No. _____

In The

SUPREME COURT OF THE UNITED STATES

GLEN S.,
Petitioner

v.

STATE OF CONNECTICUT,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
CONNECTICUT APPELLATE COURT

APPENDIX (Vol. 1 of 1)

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March 7, 2022

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STATE OF CONNECTICUT v. GLEN S.*
(AC 43101)

Prescott, Suarez and Vitale, Js.

Syllabus

The defendant, who had been convicted of sexual assault in a spousal or cohabiting relationship, appealed to this court from the judgment of the trial court revoking his probation. The defendant requested that he appear as a self-represented party in his violation of probation proceeding. Following a canvass, the trial court determined that the defendant was competent to represent himself and granted his request. During the evidentiary hearing portion of the proceeding, the defendant had difficulty formulating nonargumentative, noncompound questions while cross-examining the state's witnesses. After the state rested its case, the defendant requested that a specific attorney be appointed as his defense counsel. The trial court was unable to grant the request because the attorney was not on the authorized list of special public defenders. The trial court instead appointed a special public defender to act as standby counsel, as the defendant continued to insist that he represent himself, and it ordered a competency evaluation of the defendant pursuant to the applicable statute (§ 54-56d). After the defendant refused to cooperate with the evaluators, the trial court determined that the defendant was no longer competent to represent himself and appointed his standby counsel to fully represent him. At the request of defense counsel, the trial court ordered a second competency evaluation to determine whether the defendant was competent to stand trial. The

* In accordance with our policy of protecting the privacy interests of the victims of sexual assault, we decline to use the defendant's full name or to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

APPENDIX A

defendant again refused to cooperate with the evaluators, and the trial court, finding that the defendant understood the charges against him and was capable of assisting with his defense, proceeded with the evidentiary hearing. The defendant declined the opportunity to recall the state's witnesses for reexamination, and he did not testify or put forth any of his own witnesses. The trial court found the defendant in violation of his probation. *Held*:

1. The defendant could not prevail on his unpreserved claim that the trial court's canvass regarding the waiver of his right to be represented by counsel was constitutionally inadequate under *Faretta* v. *California* (422 U.S. 806) because the claim failed under the third prong of *State* v. *Golding* (213 Conn. 233), as the defendant did not demonstrate that a constitutional violation existed: the trial court reasonably could have concluded that the defendant was competent to waive his right to counsel, as his request for self-representation was clear and unequivocal, he indicated during the trial court's canvass that he had represented himself in prior federal cases, that he was voluntarily waiving his right to counsel, and that he was aware of the disadvantages to proceeding as a self-represented party, and his technical legal knowledge was irrelevant to the competency determination; moreover, the trial court apprised the defendant of his maximum exposure for the violation of his probation and was not required to advise him of his maximum exposure with respect to certain misdemeanor charges that were not before the trial court at the time of the canvass.
2. The defendant could not prevail on his claim that, even if the canvass regarding the waiver of his right to be represented by counsel was constitutional, he was entitled to a new trial under *State* v. *Connor* (292 Conn. 483): the defendant failed to present sufficient evidence to demonstrate that he suffered from such a significant mental impairment that the trial court should have, sua sponte, determined that he was incompetent to represent himself, as the defendant failed to cooperate during the two court-ordered competency evaluations and his inability to effectively cross-examine the state's witnesses was insufficient, alone, to overcome the statutory presumption of competency.
3. The trial court did not err when it failed, sua sponte, to canvass the defendant about the waiver of his constitutional right to testify and this court declined to exercise its supervisory authority to require trial courts to conduct such a canvass: our Supreme Court previously determined in *State* v. *Paradise* (213 Conn. 388), that trial courts were not constitutionally required to canvass a defendant about the waiver of his right to testify in instances such as the present case, where the defendant did not allege that he wanted to testify or that he did not know that he could testify; moreover, the exercise of supervisory powers relating to the issue was better left to our Supreme Court.
4. The defendant's claim that the trial court's judgment should be reversed because he was deprived of his constitutional right to conflict free

representation because an actual conflict existed was unavailing: his public defender's one sentence reference to the defendant's threat of physical violence against him in a motion for appointment of a guardian ad litem, which was filed in an attempt to obtain releases of the defendant's relevant health information in order to determine his competency, did not provide an adequate factual basis for the defendant's contention that an actual conflict existed; moreover, the record did not reflect that his public defender sought to withdraw from further representation or that his public defender made any statements that were representative of divided loyalty.

Argued March 3—officially released August 31, 2021

Procedural History

Substitute information charging the defendant with the crime of violation of probation, brought to the Superior Court in the judicial district of Stamford-Norwalk, geographical area number twenty, and transferred to the judicial district of Waterbury, geographical area number four; thereafter, the matter was tried to the court, *Fasano, J.*; judgment revoking the defendant's probation, from which the defendant appealed to this court. *Affirmed.*

Conrad Ost Seifert, assigned counsel, for the appellant (defendant).

Sarah Hanna, senior assistant state's attorney, with whom, on the brief, were *Maureen T. Platt*, state's attorney, and *John R. Whalen*, supervisory assistant state's attorney, for the appellee (state).

Opinion

VITALE, J. The defendant, Glen S., appeals from the judgment of the trial court revoking his probation after finding that he had violated the conditions of his probation in violation of General Statutes § 53a-32. On appeal, the defendant claims: (1) the court's canvass regarding the waiver of his right to be represented by counsel was constitutionally inadequate under *Faretta* v. *California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); (2)

even if the canvass was constitutional under *Faretta*, he is entitled to a new trial under *State* v. *Connor*, 292 Conn. 483, 973 A.2d 627 (2009), because he exhibited a noticeable impairment during the first day of the violation of probation evidentiary hearing; (3) this court should exercise its supervisory authority to require that trial courts canvass criminal defendants about the waiver of their constitutional rights to testify; (4) this court should review his claim of ineffective assistance of counsel on direct appeal because the ineffectiveness of his trial counsel is clear from the record; and (5) the court's judgment should be reversed because he was deprived of his constitutional right to conflict free representation. We disagree and, accordingly, affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to this appeal. The defendant pleaded guilty on August 13, 2008, to sexual assault in a spousal or cohabiting relationship in violation of General Statutes (Rev. to 2007) § 53a-70b. The defendant thereafter was sentenced by the court, *Fasano*, *J.*, to a term of fifteen years of incarceration, execution suspended after five years, and fifteen years of probation. The sentencing court imposed conditions of probation, which provided, inter alia, that the defendant (1) not violate any criminal law of Connecticut, (2) report to his probation officer as directed, (3) keep his probation officer apprised of any arrests during the probationary period, (4) keep the probation officer apprised of his location and inform the probation officer of any changes to his address or contact information, (5) undergo sex offender evaluation and treatment, and (6) register as a sex offender. On October 5, 2011, the court, *Damiani*, *J.*, imposed another condition of probation, barring the defendant from having any contact with the Office of the State's Attorney or any member of that office. The defendant signed an agreement detailing the conditions

of his probation on March 15, 2012, and was released from prison on October 31, 2012. The defendant again signed an acknowledgment of the conditions of probation on May 3, 2017.

During his probation period, the defendant failed to complete the required sex offender treatment program and, consequently, was discharged from the program in February, 2018. In a letter to Jason Grady, the defendant's probation officer, a therapist for the sex offender treatment program informed Grady that the defendant had been discharged due to his constant outbursts and that the defendant's individual sessions were ineffective due to his escalating mental health instability. Grady then attempted to locate the defendant in May, 2018, after the defendant missed numerous probation appointments. While searching for the defendant, Grady discovered that the address provided by the defendant for the sex offender registry was for an administrative office and the defendant had not been living at that listed address. Grady further learned that the defendant had been arrested in Norwalk on June 28, 2018, for charges of interfering with an officer in violation of General Statutes § 53a-167a and breach of the peace in violation of General Statutes § 53a-181. As a result, Grady obtained an arrest warrant on July 20, 2018, for violation of probation on the basis of the defendant's arrest in Norwalk, his failure to report to adult probation as directed, and his failure to keep Grady apprised of his address. The defendant subsequently was arrested on August 28, 2018, after an arrest warrant was issued.

The defendant was arraigned on August 29, 2018, in Superior Court in Norwalk for violation of probation as well as for his refusal to submit to fingerprinting in violation of General Statutes § 29-12. During the arraignment, the defendant asserted that he wanted to repre-

sent himself for the bond hearing. The court, *McLaughlin, J.*, denied the defendant's request to represent himself at the bond hearing and, instead, appointed a public defender to represent the defendant for the bond hearing only. The defendant repeatedly objected to the appointment of counsel throughout the bond hearing. Due to the defendant's multiple outbursts during the bond hearing, the defendant's assigned public defender requested that mental health treatment be provided by the Department of Correction for the defendant.[1] The court granted the public defender's request and ordered on the mittimus that the defendant receive mental health treatment. The violation of probation case was thereafter transferred to the Superior Court in Waterbury. The misdemeanor charges underlying the violation of probation remained in Norwalk, along with the fingerprint charge.

On August 30, 2018, during the arraignment before the Superior Court in Waterbury, the defendant continued his outbursts and insisted that he be allowed to represent himself. The defendant's assigned public defender for the bond hearing in Waterbury informed the defendant that he would not be permitted to represent himself. The defendant continued to interrupt the proceedings while claiming that the court was violating his right to represent himself. As a result of the defendant's multiple outbursts during the arraignment, the assigned public defender requested that the court order mental health and medical treatment for the defendant, which request was granted by the court and ordered on a second mittimus. The defendant's violation of probation case was thereafter transferred to the judicial district of Waterbury.

On September 12, 2018, the court, *Fasano, J.*, asked the defendant if he would like to have an attorney to

[1] The purpose of the requested mental health treatment is unclear from the record.

represent him, to which the defendant responded that he would like to represent himself. The court then went on to canvass the defendant in order to assess his ability to represent himself, after the defendant reiterated his desire to appear as a self-represented party. Following the canvass, the court granted the defendant's request to represent himself in the violation of probation proceeding, concluding that the canvass satisfied its concerns about whether the defendant was indeed competent to represent himself.

