitioner has not carried his burden on any of his claims and, therefore, the petition is denied.

I. Factual and Procedural Background

Mr. Lopez was arrested on March 17, 2009 on multiple charges of sexual assault and risk of injury to a minor. Shortly after his arrest, Attorney William Schipul was appointed to represent him. On July 16, 2010, pursuant to a plea agreement negotiated by Attorney Schipul, Mr. Lopez pleaded guilty to two counts of risk of injury to a minor (sexual contact) in violation of General Statutes § 53-21(a)(2). Mr. Lopez maintains that Attorney Schipul failed to provide effective representation for several reasons. During the pretrial period, Mr. Lopez was held in

custody at the Garner Correctional Institution. Mr. Lopez claims Attorney Schipul never met with him at Garner prior to entering his guilty pleas and never met with him at the courthouse, outside the courtroom. He claims that Attorney Schipul refused to obtain and share documents with Mr. Lopez (specifically witness statements, hospital records and Department of Children and Families records), failed to investigate alleged inconsistencies in the witness statements, failed to investigate Mr. Lopez' state of mind at the time he entered into the plea agreement, lied to him about the nature of the plea he was to enter, and coerced Mr. Lopez into entering into the plea agreement.

Mr. Lopez also asserts that his mental condition at the time he entered into the plea agreement was such that he was unable to knowingly and voluntarily enter into a plea agreement, specifically because he was "heavily medicated" both when the pleas were entered and when he was sentenced. Despite being canvassed on that subject at the time he entered his pleas, he maintains that he was "not there" during the canvass, he was "in and out," stiff, paralyzed and having flashes due to the medication. He maintains he "wasn't thinking right" at the time.

Mr. Lopez's claim that his sentence is illegal is based on the assertion that the ten-year period of probation imposed on him is excessive and may not exceed the six year period he was required to actually serve.

Mr. Lopez also claims that he is innocent of the charges to which he pleaded guilty.

The court conducted a trial of this case beginning on October 19, 2016, continuing on January 13, 2017 and March 24, 2017 and concluding on July 7, 2017. The court heard testimony from Mr. Lopez, Daisy Barreiro (a DCF supervisor) and Dr. Maurice Lee (a physician at Garner) on October 19, 2016. On January 13, 2017 Detective David Defeo, Andrea Sellers of DCF, Sheyla Claudio (the victim's sister), Nayda Rodriguez (an acquaintance of the petitioner

and his wife) and Attorney Schipul testified. On March 24, 2017 the court heard testimony from Paula Lopez (the petitioner's wife) and on July 7, 2017 Attorney Schipul completed his testimony and Nayda Picard (the victim's mother) also testified. Mr. Lopez introduced several exhibits, including an excerpt from a police report, the record of a DCF investigation and medical records from the Department of Corrections. The respondent introduced a transcript of the plea canvass conducted when Mr. Lopez entered his guilty pleas. The court has considered all this evidence in reaching its conclusions in this case. The court specifically finds the testimony of Attorney Schipul and Dr. Lee credible and significant in resolving the issues raised in this case.

On July 16, 2010, Mr. Lopez pleaded guilty to two counts of risk of injury (sexual contact) to a minor under the age of thirteen. He was thoroughly canvassed by the court before the court accepted his plea. The facts of the case were discussed in detail and Mr. Lopez took the opportunity to express his disagreement with some of the facts recited by the state's attorney. The state's attorney claimed that Mr. Lopez, on two occasions between March 2005 and September 2008, had sexual contact with the victim including penile and digital penetration of the child's vagina and anus. Mr. Lopez denied any penetration, but admitted touching those areas with his hands for the purpose of sexual gratification. The following colloquy occurred after the state recited the facts.

> THE COURT: Among the claims I've heard was that you touched with your hands the vaginal and anal area of the young child. Is that correct sir?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: There's also a statement that there was vaginal penetration with your penis and that your penis penetrated the victim's anus.

THE DEFENDANT: No, sir.

THE COURT: Did you touch her with your penis?

THE DEFENDANT: No, sir.