On October 9, 2018, the state filed a long form information alleging five grounds for the violation of probation charge against the defendant. Specifically, the state alleged that the defendant had failed to abide by the conditions that he (1) not violate any criminal laws of Connecticut, (2) report to his probation officer as directed, (3) keep his probation officer informed of his whereabouts, (4) complete sex offender evaluation and treatment, and (5) provide truthful information to the Connecticut State Police Sex Offender Registry Unit. A violation of probation evidentiary hearing was held on October 30, 2018.[2]

During the violation of probation hearing, the state presented testimony from Charles Santiago, the probation officer who had completed the defendant's probation intake and reviewed the conditions of probation with the defendant on March 15, 2012, and Grady, the

[2] "[R]evocation of probation hearings, pursuant to § 53a-32, are comprised of two distinct phases, each with a distinct purpose. . . . In the evidentiary phase, [a] factual determination by a trial court as to whether a probationer has violated a condition of probation must first be made. . . . The state must establish a violation of probation by a fair preponderance of the evidence. . . . That is to say, the evidence must induce a reasonable belief that it is more probable than not that the defendant has violated a condition of his or her probation. . . . In the dispositional phase, [i]f a violation is found, a court must next determine whether probation should be revoked because the beneficial aspects of probation are no longer being served." (Citations omitted; internal quotation marks omitted.) *State* v. *Parker*, 201 Conn. App. 435, 444–45, 242 A.3d 132 (2020).

defendant's probation officer at the time of his arrest for violation of his probation. Santiago testified that he reviewed the conditions of probation with the defendant prior to the defendant's release and that the defendant agreed to the conditions of probation by signing the form delineating the conditions. Grady testified that he typically had weekly check-ins with the defendant. After the defendant missed several appointments, Grady attempted to locate the defendant but could not find the defendant at his home or at his father's home. Further, he testified that the defendant had changed his address in the sex offender registry to an address for an administrative office. The state rested its case at the close of the defendant's cross-examination of Grady.

At the close of the October 30, 2018 hearing, the defendant sought to have the court appoint Attorney William T. Koch, Jr., as his defense counsel; however, the court was unable to grant the defendant's request because Koch was not on the authorized list of special public defenders. The court, however, advised the defendant that he could retain Koch as private counsel. The court then continued the evidentiary hearing until December 30, 2018, to allow the defendant more time to prepare after the defendant indicated that he intended to call numerous witnesses to testify. The court also admonished the defendant numerous times for his repeated outbursts throughout the violation of probation hearing.

On November 8, 2018, the defendant filed a request with the court to be appointed a special public defender, specifically, Koch. While in court on November 30, 2018, a member of the public defender's office indicated to the court that the defendant was eligible for public defender services. Nevertheless, the defendant then insisted on continuing to represent himself and made

a request that Koch[3] be appointed as his standby counsel. The attorney with the public defender's office who was present in court that day informed the court that Koch was not on the authorized list of special public defenders, despite the defendant's protestations to the contrary. The court informed the defendant that he would be appointed a special public defender to act as standby counsel and that Koch would be appointed only if he was indeed on the special public defender list. While in court on January 2, 2019, Attorney J. Patten Brown III was appointed as the defendant's standby counsel, and the court, sua sponte, also ordered a competency evaluation of the defendant pursuant to General Statutes § 54-56d, after raising concerns about the defendant's ability to stand trial due to his outbursts.[4] The defendant expressed that he had no intention of cooperating with the § 54-56d competency evaluators.

On February 13, 2019, after receiving a report that the defendant had failed to cooperate with the evaluators, the court determined that the defendant was not

[3] Although the transcript references Attorney William Cox, the defendant was actually requesting that Koch be appointed.

[4] General Statutes § 54-56d provides in relevant part: "(a) . . . A defendant shall not be tried, convicted or sentenced while the defendant is not competent. For the purposes of this section, a defendant is not competent if the defendant is unable to understand the proceedings against him or her or to assist in his or her own defense.

"(b) . . . A defendant is presumed to be competent. The burden of proving that the defendant is not competent by a preponderance of the evidence and the burden of going forward with the evidence are on the party raising the issue. The burden of going forward with the evidence shall be on the state if the court raises the issue. The court may call its own witnesses and conduct its own inquiry.

"(c) . . . If, at any time during a criminal proceeding, it appears that the defendant is not competent, counsel for the defendant or for the state, or the court, on its own motion, may request an examination to determine the defendant's competency.

"(d) . . . If the court finds that the request for an examination is justified and that, in accordance with procedures established by the judges of the Superior Court, there is probable cause to believe that the defendant has committed the crime for which the defendant is charged, the court shall order an examination of the defendant as to his or her competency. . . ."

competent to represent himself and appointed Brown to fully represent him. The court nevertheless determined that the defendant was competent to stand trial because of the presumption of competence. Specifically, the court found that the defendant was "at least minimally competent . . . in terms of understanding the nature of the charges . . . and . . . capable of assisting in [his] defense . . . [but] choose[s] not to . . . ." The court determined that the defendant was minimally competent to stand trial by comparing the defendant's conduct to what it considered to be the standard for minimal competence.

The court, however, asserted that it did not believe the defendant to be capable of continuing to represent himself because of the motions that the defendant had filed and because the defendant "[spoke] over the court's voice . . . disregard[ed] orders, [was] long winded, [and asked] inappropriate questions . . . ." Brown, believing that the defendant presented competency issues, objected to the court's determination that the defendant was competent to stand trial to the extent that the court had found him competent enough to understand the nature of the charges and to assist with his defense. Brown, consequently, requested another § 54-56d competency evaluation. The court overruled Brown's objection regarding its competency findings. On March 12, 2019, Brown filed a motion seeking the appointment of a guardian ad litem for the defendant in order to obtain the release of the defendant's protected health information to assist in determining his competency. During a hearing on April 10, 2019, Brown renewed his request for another § 54-56d competency evaluation in light of the defendant's assertion that he would cooperate with the competency evaluators. The court granted Brown's request and ordered a § 54-56d competency evaluation.

The violation of probation evidentiary hearing was continued to May 9, 2019. On that date, the court

reported that the defendant once again had refused to cooperate with the evaluators after it had ordered a second evaluation for the defendant on Brown's April 10, 2019 request. The court then reiterated its conclusion that the defendant was competent to stand trial but not to represent himself. Brown raised his objection again as to the court's conclusions and requested that a guardian ad litem be assigned to the defendant or, in the alternative, if the court believed the defendant to be competent to stand trial, that it allow the defendant to represent himself. The court denied Brown's requests because the defendant twice had failed to cooperate with the evaluators and because the court, which initially had allowed the defendant to represent himself, no longer believed that he was capable of doing so. The defendant did not put forth any witnesses during the evidentiary hearing nor did he testify. The court then instructed the parties to present their closing arguments as to whether the defendant had violated one or more conditions of his probation and as to sentencing.

Following closing arguments, the court found the defendant in violation of his probation. With respect to sentencing, the court opened the defendant's underlying judgment, vacated the suspension order and imposed a sentence of ten years of imprisonment, execution suspended after six years, and the remaining period of probation. After learning that the misdemeanor charges had been transferred to Waterbury, Brown moved for a dismissal of those charges, which the court granted. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the court's canvass regarding his waiver of his right to be represented by counsel was constitutionally inadequate under *Faretta* v. *California*, supra, 422 U.S. 806. Specifically, the defendant contends that the court did not thoroughly

canvass him regarding his competence to make a knowing and voluntary waiver and failed to advise him of his total maximum sentence exposure on both the violation of probation and the underlying misdemeanor charges. As the state correctly observes, the defendant's *Faretta* claim is unpreserved; however, we review the defendant's claim pursuant to the bypass doctrine enunciated in *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015),[5] because the record is adequate for review and the defendant's claim is of a constitutional nature. The defendant's claim, however, fails under the third prong of *Golding* because the defendant has failed to show the existence of a constitutional violation.

The following additional facts and procedural history are relevant to this claim. On September 12, 2018, the court, *Fasano*, *J.*, canvassed the defendant after he asserted that he wanted to represent himself in order to ascertain whether the defendant was knowingly, intelligently, and voluntarily waiving his right to coun-

[5] "*Golding* is a narrow exception to the general rule that an appellate court will not entertain a claim that has not been raised in the trial court. The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Internal quotation marks omitted.) *State* v. *Elson*, 311 Conn. 726, 749, 91 A.3d 862 (2014).

"Under *Golding*, a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail." (Emphasis in original; internal quotation marks omitted.) *State* v. *Lemanski*, 201 Conn. App. 360, 365–66 n.3, 242 A.3d 532 (2020), cert. denied, 336 Conn. 907, 244 A.3d 147 (2021).

sel.[6] After canvassing the defendant, the court found that he was competent to represent himself.

[6] The following colloquy occurred at the time of the defendant's arraignment in Waterbury:

"The Court: You have to be competent to represent yourself.

"The Defendant: I am. . . .

"The Court: So let me ask you some questions. I have to canvass you about representing yourself, okay?

"The Defendant: I understand that, Your Honor, yes.

"The Court: You understand you have the right to be represented by an attorney, even if you can't afford an attorney? Do you understand you have that right?

"The Defendant: Yes, Your Honor.

"The Court: Are you waiving that right voluntarily?

"The Defendant: Yes. I have too much money to get a public . . . defender.

"The Court: Okay. Have you had any experience representing yourself?

"The Defendant: Yes, Your Honor.

"The Court: Yes?

"The Defendant: Yes. I filed several federal lawsuits in federal court and had positive results as a result. . . .

"The Court: So you've handled these cases on your own; is that right?

"The Defendant: Yes, Your Honor, over the years, yes.

"The Court: Have you any law school—

"The Defendant: Yes. The private school I went to in New Hampshire, the last quarter of tenth grade and the eleventh grade when we studied law, and I graduated at the end of eleventh grade before I turned sixteen in September.

"The Court: All right. So you've had occasion to study law. You understand that the state has gone to college, has gone to law school, and they are very well versed in the law. I just want to show you the disadvantages.

"The Defendant: Well, Your Honor, there's no case—

"The Court: Just tell me if you understand that they've gone to law school and college.

"The Defendant: Yes, no problem.

"The Court: You understand they have experience putting on these hearings. You have a violation of probation. You don't have any other pending charges, right?

"The Defendant: In Norwalk that is the basis for the violation of probation. It was an illegal arrest, and I was assaulted . . . .

"The Court: You're going to represent yourself in that one, too?

"The Defendant: Yes, Your Honor.

"The Court: Let me tell you the disadvantages, if you understand them. That's all I need to do.

"The Defendant: All right.

"The Court: Number one: The state's been to law school. Number two: They've tried cases. They know how to put on evidence. They know how to cross-examine witnesses. They know how to argue at the conclusion of the evidence. These are all things you really haven't had a lot of experience with.

"The Defendant: Your Honor, [80] percent of the cases get pled out, okay.

"The Court: Yes, I'm pretty sure I know that.

"It is well established that [w]e review the trial court's determination with respect to whether the defendant

"The Defendant: Right. I'm just reconfirming that I am competent to represent myself pro se. Furthermore, this is nothing because it's a house of cards built on a foundation of lies and a false arrest in Norwalk.

"The Court: You don't have to argue your case just yet. I just want to be sure you're capable.

"The Defendant: Yeah, no problem.

"The Court: You have to understand all the advantages they have. And I think you do understand that.

"The Defendant: Thank you, Your Honor.

"The Court: What's the amount of time he could receive, the exposure?

"[The Prosecutor]: Ten years. . . .

"The Defendant: Maximum.

"The Court: So you're looking at a violation of probation where you could receive up to ten years. Do you understand that?

"The Defendant: Yes, Your Honor. I already have a habeas corpus put in a year ago.

"The Court: Because you're going to be representing yourself, and at the conclusion, you can't really yell at your lawyer if you get up to ten years in jail.

"The Defendant: Your Honor, I'm not. I'll be in jail for a maximum of ninety more days, if that.

"The Court: In any event, you understand the exposure?

"The Defendant: Yes, Your Honor. Yes.

"The Court: Nonetheless, you wish to proceed on your own?

"The Defendant: Right.

"The Court: You're doing that voluntarily and of your own free will. You're aware of all the disadvantages that I enumerated, right?

"The Defendant: Right.

"The Court: You're aware of the exposure in this particular case?

"The Defendant: Yes, Your Honor.

"The Court: All right. I'm satisfied that you're competent, that you're capable of representing yourself.

"The one other thing is you're going to have to allow the state to state its case. You're going to have to listen to the orders of the court. You're going to have to comply with those orders and the rules of evidence and so on. You understand that?

"The Defendant: Yes. I just have one request. That when I'm speaking, I don't get interrupted by the district attorney's office and vice versa. I will not interrupt the district attorney's office when they are speaking.

"The Court: How about the court? Are you going to interrupt them?

"The Defendant: No, I'm not going to interrupt you, Your Honor.

"The Court: All right. I appreciate that. So you're going to comply with the rules?

"The Defendant: Yes.

"The Court: You're going to give the state an opportunity to be heard. You're going to listen to the court. You're going to let them finish its sentence before you say something.

"The Defendant: Yes.

"The Court: So you're going to be allowed to represent yourself.

"The Defendant: Thank you. They can go first."

knowingly and voluntarily elected to proceed [as a self-represented party] for abuse of discretion." (Internal quotation marks omitted.) *State* v. *Joseph A.*, 336 Conn. 247, 254, 245 A.3d 785 (2020). "In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling." (Internal quotation marks omitted.) *State* v. *Cooke*, 42 Conn. App. 790, 797, 682 A.2d 513 (1996).

"The right to counsel and the right to self-representation present mutually exclusive alternatives. A criminal defendant has a constitutionally protected interest in each, but [because] the two rights cannot be exercised simultaneously, a defendant must choose between them. When the right to have competent counsel ceases as the result of a sufficient waiver, the right of self-representation begins. . . . Put another way, a defendant properly exercises his right to self-representation by knowingly and intelligently waiving his right to representation by counsel. . . .

"[A] defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation . . . . Rather, a record that affirmatively shows that [he] was literate, competent, and understanding, and that he was voluntarily exercising his informed free will sufficiently supports a waiver. . . . The nature of the inquiry that must be conducted to substantiate an effective waiver has been explicitly articulated in decisions by various federal courts of appeals. . . .

"Practice Book § [44-3] was adopted in order to implement the right of a defendant in a criminal case to act as his own attorney . . . . Before a trial court may accept a defendant's waiver of counsel, it must conduct an inquiry in accordance with § [44-3], in order to satisfy itself that the defendant's decision to waive

counsel is knowingly and intelligently made. . . . Because the § [44-3] inquiry simultaneously triggers the constitutional right of a defendant to represent himself and enables the waiver of the constitutional right of a defendant to counsel, the provisions of § [44-3] cannot be construed to require anything more than is constitutionally mandated. . . .

"The multifactor analysis of [Practice Book § 44-3], therefore, is designed to assist the court in answering two fundamental questions: first, whether a criminal defendant is minimally competent to make the decision to waive counsel, and second, whether the defendant actually made that decision in a knowing, voluntary and intelligent fashion. . . . As the United States Supreme Court [has] recognized, these two questions are separate, with the former logically antecedent to the latter. . . . Inasmuch as the defendant's competence is uncontested, we proceed to whether the trial court abused its discretion in concluding that the defendant made the waiver decision in a knowing, voluntary, and intelligent fashion." (Citations omitted; internal quotation marks omitted.) *State* v. *Joseph A.*, supra, 336 Conn. 254–56. Further, as our Supreme Court observed in *State* v. *Cushard*, 328 Conn. 558, 568, 181 A.3d 74 (2018), "the court may accept a waiver of the right to counsel without specifically questioning a defendant on each of the factors listed in [Practice Book] § [44-3] if the record is sufficient to establish that the waiver is voluntary and knowing." (Internal quotation marks omitted.)

The defendant, in essence, claims that the court did not inquire sufficiently into whether he indeed was competent to knowingly and voluntarily waive his right to counsel. In response, the state argues that the court fully complied with Practice Book § 44-3, even though it was not required to do so, as strict adherence to § 44-3 is not necessary to establish that a court's canvass is constitutionally sufficient. The state contends that the

canvass was adequate because (1) the record reflects that the defendant was aware of his right to counsel and the court repeatedly informed the defendant of his right to counsel, (2) the exchange between the defendant and the court exhibited that the defendant had the intelligence and capacity to appreciate the consequences of his waiver, (3) the record reflects that the defendant understood the nature of the charges against him because the defendant informed the court that his arrest in Norwalk is what predicated the violation of probation proceeding and that he knew that the maximum exposure for the violation of probation was ten years, (4) the court repeatedly explained to the defendant the pitfalls and dangers of representing himself, and the defendant acknowledged the disparity between the prosecutor's legal education and his own, and (5) the defendant indicated that he desired to represent himself and was voluntarily deciding to do so despite the potential disadvantages.

We begin by noting that the defendant's request for self-representation was clear and unequivocal. See *Faretta* v. *California*, supra, 422 U.S. 835. "[T]he focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the ability to understand the proceedings." (Emphasis omitted; internal quotation marks omitted.) *State* v. *Connor*, supra, 292 Conn. 512. The record reflects a lengthy canvass conducted by the court in which the defendant informed the court that he had represented himself in previous federal cases. Moreover, the court repeatedly asked the defendant if he was waiving his right to counsel voluntarily and whether he was aware of the disadvantages of proceeding as a self-represented party, to which the defendant answered affirmatively. There is no indication in the record that the defendant was unaware that he was waiving his right to counsel or that he was doing so involuntarily. "The purpose of the knowing

and voluntary inquiry . . . is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced." (Emphasis omitted; internal quotation marks omitted.) Id. Although the defendant also argues that the trial court's canvass was inadequate because it did not "follow up or explore the defendant's obvious lack of legal education and training," we fail to see how an inquiry into the defendant's legal training and education would have had any bearing on his competence to waive his right to counsel. "In other words, the competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right, not the competence to represent himself. . . . Consequently, a defendant's technical legal knowledge is not relevant to the determination [of] whether he is competent to waive his right to counsel . . . ." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Connor*, supra, 511. Notably, during the January 2, 2019 hearing, the defendant stated that the court's canvass during the September 12, 2018 arraignment had been thorough. On the basis of the record, the court reasonably could have concluded that the defendant was competent to waive his right to counsel. Therefore, we conclude that the court did not abuse its discretion in determining that the defendant knowingly, intelligently, and voluntarily had waived his right to counsel. See *State* v. *D'Antonio*, 274 Conn. 658, 709–11, 877 A.2d 696 (2005).

The defendant also claims that the canvass was constitutionally deficient because he was not advised of the total maximum sentence exposure for both the violation of probation and the underlying misdemeanor charges.

During the canvass, the court advised the defendant that he was "looking at a violation of probation where [he] could receive up to ten years" of incarceration, to

which the defendant responded that he understood. The defendant argues that the court should also have indicated the maximum exposure for the misdemeanor charges; however, as the state correctly notes, the defendant was not arraigned on the misdemeanor charges in Waterbury because those charges had not been transferred from Norwalk as of the defendant's September 12, 2018 arraignment in Waterbury, when the canvass took place. Thus, there was no need for the court to canvass the defendant about the misdemeanor charges that were not yet before it. The defendant also asserts that his statement to the court during the canvass that he would not be in jail for more than "ninety more days" was an indication that he was not aware of his maximum exposure at sentencing. A review of the record reveals that the defendant's statement concerning the amount of time for which he believed he would be incarcerated was premised on his belief that "[the violation of probation proceeding] is nothing because it's a house of cards built on a foundation of lies and a false arrest in Norwalk." There is no indication that the court did not apprise the defendant of the maximum exposure for the violation of probation. Therefore, the defendant's unpreserved claim that the court's canvass was constitutionally deficient fails under the third prong of *Golding*.

II

Alternatively, the defendant contends that, even if the court's canvass was adequate under *Faretta*, he is entitled to a new trial pursuant to our Supreme Court's decision in *State* v. *Connor*, supra, 292 Conn. 483. Specifically, the defendant argues that he is entitled to a new trial because he "suffered from an impairment noticeable enough during the violation of probation evidentiary hearing on October 30, 2018," and could not perform basic representational functions during that hearing, such that the court should have appointed

counsel no later than the defendant's attempted cross-examination of the state's first witness during that hearing.[7] In other words, the defendant asserts that the court should have, sua sponte, determined that he was incompetent to represent himself. We disagree.

A review of the record reveals that the defendant had difficulty formulating nonargumentative, noncompound questions while cross-examining Santiago on October 30, 2018, during the first day of the evidentiary hearing.[8] Our Supreme Court in *State* v. *Connor*, supra, 292 Conn. 518–19, exercised its supervisory authority and established that, "upon a finding that a mentally ill or mentally incapacitated defendant is competent to stand trial and to waive his right to counsel at that trial, the trial court must make another determination, that is, *whether the*

[7] Although the defendant claims that counsel was not appointed until May, 2019, the record reveals that full counsel was appointed on February 13, 2019.

[8] For instance, the following exchange occurred during the defendant's cross-examination of Santiago, the state's first witness:

"[The Defendant]: All right. Now the reason why you, when I met with you and I was complaining about the public defender, the reason why you committed perjury and falsely accused me of threating her was because you were not happy that I was granted parole to the feds, and that it would be less time for you guys to be able to violate my probation on a technicality because even the federal probation officers did not want me released on my release date, and that's why they had me illegally put in Whiting Forensic Institute without a prior court order, and that the Connecticut local mental health authority said that there was no clinical reason to keep me locked up in a mental hospital, and so you had that same feeling. Because any time anybody says, sexual assault, it makes the rule book and the laws go, and justice out the window.