THE COURT: Did you put your hand in her vagina?

ATTY. SCHIPUL: What was the question, your Honor?

THE COURT: Did he place his fingers in the child's vagina?

THE DEFENDANT: No, sir.

THE COURT: What did you do, sir? You're pleading guilty so I want to make sure that there are facts to support your guilty plea.

THE DEFENDANT: I touched the vaginal and anal area.

THE COURT: And did you do that for purposes of your sexual gratification, sir?

THE DEFENDANT: Yes.

Moreover, at the trial of this case, Mr. Lopez himself brought out the fact that a DCF investigation had substantiated the allegations of sexual abuse against him.

In its plea canvass the court asked Mr. Lopez whether he was satisfied that he had enough time to discuss the evidence in the case, the elements of the offenses and his decision to plead guilty with Attorney Schipul. Mr. Lopez responded affirmatively. The court also asked Mr. Lopez whether he was "under the influence of any drugs or medication" and Mr. Lopez said, "No, sir." It does appear from the records, however, that Mr. Lopez may have been taking Zoloft, Klonopin and Abilify at the time he pled guilty. Dr. Lee testified that these medications can cause drowsiness and slower thinking and Abilify can cause confusion at higher doses, but

not at the dose prescribed to the petitioner. Significantly, Attorney Schipul was aware that Mr. Lopez had been taking medications and had been diagnosed with mental health conditions. For this reason, Attorney Schipul had Mr. Lopez examined by a forensic psychiatrist, Dr. James Phillips. Dr. Phillips' examination raised no issues or concerns and Attorney Schipul himself observed no competency issues during his representation of Mr. Lopez.

Attorney Schipul thoroughly explained his efforts in the case and the thought process underlying Mr. Lopez's guilty plea. Contrary to Mr. Lopez's claims, Attorney Schipul did visit with Mr. Lopez on multiple occasions during the pretrial phase of the case and discussed the evidence in the case with him. He acknowledged there were inconsistencies in the statements given by witnesses, as there always are according to Attorney Schipul, but that the nature of the inconsistencies did not substantially weaken the state's case. Moreover, there was nothing more to investigate about them, since they were already documented in the witness statements.

Attorney Schipul reviewed the state's disclosure, which included not only the police reports, witness statements and discoverable portions of the medical and DCF records, but also a recorded statement Mr. Lopez gave to the police following a valid waiver of his *Miranda* rights. Lopez made statements that Attorney Schipul believed could be used effectively against him at trial. The undisputed circumstances of the case, including Mr. Lopez's admission that he entered the victim's home and bedroom at 6:00 a.m. and discussed her sexual preferences, along with all the other evidence, made a conviction on more than just the risk of injury charges a reasonable possibility, in Attorney Schipul's estimation.

Throughout the case there had been discussions of accepting a plea offer. At the outset, Mr. Lopez wanted a trial, but as the case developed, the state made its disclosures and Attorney Schipul discussed the case with Lopez, his attitude changed. He did not want to testify and he

did not want the victim to testify. When the state's offer was for twelve years suspended after eight, Mr. Lopez told his wife he wanted to plead guilty and that was communicated to Attorney Schipul, who then negotiated the offer down to twelve years suspended after six. Mr. Lopez accepted that offer. He has not claimed to have been misled about the length of the sentence and it was discussed in detail with the court before the court accepted his plea.

Mr. Lopez presented a number of witnesses at this trial in an effort to highlight some of the inconsistencies and to otherwise cast doubt upon the reliability of the key witnesses in the underlying case. The court finds that the inconsistencies were minor and they have virtually no weight at all on the question of Mr. Lopez's claim of actual innocence. Mr. Lopez's theory that the allegations against him were contrived in retaliation for his refusal to register a car for the victim's mother under his insurance amounted to nothing more than just a theory. There was evidence of the existence of such an issue, but nothing more than Mr. Lopez's own allegation that the allegations against him were fabricated because of it.