"[The State]: Objection, Your Honor.

"The Court: Sustained. Here is the thing. You have to ask a question, not tell the story. . . .

"The Court: So, you ask a question now. . . .

"[The Defendant]: So, why did you feel you were above the law? Because you thought you weren't going to get caught, or because you thought, well, he's a sex offender, and he's got a long history of crimes? Nobody is going to believe him? Or is it that you are in a position of authority and you think you could do whatever you want . . . . So . . . why was it you felt that you could lie?"

defendant also is competent to conduct the trial proceedings without counsel." (Emphasis added.) On appeal, the defendant claims, in essence, that his inability to effectively cross-examine the state's first witness was an indication that he suffered from such a significant mental impairment that the court should have, sua sponte, determined that he was incompetent to represent himself or, at the least, continued the proceeding so that the defendant's competence to represent himself could be investigated further.

At the outset, we note that, after the defendant was appointed full counsel on February 13, 2019, the court gave the defendant the opportunity to recall the state's witnesses to reexamine them. The defendant, however, declined the invitation to do so. We also note that the defendant failed to cooperate with the competency evaluators during both of the court-ordered § 54-56d competency evaluations. Further, the defendant did not raise any objections to the trial court concerning the timing of the court's appointment of counsel, which he now claims on appeal came "too late." The defendant objected only to the court's determination that he was capable of assisting with his own defense. In response to the defendant's objection and argument, the court granted his request for a second competency evaluation. "Pursuant to § 54-56d (b), [every] defendant is presumed to be competent." (Internal quotation marks omitted.) *State* v. *Campbell*, 328 Conn. 444, 486, 180 A.3d 882 (2018). Because of his failure to cooperate with the competency evaluators, the presumption of competency to stand trial was not rebutted. The defendant's failure to cooperate with the evaluators undermines his argument and now causes him to rely on his alleged ineffective cross-examination of the state's witnesses to bolster his claim that an "impairment noticeable enough" existed during the evidentiary hearing on October 30, 2018, such that the court should

have determined that he was incompetent to represent himself.

To the extent that the defendant relies on his inability to effectively cross-examine the state's first witness as evidence of his incompetence to represent himself, our Supreme Court in *Connor* addressed a similar claim. The court in *Connor* reasoned that the defendant's lengthy and confusing questioning during voir dire, his " 'rambling dialogue' with the court concerning his health and the fact that he thought that correction officers planned to kill him . . . and . . . the [defendant's inability] . . . to pose relevant questions," reflected "more on the defendant's lack of legal experience and expertise than . . . on his mental condition." *State* v. *Connor*, supra, 292 Conn. 524. Although, competency to stand trial and competency for self-representation are separate concepts, the defendant's statutorily presumed competency to stand trial appertains to his competency for self-representation. In that vein, we observe that, with respect to the interrelated issue of competency to stand trial, our Supreme Court has held that a defendant's incompetence to stand trial is not "demonstrated by his lack of legal competence to try his case skillfully." *State* v. *Wolff*, 237 Conn. 633, 666, 678 A.2d 1369 (1996); see also *State* v. *Johnson*, 253 Conn. 1, 30, 751 A.2d 298 (2000) (citing *State* v. *Johnson*, 22 Conn. App. 477, 489, 578 A.2d 1085, cert. denied, 216 Conn. 817, 580 A.2d 63 (1990), for notion that "defendant's obstreperous, uncooperative or belligerent behavior . . . and hostility toward [his] attorney [does] not necessarily indicate defendant's incompetency" (internal quotation marks omitted)). Thus, in the present case, the defendant cannot solely rely on his inability to effectively cross-examine the state's witnesses to establish a purported impairment sufficient to sustain his claim pursuant to *Connor*. The defendant's failure to cooperate with the competency evaluators adversely affects

his present claim, given the statutory presumption of competency. The statutory presumption of competency was not overcome by sufficient evidence. The fact that an evaluation was merely ordered, but not completed, does not alter the nature of the record before us.

On the basis of the record and the facts before the court, there was insufficient evidence that the defendant suffered from such a significant mental impairment that the court should have, sua sponte, determined that he was incompetent to represent himself. Although an evaluation for the defendant's competency to stand trial would have been helpful in determining whether there was a basis for the court to determine that the defendant was incompetent to represent himself, the defendant, nevertheless, still must demonstrate that there was sufficient evidence to alert the court of a significant mental impairment that required the court to exercise its powers sua sponte. Accordingly, the defendant's claim under *Connor* fails.

III

The defendant next claims that the court erred when it failed, sua sponte, to canvass him about the waiver of his constitutional right to testify. This claim is unpreserved, but the defendant invites this court to provide him a remedy in the exercise of its supervisory authority. For the reasons set forth herein, we decline to do so.

"[T]his court possesses an inherent supervisory authority over the administration of justice. . . . [T]he integrity of the judicial system serves as a unifying principle behind the seemingly disparate use of our supervisory powers. . . . [O]ur supervisory powers are invoked only in the rare circumstance where [the] traditional protections are inadequate to ensure the fair and just administration of the courts . . . . Ordinarily, our supervisory powers are invoked to enunciate a rule that is not constitutionally required but that we think

is preferable as a matter of policy. . . . As our Supreme Court explained, [s]upervisory powers are exercised to direct trial courts to adopt judicial procedures that will address matters that are of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole. . . . *State* v. *Valedon*, 261 Conn. 381, 386, 802 A.2d 836 (2002). At the same time, [a]lthough [w]e previously have exercised our supervisory powers to direct trial courts to adopt judicial procedures . . . we also have exercised our authority to address the result in individual cases . . . because [certain] conduct, although not rising to the level of constitutional magnitude, is unduly offensive to the maintenance of a sound judicial process." (Citations omitted; internal quotation marks omitted.) *State* v. *Jimenez-Jaramill*, 134 Conn. App. 346, 380–81, 38 A.3d 239, cert. denied, 305 Conn. 913, 45 A.3d 100 (2012).

As the defendant concedes in his appellate brief, our Supreme Court's decision in *State* v. *Paradise*, 213 Conn. 388, 404–406, 567 A.2d 1221 (1990), overruled in part on other grounds by *State* v. *Skakel*, 276 Conn. 633, 693, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006), is controlling with respect to whether a trial court is constitutionally required to canvass a defendant about the waiver of his or her right to testify. *Paradise* provides that federal law does not "[contain] any such procedural requirement" for a trial judge to affirmatively canvass the defendant "to ensure that his waiver of his right to testify is knowing, voluntary and intelligent . . . where the defendant has not alleged that he wanted to testify or that he did not know that he could testify." Id. In the present case, the defendant has not claimed that he expressed any such desire to testify at trial or that he did not know that he could testify; therefore, the

court had no constitutional duty to canvass him concerning his right to testify under *Paradise*.

The defendant, however, requests that this court exercise its supervisory authority to "impose an affirmative duty on our trial courts to canvass criminal defendants and alleged probation violators even when the defendant does not ask to testify or does not declare he will not testify." We previously declined a request to exercise our supervisory authority with respect to a similar issue in *State* v. *Dijmarescu*, 182 Conn. App. 135, 158–59, 189 A.3d 111, cert. denied, 329 Conn. 912, 186 A.3d 707 (2018), in which we declined to require trial courts to canvass defendants regarding their right against self-incrimination before testifying. "The exercise of our supervisory powers is an extraordinary remedy to be invoked only when circumstances are such that the issue at hand, while not rising to the level of a constitutional violation, is nonetheless of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole." (Internal quotation marks omitted.) Id., 158. We see no reason to depart from our decision in *Dijmarescu*, in which we "conclude[d] that any determination of whether a court should be required to canvass a defendant regarding his right against self-incrimination before he testifies is better left to our Supreme Court." Id., 159. Accordingly, we decline the defendant's request that we exercise our supervisory authority with respect to this claim.

IV

The defendant next claims that he was deprived of his sixth amendment right to conflict free representation because an actual conflict existed.[9] The defendant contends that an actual conflict existed because he threat-

[9] The defendant also requests that this court review his ineffective assistance of counsel claim on direct appeal. We decline to do so. "[A] claim of ineffective assistance of counsel is more properly pursued on a petition for new trial or on a petition for a writ of habeas corpus rather than on direct

ened Brown with physical violence and Brown published it to the court.[10] The state contends that the

appeal . . . [because] [t]he trial transcript seldom discloses all of the considerations of strategy that may have induced counsel to follow a particular course of action. . . . It is preferable that all of the claims of ineffective assistance, those arguably supported by the record as well as others requiring an evidentiary hearing, be evaluated by the same trier in the same proceeding. . . . Furthermore, [o]n the rare occasions that [this court has] addressed an ineffective assistance of counsel claim on direct appeal, [it has] limited [its] review to allegations that the defendant's sixth amendment rights had been jeopardized by the actions of the trial court, rather than by those of his counsel. . . . [This court has] addressed such claims, moreover, only where the record of the trial court's allegedly improper action was adequate for review or the issue presented was a question of law, not one of fact requiring further evidentiary development. . . . Additionally, this court has observed that a defendant may pursue a claim of ineffective assistance in a direct appeal in connection with a claim that his guilty plea was the result of ineffective assistance of counsel. A claim of ineffective assistance of counsel is generally made pursuant to a petition for a writ of habeas corpus rather than in a direct appeal. . . . Section 39-27 of the Practice Book, however, provides an exception to that general rule when ineffective assistance of counsel results in a guilty plea." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Polynice*, 164 Conn. App. 390, 396–97, 133 A.3d 952, cert. denied, 321 Conn. 914, 136 A.3d 1274 (2016).

The defendant's claim that trial counsel provided ineffective assistance by recommending three years of incarceration would require an evidentiary hearing to ascertain the reasoning behind trial counsel's recommendation. "The transcript of the proceedings in the trial court allows us to examine the *actions* of defense counsel but not the underlying *reasons* for his actions." (Emphasis in original; footnote omitted.) *State* v. *Gregory*, 191 Conn. 142, 144, 463 A.2d 609 (1983). For example, given the strength of the state's evidence regarding the defendant's failure to comply with the conditions of his probation, by advancing the foregoing argument, defense counsel may very well have been attempting to mitigate the potential consequences of a finding that the defendant was in violation of probation.

The record is inadequate, and, thus, we decline to review this claim on direct appeal.

[10] The defendant also claims that the court was "under the duty to inquire whether there was a conflict of interest" when (a) trial counsel sought to have a guardian ad litem appointed for the defendant, (b) the court became aware that the defendant had filed a grievance against trial counsel, and (c) trial counsel failed to cross-examine any of the state's witnesses and failed to present any defense. In essence, the defendant claims that the court had a duty to inquire as to a potential conflict of interest; however, the defendant provided little to no analysis of this claim and, instead, focused his analysis on whether there was an actual conflict. "We are not required to review issues that have been improperly presented to this court through an inadequate brief." (Internal quotation marks omitted.) *State* v. *David P.*,

record is inadequate to review this claim. We disagree with the state because the basis for the alleged conflict is readily apparent from the record, as it consists mainly of the motion for appointment of a guardian ad litem in which counsel indicated that the defendant made a threat of physical violence. Because that is the basis of the motion, the record is not inadequate to review this claim, as the state contends.

The following additional facts are relevant to the resolution of this claim. On March 12, 2019, Brown filed a motion with the court seeking an appointment of a guardian ad litem for the defendant. Although the motion requested appointment of a guardian ad litem "for the purpose of obtaining releases of information as necessary to determine [the defendant's] competency," nothing was developed in the record in connection with the motion related to the existence of an actual conflict of interest. It appears that Brown included, inter alia, one sentence in that motion indicating that the defendant had threatened him and the court with physical violence.

We begin by setting forth the standard of review and legal principles that govern our analysis. "Our review in this case is plenary. Although the underlying historical facts found by the . . . court may not be disturbed unless they were clearly erroneous, whether those facts constituted a violation of the [defendant's] rights under the sixth amendment is a mixed determination of law and fact that requires the application of legal principles to the historical facts of this case. . . . As such, that question requires plenary review by this court unfettered by the clearly erroneous standard. . . .

70 Conn. App. 462, 473, 800 A.2d 541, cert. denied, 262 Conn. 907, 810 A.2d 275 (2002). We, therefore, decline to review the defendant's claim that the court had a duty to inquire about a potential conflict because it was inadequately briefed.

"The sixth amendment to the United States constitution as applied to the states through the fourteenth amendment, and article first, § 8, of the Connecticut constitution, guarantee to a criminal defendant the right to effective assistance of counsel. . . . Where a constitutional right to counsel exists, our [s]ixth [a]mendment cases hold that there is a correlative right to representation that is free from conflicts of interest. . . . The right attaches at trial as well as at all critical stages of a criminal proceeding . . . .

"Our Supreme Court has described a conflict of interest as that which impedes [an attorney's] paramount duty of loyalty to his client. . . . Thus, an attorney may be considered to be laboring under an impaired duty of loyalty, and thereby be subject to conflicting interests, because of interests or factors personal to him that are inconsistent, diverse or otherwise discordant with [the interests] of his client . . . . Conflicts of interest . . . may arise between the defendant and the defense counsel. The key here should be the presence of a specific concern that would divide counsel's loyalties. . . .

"In a case of a claimed conflict of interest, therefore, in order to establish a violation of the sixth amendment the defendant has a two-pronged task. He must establish (1) that counsel actively represented conflicting interests and (2) that an actual conflict of interest adversely affected his lawyer's performance." (Citations omitted; internal quotation marks omitted.) *DaSilva* v. *Commissioner of Correction*, 132 Conn. App. 780, 784–85, 34 A.3d 429 (2012).

The defendant argues on appeal that Brown's assertion concerning the defendant's threats of physical violence, standing alone, was "an actual conflict . . . because the defendant threatened [Brown] with violence and [Brown] published this [information] to the court." (Emphasis omitted.) Moreover, the defendant

argues that Brown's decision to include that statement in the motion was an indication that Brown's performance was affected by the purported threats. "To demonstrate an actual conflict of interest, the [defendant] must be able to point to specific instances in the record which suggest impairment or compromise of his interests for the benefit of another party. . . . A mere theoretical division of loyalties is not enough." (Internal quotation marks omitted.) *DaSilva* v. *Commissioner of Correction*, supra, 132 Conn. App. 785–86. A review of the guardian ad litem motion that Brown filed, however, demonstrates that the sole purpose of the motion and the inclusion of the statement at issue was to obtain releases of the defendant's relevant health information, which Brown needed in order to determine the defendant's competency. The defendant has not provided a factual basis apart from the one sentence included in Brown's written motion that mentioned the defendant's threat to support his contention that an actual conflict existed. The record does not reflect that Brown sought to withdraw from further representation of the defendant following the purported threat, nor does the record contain any statements by Brown that are representative of divided loyalty. In the absence of additional facts in the record in support of the defendant's claim, we are not persuaded that there was an actual conflict or, stated differently, an "impairment or compromise of [the defendant's] interests for the benefit of another party." (Internal quotation marks omitted.) Id. Thus, this claim fails.

The judgment is affirmed.

In this opinion the other judges concurred.

[redacted]T : SUPERIOR COURT

STATE OF CONNECTICUT : JUDICIAL DISTRICT OF WATERBURY

v. AC 43101 : AT WATERBURY, CONNECTICUT

GLEN [redacted] : MAY 9, 2019

(Court's finding of violation of probation and sentence)

BEFORE THE HONORABLE ROLAND D. FASANO, JUDGE

APPEARANCES:

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Representing the Defendant:

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18 [redacted]

Recorded and Transcribed by:
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Court Recording Monitor
400 Grand Street
Waterbury, CT 06702

APPENDIX B

* * *

THE COURT: On the issue of whether or not he was in violation, I think we all agree that he was certainly in violation of the conditions of his probation. I think that evidence is overwhelming in terms of his non-compliance. He missed numerous appointments, failed to be available even to the probation. They didn't even know for a long period of time how to reach him. Subsequently picked up an arrest. That's the arrest out of Norwalk for which there was probable cause that even he's alluded to during the course of these proceedings. He was discharged from Connections which is the main cog in terms of the sex offender treatment he was to receive during the course of the probation. And he, apparently, didn't behave appropriately in the sex group. He gave false information to the sex registry, on and on and on. So he certainly was in violation of the conditions of probation.

With respect to the issue of sentencing, and I'm sure just as the state has pointed out, he has been in and out of prison probably over that 38 year period. A lot of serious crimes. But at this point he was on probation for a sex assault in the second degree. I think he -- if he were given a flat sentence, that to me would not sit well. I think he needs to serve a period of incarceration and then be back on probation because I think he has to be supervised. And I think that would be

an important part of this disposition.

So that on the sex assault in the second degree, the Court will reopen the previous judgment, vacate the suspension order and impose a sentence of ten years, execution suspended after service of six years and the remaining period of probation. The remaining period of probation will include the conditions of probation that had been set at the time of the sex assault in the second degree.

Additionally, there will be a mental health evaluation and treatment as deemed appropriate and any other conditions deemed appropriate by probation.

* * *

The Honorable Roland D. Fasano, Judge

STATE OF CONNECTICUT

UWY-CR08-0[redacted]

STATE OF CONNECTICUT

V.

GLEN [redacted] S[redacted]

Present: Hon. Roland D. Fasano

SUPERIOR COURT

JUDICIAL DISTRICT

OF WATERBURY

MAY 9, 2019

JUDGMENT

Upon an information charging the defendant, Glen [redacted] S[redacted], with the crime of Sexual Assault in Spousal or Cohabiting Relationship, in violation of §53a-70b of the General Statutes, the defendant appeared at the Superior Court, Judicial District of Waterbury on August 13, 2008 for sentencing, when the defendant was committed to the custody of the Commissioner of Correction for a period of 15 years, execution suspended after 5 years, 15 years probation. Costs and fees were waived.

Said action came thence to August 30, 2018, when upon an information charging the defendant with the crime of Violation of Probation, in violation of §53a-32 of the General Statutes, the defendant appeared at the Superior Court, G.A. 4, and when the action was ordered transferred to the Superior Court, Waterbury Judicial District, and thence to October 30, 2018, when the court denied defendant's Motion for Change of Venue, and when the court denied defendant's Motion to Dismiss, and thence to the present time when, after hearing, the court found the defendant in violation of probation.

Whereupon It Is Adjudged that on the charge of Violation of Probation, in violation of §53a-32 of the General Statutes, the defendant, Glen Alan S[redacted], be committed to the custody of the Commissioner of Correction for a term of 10 years execution suspended, 6 years to serve, and remainder of probation.

By the Court (Fasano, J.)

William M. Hoey

William M. Hoey
Deputy Chief Clerk

APPENDIX C

340 Conn. 909
Supreme Court of Connecticut.

STATE of Connecticut
v.
GLEN S.

Decided December 7, 2021

Attorneys and Law Firms

Conrad Ost Seifert, assigned counsel, in support of the petition.

Sarah Hanna, senior assistant state's attorney, in opposition.

Opinion

The defendant's petition for certification to appeal from the Appellate Court, 207 Conn. App. 56, 261 A.3d 805, is denied.

All Citations

340 Conn. 909, 264 A.3d 577 (Mem)

APPENDIX D

REDACTED

STATE OF CONNECTICUT
APPELLATE COURT

A.C. 43101

STATE OF CONNECTICUT

V.

GLEN S[redacted]

BRIEF OF THE DEFENDANT-APPELLANT WITH SEPARATE APPENDIX PARTS I & II

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To Be Argued on Behalf of the
Defendant-Appellant by:

CONRAD OST SEIFERT, ESQUIRE
ASSIGNED COUNSEL

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STATEMENT OF THE ISSUES

1. Did the trial court fail to establish a valid waiver of the defendant's Sixth Amendment right to counsel?
2. Assuming arguendo the *Faretta* canvass was not constitutionally defective, does the holding of *State v. Connor*, 292 Conn. 483 (2009) require a new trial because on October 30, 2018 the defendant lacked the ability to perform basic representational functions?
3. Should this court exercise its supervisory authority and hold that trial courts must canvass criminal defendants about their constitutional right to testify?
4. Should defense counsel's ineffectiveness be reviewed on direct appeal because ineffectiveness of counsel is clear from the record?
5. Was the defendant deprived of his constitutional right to conflict-free representation requiring that judgment be reversed?

TABLE OF AUTHORITIES

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I. Statement of Facts And Nature Of Proceedings

A. Procedural History.

Following his arrest for the misdemeanors of breach of peace second degree and interfering with an officer, violations of C.G.S. §§'s 53a-181 and 53a-167a respectively, the defendant was arrested by warrant for violation of probation.[1] The violation of probation was prosecuted at the Waterbury Superior Court, Part A, following transfer of the two misdemeanors from G.A. 20, Norwalk to Waterbury. At his August 29, 2018 arraignment, the defendant objected to the G.A. 20 public defender standing in for him for bond purposes. The court said that it was "going to appoint the public defender." The defendant replied that he had a right to represent himself pro se. The court ordered: "[y]ou are not representing yourself in this bond hearing."[2] The court set bond at $150,000.00 and the defendant appeared at Waterbury Superior Court, G.A. 4 the next day. At that time the defendant stated he was "pro se" but a public defender again appeared and after the defendant said: "Wait . . . I'm representing myself." The public defender said, "No you're not." (8-30-18 Tr. p. 1, A.94 p. 2, A.95.) On September 12, 2018 the defendant's case had been transferred to the Part A court in Waterbury, Judge Fasano presiding. When the court asked the defendant if he "would like to have an attorney," the defendant replied, "no . . . I'm representing myself pro se." (9-12-18 Tr. p. 2, A.100.) Thereupon the trial court canvassed the defendant regarding some of the disadvantages of self-representation and found the defendant was "capable of representing [him]self."[3]

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[1] C.G.S. §§'s 53a-181 and § 53a-167a are at A.43 and A.42. The violation of probation warrant is published at A.56.