II. Discussion

A. Validity of the Guilty Plea

Lopez challenges his guilty plea based on a claim that he was "heavily medicated" and "not thinking right" at the time he entered his plea. He claims he should be permitted to withdraw his guilty plea for this reason. No defenses to the petition were pleaded by the respondent and thus any claim of procedural default based on the petitioner's failure to move to withdraw his plea or appeal from his conviction has been waived. *Day* v. *Commissioner of Correction*, 151 Conn. App. 754, 758-60, 96 A.3d 600, cert. denied, 314 Conn. 936, 102 A.3d 1113 (2014); *Ankerman* v. *Commissioner of Correction*, 104 Conn. App. 649, 654-55, 935 A.2d 208, cert. denied, 285 Conn. 916, 943 A.2d 474 (2007).

"The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Hill* v. *Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). "A guilty plea and subsequent conviction of an accused person who is not legally competent to stand trial violates the due process of law guaranteed by the state and federal constitutions." (Internal quotation marks and citations omitted) *Taylor* v. *Commissioner of Corrections*, 284 Conn. 433, 449, 936 A.2d 611 (2007). A defendant who does not have a rational and factual understanding of the proceedings or is unable to assist in his own defense is not competent to enter a guilty plea. Id., 450. A valid guilty plea must be supported by a record disclosing "an act that represents a knowing choice among available alternative courses of action, an understanding of the law in relation to the facts, and sufficient awareness of the relevant circumstances and likely consequences of the plea..." (Internal quotation marks and citations omitted) Id., 451. The fact that a defendant is suffering from a mental or emotional impairment or is on medication does not mean the defendant is incompetent. "The touchstone of competency, rather, is the ability of the defendant to understand the proceedings against him and to assist in his own defense." Id., 452.

Mr. Lopez's uncorroborated testimony that he was heavily medicated and not in his right mind when he entered his guilty plea is not sufficient to establish that his plea was not knowing, voluntary and intelligent. The transcript of the plea canvass demonstrates the opposite. Mr. Lopez was quick to consult with his attorney and contradict the prosecutor's recitation of the facts. He readily responded to the court's questions isolating the facts with which he agreed from those with which he disagreed. Attorney Schipul confirmed that Mr. Lopez had demonstrated an understanding of the elements of the offenses to which he was pleading guilty. Attorney Schipul testified in this case that Mr. Lopez did not exhibit any signs of incompetency

throughout his representation of him. Attorney Schipul nevertheless obtained a psychiatric evaluation and opinion on Mr. Lopez because there were mental health issues and Lopez was on medication. Dr. Lee's testimony establishes that the common side effects of the petitioner's medications would not be expected to impair an individual to the point of incompetency based on the particular facts of this case. There is no evidence in this case demonstrating a reasonable likelihood that the petitioner's medications adversely affected his ability to understand the proceedings against him or assist in his own defense. *Taylor* v. *Commissioner of Correction*, supra, 284 Conn. 452-54.

B. Ineffective Assistance of Counsel

Mr. Lopez alleges that Attorney Schipul provided ineffective assistance of counsel in several ways. First, he alleges that Attorney Schipul failed to investigate Lopez's state of mind at the time he entered into the plea agreement. He also claims Attorney Schipul never met with him outside the courtroom prior to his guilty plea. He claims that Attorney Schipul refused to obtain and share documents with Mr. Lopez, failed to investigate alleged inconsistencies in the witness statements, lied to him about the nature of the plea he was to enter, and coerced Mr. Lopez into entering into the plea agreement.

"The sixth and fourteenth amendments to the United States constitution guarantee criminal defendants the right to have counsel for their defense in state prosecutions... Implicit in this guarantee is the right to have effective assistance of counsel." (Emphasis in original; citations omitted.) *Skakel* v. *Commissioner of Correction*, 325 Conn. 426, 441, 159 A.3d 109 (2016). "To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)." (Citations omitted.) *Small* v. *Commissioner of Correction*,

286 Conn. 707, 712, 946 A.2d 1203, cert. denied, 555 U.S. 975, 129 S. Ct. 481, 172 L. Ed. 2d 336 (2008). The petitioner has the burden to establish that "(1) counsel's representation fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defense because there was a reasonable probability that the outcome of the proceedings would have been different had it not been for the deficient performance." (Emphasis in original.) *Johnson* v. *Commissioner of Correction*, 285 Conn. 556, 575, 941 A.2d 248 (2008), citing *Strickland* v. *Washington*, supra, 466 U.S. 694.