[2] 8-29-18 Tr. pp. 2-3, A.92 -A.93.

[3] The *Faretta* canvass occurs at pages 3-7 of the September 12, 2018 transcript. *Faretta v. California*, 422 U.S. 806 (1975). The finding of the defendant's capability to represent himself appears at page 7. The entire transcript is published at A.98 - A.110.

October 30, 2018 was the first day of the violation of probation hearing. The defendant, who had no law school training, proceeded to defend himself pro se without any standby counsel having been appointed. The state presented its case and rested. On May 9, 2019 the hearing resumed and the defendant was represented by assigned counsel. The prosecutor and the defense attorney made closing arguments and the defendant was found to have violated his probation.

The court reopened the defendant's 2008 judgment of conviction for sexual assault "in spousal or cohabitating relationship," a violation of C.G.S. § 53a-70b,[4] vacated the suspended sentence time and imposed a sentence of "ten years, execution suspended after service of six years and the remaining period of probation."[5] Immediately thereafter the state nolled the G.A. 20 misdemeanor charges that formed one of the grounds of the violation of probation warrant and violation of probation prosecution. Attorney Brown then moved for dismissal of those charges. The dismissal motion was granted. The defendant timely applied for a waiver of the appeal filing fees and for appointment of appellate counsel. This appeal was timely filed.

B. Facts.

On October 30, 2018 the defendant was not appointed standby counsel nor was any judicial inquiry made regarding standby counsel being appointed. He requested that "Attorney William G. Koch, Jr." be appointed to represent him. The court did not appoint Attorney Koch or any other assigned counsel to represent him. The defendant also asked the court for a hearing continuance. That was effectively denied. The judge ruled that the

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[4] C.G.S. § 53a-70b is published at A.41. The 2008 sentence is shown on the docket sheet dated 8-13-2008. A.1.

[5] See the judicially signed transcript excerpt of 5-9-19, A.167. Also see the sentencing mittimus. A.19.

state could proceed that day with its witnesses and ruled that the case would be continued to allow the defendant time to call his witnesses. (10-30-18 Tr., pp. 14-15, A.111 – A112.) Towards the end of the hearing day, the defendant stated he was going to have witnesses. (*Id.* p. 72, A.141.) The hearing was continued to December 30, 2018 but on November 30, 2018 the parties were back in court. The court asked the defendant if he wanted Attorney Koch to represent him or be standby counsel and the defendant replied, "either way, Your Honor." (11-30-18 Tr. p. 2, A.143.) The court found the defendant eligible for the services of the public defender's office. (*Id.* p. 3.) A Waterbury public defender was present who communicated to the court the defendant's eligibility. The public defender also stated, ". . . I'm being told that Mr. – Attorney Cox (sic) is not one of our attorneys." (*Id.* at p. 3, A.144.)[6] The public defender also said, "my division makes the determination who's going to get assigned Special Public Defender." *Id.* The court replied that it had "no control over that." (*Id.*) The judge continued the case to January 2, 2019 and said, "[l]et's see who's appointed." (*Id.* p. 6, A.146.)

On January 2, 2019 the court appointed Attorney J. Patten Brown, III as assigned counsel in the capacity of standby counsel.[7] The court also ordered a competency examination pursuant to C.G.S. § 54-56d and the case was continued.

On January 30, 2019 the case was again continued two weeks at the request of the 54-56d evaluators. Thereafter, on February 13, 2019 a hearing was held. The court noted that the evaluator's sealed letter said that "[redacted]

[6] It appears that Attorney Green was referring to the Waterbury public defender's office list of attorneys who were approved to be assigned counsel at that court only and was not referring to all courts statewide. Attorney William Koch practiced in New London County.

[7] The record is silent regarding why no standby counsel had been appointed for the pro se defendant when the violation of probation hearing commenced on October 30, 2018. The state presented its entire case on that day and the defendant had no standby counsel. See Practice Book §§ 44-4, 44-5, A.34 – A.35.

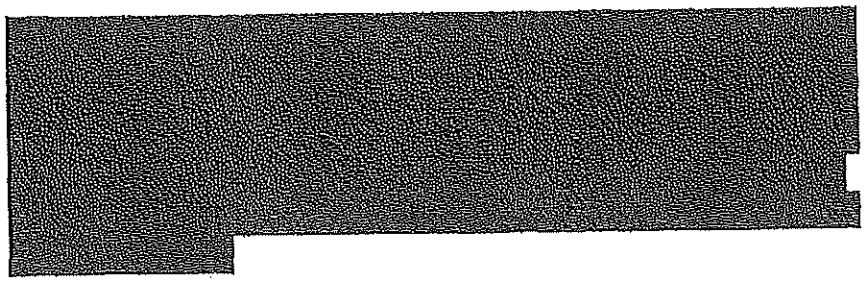
[redacted]." (2-13-19 Tr. p. 1, A.147, A.13.) The court then, despite the lack of having the C.G.S. § 54-56d report, said, "I think you're capable of assisting in your own defense." . . . I'll make a finding that you're competent because of the presumption [of competence]." (*Id.*, p. 2, A.148.) Referring to standby assigned counsel Attorney Brown, the court stated, "I'm appointing him now as a full-time lawyer on your behalf. He was stand-by." (*Id.*, p. 4, A.149.)

On March 26, 2019 the hearing resumed and moments after the defendant entered the courtroom he fell and collapsed. (3-26-19 Tr. p. 1, lines 1-17, A..152.) The defendant was taken to Waterbury Hospital. The case was then continued to April 10, 2019.

At the April 10, 2019 hearing Attorney Brown represented that the defendant had been in the hospital and that "there was a problem with his medication." (4-10-19 Tr. p. 2.) Attorney Brown moved for another 54-56d evaluation. The court ordered the competency evaluation and continued the case to May 9, 2019. (*Id.* p. 3, A.154.)

On May 9, 2019 the court, referring to the second letter from the competency evaluation team, stated that the defendant, "did not provide relevant responses to any questions" and failed to cooperate. (5-9-19 Tr. p. 1, A.167, sealed letter, A.18.) The court said, "that was a bust again." *Id.* Attorney Brown represented that his "client has spoken to me and he's given me names of witnesses that . . . can't be located." (*Id.* p. 2, A.168.) Attorney Brown told the court that he did "not agree that my client is competent." *Id.* He moved the court at "the very least appoint a GAL or if you are going to find him competent, let him represent himself." *Id.* Previously, on March 11, 2019 Attorney Brown had filed a "motion for appointment of guardian ad litem."[8] Inter alia, this motion represented:

[8] This motion appears in the appendix, pp. A.14 – A.17.



Attorney Brown stated he would "make whatever argument I can if the court denies all or both of those motions." (*Id.* p. 3, A.) The judge said, "[t]hat would be my intent" and ordered the parties to proceed to closing arguments on both liability and sentencing. *Id.* The state argued for "a substantial prison sentence." (*Id.* p. 6, A.172.) Attorney Brown argued that the defendant committed "a lot of technical violations that I don't think are deniable with a straight face in any way." (*Id.* p. 7.) He asked the court "to impose the sentence on the lower end, less than five years of what he owes." He then argued: "*Maybe sitting in Garner*[9] *for a period of time, perhaps three years* or so, . . . he will be medicated and get in a better position." (*Id.* emphasis added.) The court reopened the 2008 judgment of conviction, vacated the suspended sentence time and imposed a sentence of "ten years, execution suspended after service of six years and the remaining period of probation." (5-9-19 Tr. p. 13, A.179.)

C. The Evidentiary Hearing Facts.

The state's Long Form Information is dated October 4, 2018 and states in pertinent part, that the defendant violated his probation by his alleged:

> 1. Failure to abide by condition that he not violate any criminal laws of the State of Connecticut.
> 2. Failure to report to probation officer as directed;
> 3. Failure to keep probation officer informed of whereabouts;
> 4. Failure to complete sex offender evaluation and treatment;
> 5. Failure to provide truthful information to Connecticut State Police Sex Offender Registry Unit, in violation of Section

[9] Referring to Garner Correctional Center in Newtown.

> 53a-32(a) and Section 53a-32a of the Connecticut General Statues. (sic). (p. 1, A.10.)

On October 30, 2018 the prosecutor admitted into evidence the plea transcript of August 13, 2008 as State's Exhibit One. (A.60.) The state's first witness was Charles Santiago. He was one of the probation officers familiar with the defendant's file. He identified the "order of probation" pertaining to the defendant. (10-30-18 Tr. p. 23, A.113.) It was admitted as State's Exhibit Two (A.76.) The witness identified the "conditions of probation" form as State's Exhibit Three. (10-30-18 Tr. p. 29, A.114.) The witness testified he reviewed the conditions with the defendant and the defendant signed the form. (*Id.* p. 30, A.115.) Similar questions and answers occurred regarding State's Exhibit Four, the "sex offender conditions of probation." (*Id.* p. 31, A.116.) He also testified that the defendant's name had been switched with the name of some other probationer and the witness admitted that "Mr. S[redacted] sign[ed] a wrong form." (*Id.* p. 34.) Apparently the conditions were the same for both forms and the defendant did not claim at the violation of probation hearing that he had no knowledge of the probation conditions which applied to him.

The state's second and final witness was Mr. Jason Grady. He was the defendant's probation officer starting in mid-December 2017. He testified that the defendant was required to meet with him weekly. He testified that in May of 2018 he tried to contact the defendant because he "had missed appointments with me." (10-30-18 Tr. p. 45, A.124.) He testified he was "trying to get him into compliance with supervision." *Id.* He explained the steps he took.

> One of them was checking the Connecticut State Sex Offender Registry. I noticed that he had changed his place of residence with the sex offender registry to an address in Bridgeport which turned out to be the administrative office of the Greater Bridgeport Mental Health Department. And the

> next I heard of Mr. S[redacted], was the night of his arrest -- a new arrest. *Id.*, p. 46, A.125.

The prosecutor then introduced without objection three documents. They comprise State's Exhibit Six. (A.82.) The witness identified them as "the information sheet for the State Superior Court and an incident report from the Norwalk Police Department." (10-30-18 Tr. p. 47, A.126.) Without objection the witness testified about the first page of the three-page Exhibit Six. He stated it was "the information sheet usually kept in the court's file for tracking purposes of the case." He testified without objection, "yes" in response to the prosecutor's question if he saw "a notation on there that probable cause was found for the arrest on June 28, 2018." No civilian complainant, no police officer and no actual witness testified on either of the two violation of probation hearing dates regarding probable cause to arrest or what they witnessed relative to the incident of June 28, 2018. Thereafter during the state's direct examination of this witness, the defendant tried to explain that, "it was a false arrest and . . . criminality on the police report part." (10-30-18 Tr. p. 49, A.128.) As a pro se defendant the defendant then interrupted the direct examination of this witness and argued that he "didn't do anything wrong." *Id.* The court told the defendant that he was arguing and he was "going to have his chance . . . to argue." (*Id.* p. 50, A.129.)

The prosecutor questioned Mr. Grady about the defendant having changed his address to an address in Bridgeport. Mr. Grady testified the address was sixteen "Center Avenue in Bridgeport." (*Id.* p. 51, A.130.) He was asked, "[d]o you have an idea if he was actually living at that address?" He replied: A *I do not believe he was living there.* I believe that is the administrative offices of the Greater Bridgeport Mental Health Department." (10-30-18 Tr. p. 52, A.131.) emphasis added.) The pro se defendant objected and told the

court, "*But I was there, inpatient.*" (10-30-18 Tr. p. 52, A.131.) emphasis added.)[10] When the court asked him what the objection was, the defendant replied (referring to the fact that he had been a residential "inpatient" at that address) "it's the whole truth, Your Honor." (*Id.*) The court overruled the objection, stating that the defendant was making an argument. *Id.*

The state also inquired about the defendant's condition of probation to attend sex offender treatment. Mr. Grady identified a treatment discharge letter dated February 1, 2018. (10-30-18 Tr. p. 53, A.131.) He testified the defendant was "administratively discharged because he "was unable to participate in treatment." (*Id.*) When asked why, the witness testified, "[t]hey did not believe him to be mentally stable." (*Id.*) When this colloquy occurred Mr. Grady was testifying from a document that was not in evidence. The defendant objected to the document on hearsay grounds when the state offered it as a full exhibit. (*Id.* p. 55, A.132.) The court initially sustained the objection. (*Id.*) Thereafter the prosecutor asked if the letter indicated that the defendant "was discharged from the treatment center?" Without objection the witness said, "yes, sir." (*Id.* p. 56, A.133.) At this point the court stated, "the objection is overruled." (10-30-18 Tr. p. 56.) The court stated, "THE COURT: -- but he's already attested . . . that you were discharged. This is the formal letter, so I'm not offering (sic) it for the contest (sic) but just to show the discharge."[11] *Id.*

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[10] After he was appointed assigned counsel to fully represent him, counsel called no witnesses to prove the defendant was in fact living at the Greater Bridgeport Mental Health Center. Prior to the appointment of counsel, the pro se defendant had sent a handwritten list of witnesses' names to the court whom he wanted subpoenaed in his defense. One witness was an employee of the Greater Bridgeport Mental Health Center located at "1635 Central Avenue Bridgeport, CT 06604." See Defendant's letter to "Waterbury Clerk of Court" dated 12-19-18, A.12.

[11] In actuality, the court probably said it was "not *admitting* it for the *content*" because a trial court does not offer evidence it admits it and because "not *offering* it for the *contest*" makes no sense. The defendant is aware that he could move to have this portion of the transcript rectified. There is no need because the letter was in fact admitted by the trial court "just to

The pro se defendant attempted to cross-examine Mr. Grady. The defendant was able to develop that Mr. Grady told him "to get a Bridgeport address." (10-30-18, p. 59, A.135.) The defendant attempted to develop that he "got illegally kicked out" of his new address and whether Mr. Grady knew about all of the problems he encountered while living in Bridgeport. The defendant became upset and had trouble asking cross-examination questions. (10-30-18, pp. 61-63, A.136 – A.138.) At that point the defendant had no further questions and the state rested. (10-30-18 Tr. p. 63, A.138.)

As the first day of the violation of probation hearing concluded, the defendant was asked if he wanted to call witnesses and he said "yes." (10-30-18 Tr. p. 70, A.139.) This colloquy occurred:

> THE COURT: In that case, you need another date. You need another date --
> MR. S[redacted]: Yeah. And I would like Attorney William --
> THE COURT: -- to get your witnesses.
> MR. S[redacted]: -- T. Koch to be representing me.
> THE COURT: I can't just bring in lawyers for you. You know, you don't want a public defender, *you waived your right to an attorney and that's where you are now.* (10-30-18 Tr. p. 72, A.140, emphasis added.)

Thereafter the defendant moved for a 60-day continuance which was granted.

On the second day of the violation of probation hearing, i.e., the date on which the defendant would be able to call witnesses in his own defense, May 9, 2019, no witnesses were called by Attorney Brown. Instead, he argued the motion for a guardian ad litem and made the short closing argument advocating that his client serve three years in Garner

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show the discharge." *Id.* The discharge letter was admitted as a full exhibit thereafter. (State's Ex. 7, A.88.) (10-30-18 Tr. p. 56, A.133.)

prison for alleged violations Attorney Brown characterized as merely "technical." (5-9-19 Tr. p. 7, A.173.) Attorney Brown also admitted his client's guilt.[12]

II. ARGUMENT.

A. The Trial Court Erred in Permitting the Defendant to Represent Himself at the October 30, 2018 Hearing Because the Trial Court's *Faretta* Canvass Was Constitutionally Inadequate

At his violation of probation arraignment on August 29, 2018 and again on September 12, 2018 the defendant was adamant that he was "representing [himself] pro se." (9-12-18 Tr. p. 2, A.172.) During the *Faretta* canvass the defendant stated he had represented himself in several federal lawsuits. (9-12-18 Tr. pp. 2-3, A.99 – A.100.) When the court asked him "Have you any law school –" the defendant interrupted and gave the following reply: "Yes. The private school I went to in New Hampshire, the last quarter of tenth grade and the eleventh grade when we studied law, and I graduated at the end of eleventh grade before I turned sixteen in September." (*Id.* p. 4, A.101.) When the court aske the defendant if he understood "that the state has gone to college, has gone to law school, and they are very well versed in the law," the defendant replied: "Well your Honor, there's no case –" and the court said: "Just tell me if you understand that they've gone to law school and college." The defendant replied, "[y]es, no problem." When he was asked if he had "any other pending charges" the defendant replied: "In Norwalk that is the basis for the violation of probation."[13] He went on to say that "it was an illegal arrest" that he "was assaulted by . . . Bryce . . . who's not going to be a cop shortly." (9-12-18 Tr. p. 5, A.102.) The Norwalk G.A. cases had been transferred to Waterbury. Judge Fasano then asked the defendant: "You're going to

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[12] Defense counsel in closing argument said: "Clearly there's no doubt that, . . . there's a lot of technical violations that I don't think are deniable with a straight face." (5-9-19 Tr. pp. 6-7, A.172 - A.173.)

[13] In reality, the Norwalk arrest constituted only <u>one</u> basis out of five as shown on the violation of probation arrest warrant. A.56.

represent yourself in that one too?" The defendant replied, "[y]es, your Honor." *Id.* The court asked the prosecutor: "What's the amount of time he could receive, the exposure?" The prosecutor replied: "Ten years." (*Id.* p. 6, A.103.) The state failed to mention the defendant's exposure on the misdemeanor pending charges. The defendant's correct maximum exposure was 11 years, six months. Ten years on the violation of probation and one year, six months on the two misdemeanors.[14] At the end of the canvass the court declared the defendant competent and that he was "capable of representing yourself." (*Id.* p. 7, A.104.)

The state presented its entire case save closing argument on October 30, 2018. Although on September 12th the trial judge found the defendant capable of representing himself, it should have been apparent to the court during the defendant's attempted pro se cross-examination of the state's first witness that the defendant was not capable of representing himself. The pro se cross-examination of Mr. Santiago demonstrates that the defendant posed rambling, argumentative and sometimes demeaning questions of Santiago. Every one of his rambling questions was objected to by the state and sustained by the court. (See pages 36-41 of the 10-30-18 Tr., pp. A.118 – A.123.) One example occurs on pages 36-37. During one rambling attempted question the defendant accused the witness of perjury, accused the witness of falsely accusing him of having threatened the public defender, stated that federal officers held him illegally "in Whiting Forensic Institute" and his rambling attempted question ended without any question being posed.[15] The state

[14] C.G.S. § 53a-167a is a Class A misdemeanor and carries up to one year imprisonment. C.G.S. § 53a-181 is a Class B misdemeanor and carries a maximum of six months imprisonment. See C.G.S. § 53a-36, "Imprisonment for misdemeanors." A.40.

[15] This "question" appears on page 36, lines 20-27 and p. 37, lines 1-7. (10-30-18 Tr. pp. A.118 – A.119.)

objected. The court sustained the objection and told the defendant: "You have to ask a question, not tell the story." (10-30-18 Tr. p. 37, A.119.)

During the state's direct examination of probation officer Grady, Grady was asked if the defendant "was required to get sex offender treatment" and the witness said "yes." (10-30-18 Tr. p. 53, A.131.) The prosecutor showed the witness a document not in evidence which the witness identified as a discharge letter from the treatment center. Without any objection the witness was asked "what was the basis for the discharge" and he replied it was an administrative discharge. (*Id.* p. 53, A.131.) He was then asked, "for what reason?" The unobjected to answer was: "*They did not believe him to be mentally stable at the time.*" (*Id.* emphasis added.)

The defendant's cross-examination of Mr. Grady deteriorated into the defendant either making irrelevant statements or arguments, not asking questions and ultimately getting very upset and emotional.

> Q And the apartment that I did get, I paid two months rent for, and it was less than two weeks there --
> THE COURT: Mr. S[redacted]
> Q -- before he illegally pushed me out?
> THE COURT: You are arguing. You are arguing. Are you asking him if he was aware of that? *All right -- relax. Get yourself together.*
> MR. S[redacted]: I don't have money to --
> THE COURT: *Stop, stop, stop.*
> MR. S[redacted]: -- to pay for.
> THE COURT: *Hang on. Hang on. Take your time.*
> MR. S[redacted]: -- to security deposits and – (*INAUDIBLE*) (*EMOTIONAL*).
> THE COURT: *Take a moment to pull yourself together. Take it easy.*
> MR. S[redacted]: I was trying to take care of all of the problems myself.
> THE COURT: All right. All you need to do is ask a question.
> MR. S[redacted]: I know.
> THE COURT: So, well that's an argument. (*Id.* p. 61, A.136, emphasis added.)