"To satisfy the performance prong ... 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." *Taylor* v. *Commissioner of Correction*, 324 Conn. 631, 637-38, 153 A.3d 1264 (2017). "It is not enough for the petitioner to simply prove the underlying facts that his attorney failed to take a certain action. Rather, the petitioner must prove, by a preponderance of the evidence, that his counsel's acts or omissions were so serious that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment, and as a result, he was deprived of a fair trial." *Harris* v. *Commissioner of Correction*, 107 Conn. App. 833, 845-46, 947 A.2d 7, cert. denied, 288 Conn. 908, 953 A.2d 652 (2008). When assessing trial counsel's performance, the habeas court is required to "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . . ." *Strickland* v. *Washington*, supra, 466 U.S. 689.

Under the second prong of the test, the prejudice prong, the petitioner must show that "counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable." (Internal quotation marks omitted.) *Michael T.* v. *Commissioner of Correction*, 307 Conn. 84, 101, 52 A.3d 655 (2012). The petitioner "must demonstrate that there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (Internal quotation marks and citations omitted.) *Breton* v. *Commissioner of Correction*, 325 Conn. 640, 669, 159 A.3d 1112 (2017).

"Although a petitioner can succeed only if he satisfies both prongs, a reviewing court can find against a petitioner on either ground." (Citations omitted.) *Breton* v. *Commissioner of Correction*, supra. See *Strickland* v. *Washington*, supra, at 697, 104 S.Ct. 2052 (court need not determine whether counsel's performance was deficient before examining prejudice suffered by defendant). Ultimately, "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland* v. *Washington*, supra, 466 U.S. 686.

"Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." (Internal quotation marks and citation omitted) *Hill* v. *Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *Carraway* v. *Commissioner of Corrections*, 144 Conn. App. 461, 471, 72 A.3d 426 (2013), appeal dismissed 317 Conn. 594, 119 A.3d 1153 (2015). In order to prevail under the prejudice prong of the *Strickland* test, the petitioner must prove that, "but for counsel's allegedly deficient performance, the petitioner would have insisted upon a trial." *Carraway* v. *Commissioner of Corrections*, supra, 476, citing *Hill* v. *Lockhart*, supra.

Mr. Lopez first argues that Attorney Schipul's representation was ineffective because he failed to investigate Lopez's mental condition. This ground is without factual foundation because

Attorney Schipul did in fact have Mr. Lopez examined by a psychiatrist in order to assess Lopez's state of mind and the results were that the issue was not worth pursuing.

Mr. Lopez claims that Attorney Schipul failed to investigate the case, lied to him and coerced him into entering a guilty plea. The court finds that the petitioner has failed to carry his burden to prove these allegations. Mr. Lopez maintains that he only agreed to plead guilty because Attorney Schipul told him his plea would not require him to admit to touching the victim with the purpose of obtaining sexual satisfaction. Instead, he thought he would only have to admit that he had engaged in wrestling with the victim. Attorney Schipul clarified that was not the case and that he explained to Mr. Lopez his plea would allow him to avoid admitting penetration as distinguished from touching. Although Mr. Lopez was originally charged with two counts of sexual assault in the first degree, the plea agreement allowed him to plead guilty to two counts of risk of injury to a minor under thirteen years old (sexual contact) in violation of General Statutes §53-21(a)(2). The nature of the charges, the details of the plea agreement and the colloquy between the court and Mr. Lopez before his plea was accepted all corroborate Attorney Schipul's testimony that it was the distinction between touching and penetration that was of concern to Mr. Lopez at the time of his plea. Mr. Lopez was very clear in the colloquy to distinguish the facts he would admit from those he would not.

Attorney Schipul also provided a detailed and persuasive explanation for his advice to Mr. Lopez that the plea offer was a reasonable one and confirmed that he had reviewed all of the relevant evidence in the case and discussed it with Lopez. Mr. Lopez was originally exposed to 140 years of incarceration and lifetime registration as a sex offender. Even under the two risk of injury charges, he faced a minimum of five years and a maximum of forty years. Attorney Schipul, who had over thirty years' experience as a public defender and had handled 10-15 cases

of sexual assault on minors, believed the outcome under the plea agreement was very favorable to Mr. Lopez. His total effective sentence on the two risk of injury charges was 12 years of incarceration, suspended after service of six years and ten years' probation coinciding with the ten-year sex offender registration requirement.

Attorney Schipul's analysis and advice was well within the range of competence demanded of attorneys in criminal cases. He provided a thorough, reasoned and persuasive explanation to this court of the risks of going to trial and the benefit of accepting the state's offer and he had that discussion on multiple occasions with Mr. Lopez before he entered his guilty plea. Consequently, the petitioner has not carried his burden on the performance prong of the *Strickland* test. Moreover, under the circumstances, notwithstanding his insistence otherwise today, the court does not find credible Mr. Lopez's claim that he would have insisted on a trial but for Attorney Schipul's representation and thus his claim also fails to satisfy the prejudice prong.

C. Illegal Sentence

Mr. Lopez claims that his sentence is illegal because the period of probation is lengthier than the period of his initial incarceration. Before seeking to correct an illegal sentence for the first time in a habeas petition, a defendant must appeal the sentence directly or file a motion pursuant to Practice Book § 43-22 with the trial court. *Cobham* v. *Commissioner of Correction*, 258 Conn. 30, 38 (2001). The respondent, however, has not advanced a defense of procedural default based on Mr. Lopez's failure to raise this issue in the trial court or on appeal. Consequently, he may pursue the issue as he would have in the event that he had challenged the legality of the sentence in the trial court or upon appeal from his conviction and the court must

decide the merits of the issue. *Day* v. *Commissioner of Correction*, supra, 151 Conn. App. 758-60; *Ankerman* v. *Commissioner of Correction*, supra, 104 Conn. App. 654-55.

Mr. Lopez claims that his sentence is illegal because the ten-year period of probation exceeds the six-year term of his initial incarceration. While it is the case that the maximum period of probation that may be imposed for a B felony is five years, General Statutes §53a-29(f) provides that "[t]he period of probation, unless terminated sooner as provided in section 53a-32, shall be not less than ten years or more than thirty-five years for conviction of a violation of subdivision (2) of subsection (a) of section 53-21..." Thus, Mr. Lopez received the minimum period of probation permissible for the offenses to which he pled guilty. *State* v. *Winer*, 69 Conn. App. 738, 753-56, 796 A.2d 491, cert. denied 261 Conn. 909, 806 A.2d 50 (2002).

D. Actual Innocence

A petitioner may bring a habeas action based on a claim of actual innocence without having to allege a constitutional violation in the underlying trial. *Summerville* v. *Warden*, 229 Conn. 397, 421, 641 A.2d 1356 (1994). Newly discovered evidence, however, is necessary to pursue an actual innocence claim on a habeas petition. *Sargent* v. *Commissioner of Correction*, 121 Conn. App. 725, 734-35, 997 A.2d 609, cert. denied, 298 Conn. 903, 3 A.3d 71 (2010).[1] In order to succeed, a petitioner must prove his or her actual innocence by clear and convincing evidence with sufficient proof that no reasonable fact finder would find him or her guilty of the crime. *Miller* v. *Commissioner of Correction*, 242 Conn. 745, 791, 700 A.2d 1108 (1997).

Mr. Lopez presented no newly discovered evidence in support of his claim of actual innocence. He merely raised questions concerning the weight and credibility of the evidence relied upon at the time of his guilty plea to justify the plea. He himself, however, admitted the

[1] The Connecticut Supreme Court has not decided this issue. *Clarke* v. *Commissioner of Correction*, 249 Conn. 350, 358, 732 A.2d 754 (1999).

Additional material from this filing is available in the Clerk's Office.