After the attempted cross-examination finished, the defendant again invoked his Sixth Amendment right to counsel and said he wanted Attorney William T. Koch to represent him. (*Id.* p. 72.) The court stated, "I can't appoint him," referring to the defendant's statement that Attorney Koch was not a public defender. This colloquy then occurred:

> THE COURT: Well, then, you have -- I can't appoint him.
> MR. S[redacted]: What do you mean? As special public defender.
> THE COURT: No. I can't just appoint anybody. They are all involved with the public defender's system.
> MR. S[redacted]: Oh. But you could give me a public defender that's going to throw me under the -- throw the case out.
> THE COURT: Well, *you've gone pro se, so you are not going to get one now.*
> MR. S[redacted]: As standby counsel.
> THE COURT: I could appoint you standby counsel. You want a public defender?
> MR. S[redacted]: William T. Koch, Jr. (*Id.* p. 73, A.141, emphasis added.)

On January 2, 2019 assigned counsel J. Patrick Brown, III, was appointed as standby counsel only. As described in the statement of facts, in this interim between the two hearing dates of October 30, 2018 and May 9, 2019, the court ordered two competency evaluations. (Clerk's Docket Sheet p. 2, A.7.) In this interim the defendant's representational status changed from pro se with no standby counsel to pro se with court-appointed standby counsel and ultimately to being fully represented by court-appointed assigned counsel.

1. The *Faretta* Canvass Was Constitutionally Inadequate.

There is a strong presumption against waiver of a fundamental constitutional right. *Brewer v Williams*, 430 U.S. 387, 404 (1977). Any purported waiver must be scrupulously

examined by the court. *Johnson v. Zerbst*, 304 U.S. 458 (1938). Indeed, the *Johnson* court held that the trial court should indulge in every reasonable presumption against waiver of fundamental constitutional rights. *Id.* at 464. In the case at bar the waiver was constitutionally defective for several reasons. First, the court did not sufficiently examine the defendant's psychological and intellectual functioning status based on the replies the defendant gave to the court's brief canvass questions. When asked about having "any law school" training, the defendant interrupted the court and described a 10th grade high school law course he took decades earlier. The court's response was: "*All right. So you've had occasion to study law.*" (9-12-18 Tr. p. 4, A.102, emphasis added.) When the court told him "[b]ecause you're going to be representing yourself, . . . you can't really yell at your lawyer if you get up to ten years in jail."[16] Tellingly, the defendant's reply was: "Your Honor, I'm not. *I'll be in jail for a maximum of ninety more days, if that.*" (*Id.* p. 6, A.104, emphasis added.) The court did not follow up or explore the defendant's obvious lack of legal education and training. The court did not follow up on the defendant's extraordinary misapprehension that if he was found in violation of probation and was found guilty of the two misdemeanor charges, he thought he would be sentenced to ". . . ninety more days, *if that.*" *Id.* Although the *Faretta* colloquy was brief, the defendant's replies required additional judicial inquiry and scrutiny. Practice Book Section 44-3 requires, inter alia, that a judge: "*makes a thorough inquiry* and is satisfied that the defendant: . . . (2) *[p]ossessed the intelligence and capacity to appreciate the consequences* . . . (3) *[c]omprehends the nature of the charges and proceedings, the range of permissible punishments* . . . ." (Emphasis added.) Given the defendant's responses, the inquiry was not thorough enough and the judge erred in

[16] In context, this appears to mean that the pro se defendant could only "yell at" himself and have only himself to blame for being pro se.

finding the defendant was capable of representing himself.

The second reason the canvass was deficient is that the defendant was not advised regarding his total maximum sentencing exposure on both the violation of probation and the misdemeanor arrest. The two misdemeanors prosecutions were also before Judge Fasano and the state chose to prosecute the violation of probation first.[17] Thus he was mis-advised regarding the maximum incarceration time he was facing. See, e.g. *State v. Diaz*, 274 Conn. 818, 831 (2005).

In *Von Moltke v. Gillies*, 332 U.S. 708 (1948) the Supreme Court described the parameters of the trial court's role in establishing a valid waiver of a criminal defendant's Sixth Amendment right to counsel.

> To discharge this duty properly in light of the strong presumption against waiver of the constitutional right to counsel, *a judge must investigate as long and as thoroughly as the circumstances of the case before him demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility.* To be valid, *such waiver must be made with an apprehension of* the nature of the charges, the statutory offenses within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, *and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances . . ." Id.* at 723-24 (emphasis added.)

In the case at bar, the court did not "investigate . . . as thoroughly as the circumstances of the case" demanded. *Id.* The court was required to investigate the defendant's answer

[17] On May 9, 2019 right after being sentenced to six years in prison, the state nolled the misdemeanor charges and the court then dismissed them. (5-9-19 Tr. p. 16, A.182.) On September 12, 2018 the parties had no knowledge suggesting the misdemeanor charges would be dismissed. The state has discretion regarding if the violation of probation or its triggering arrest is tried first.

which equated a high school law course with law school. The court was required to investigate why the defendant thought that if he were found in violation of probation and found guilty of two misdemeanors he would only serve "ninety days, if that." The court was required to investigate why the defendant thought the arresting officer was "no longer going to be a cop." On these facts, the court's [w]arnings of the pitfalls of proceeding to trial" were not "rigorously conveyed" to the defendant. *Iowa v. Tovar*, 541 U.S. 77 at 89 (2004). The defendant's waiver of his Sixth Amendment right to counsel is therefore constitutionally deficient. The standard of review requires automatic reversal because harm is presumed when doubt is cast on the trial's fairness. *Penson v. Ohio*, 488 U.S. 75, 88 (1988).[18]

B. *State v. Connor*, 292 Conn. 483 (2009) Requires a New Trial Because On October 30, 2018 the Defendant Lacked the Ability to Perform Basic Representational Functions.

The defendant suffered from an impairment noticeable enough during the violation of probation evidentiary hearing on October 30, 2018 that prior to the second and final day of the hearing, the court ordered an attorney to fully represent the defendant, effectively terminating his pro se status. The defendant is not claiming the eventual full appointment of counsel constitutes error, quite the opposite. Rather, the defendant argues that there is error because appointment of counsel came too late. No later than the attempted cross-examination of the state's first witness, Mr. Santiago, the court should have stopped the trial with the witness on the stand. Then and there the court could have either ordered a

[18] This is structural error. *State v. Ayala*, 324 Conn. 571, 591 (2017). An error is generally structural when it affects the 'framework within which the trial proceeds, . . . such that 'the error always results in fundamental unfairness.' *Weaver v. Massachusetts*, __ U.S. ___, 137 S.Ct. 1899, 1908, 198 L. Ed. 2d 420 (2017.)" *State v. Cushard*, 328 Conn. 558 at 570 (2018).

C.G.S. § 54-56d competency examination, or declared a mistrial sua sponte,[19] or abruptly continued the case to appoint an assigned counsel to fully represent the defendant going forward. Santiago was the state's first witness. Instead, the hearing continued and another state's witness testified, Grady. (10-30-18 Tr. p. 43, A.123a.) Although during the interim between the two hearing dates the court ultimately did appoint counsel to fully represent the defendant, by May 9, 2019 it was too late. The damage was done. By that date, all of the state's evidence and testimony was already admitted and in the record. On May 9th the only remaining trial task the prosecution performed was argument. (5-9-19 Tr. pp. 4-6 A.170 – A.172.)

The trial court certainly recognized during the interim between October 30, 2018 and May 9, 2019 that the *defendant could not "carry out the basic tasks needed to present his own defense without the help of counsel." Indiana v. Edwards*, 128 U.S. 2379, 2386 (2008) (emphasis added).

> THE COURT: I'm not going to waste the court's time and money any further. There is a presumption of competence that attaches to a defendant. . . . I think you're capable of assisting in your defense. . . . [U]nder the circumstances and based on my experience in dealing with you, as far as the context of the hearing itself, *I'm satisfied that you are not capable of continuing as your own attorney.* I'll make a finding that you're competent because of the presumption and because of what I've viewed in terms of being minimally competent. *But as far as continuing with this trial and representing yourself, that's not going to happen. And I'm basing that not only on the motions you filed, so that they are all part of the record, but also on the transcript to this date.* And that's part of the record too. I mean, during the course of

[19] A trial court may declare a mistrial even in the absence of a party's motion. *United States v. Grasso*, 413 F.Supp. 1661 (D. Conn. 1976). It arises in the context of "manifest necessity." *State v. Anderson*, 295 Conn. 1 (2010). One of the factors supporting a mistrial is "whether the court and parties were taken by surprise." *Id.*, at 10. Such is the situation here because when the hearing started on October 30, 2018 the trial court found the defendant competent to represent himself.

> this hearing *you've been totally out of the court's control. You speak over the court's voice. You disregard orders, long winded, inappropriate questions, never on point.* And, consequently, *as a result of all that, it creates a travesty as far as the hearing that we're having and that's not consistent with the ends of justice. So that's not going to continue.*[20] (2-13-19 Tr. p. 2, A.148, emphasis added.)

The defendant agrees with the trial court that what occurred on October 30, 2018 when the defendant was pro se was not consistent with the ends of justice. It was a travesty. On that date the state began its case, entered seven exhibits into evidence, called two witnesses and rested its case. The pro se defendant indeed did speak over and interrupt the judge, and mostly asked, "long winded, inappropriate questions, never on point." *Id.*

Shortly after the United State Supreme Court decided *Edwards*, supra, the Connecticut Supreme Court had occasion to re-examine our state precedent which equated competence to stand trial with competence to defend oneself pro se. *State v. Connor*, 292 Conn. 483, 518-519. (2009). Exercising its supervisory authority it held:

> We conclude that, *upon a finding that a mentally ill* or mentally incapacitated defendant is *competent to stand trial and to waive his right to counsel at that trial, the trial court must make another determination, that is, whether the defendant also is competent to conduct the trial proceedings without counsel.*[21] *Id.* at 518 (emphasis added.)

As previously described, the trial court ruled on February 13, 2019 that the pro se defendant could not perform basic representational functions and based this on the

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[20] Because this transcript excerpt begins at the top of page two of the February 13, 2019 transcript, when the court referred to the defendant as being "totally out of the court's control" "during the course of *this* hearing," the court was exclusively referring to the earlier October 30, 2018 hearing date. A.148.

[21] Our Supreme Court thus "overruled[d] that portion of *State v. Day*, 233. Conn. 824-25, in which we concluded that a defendant who is competent to stand trial *necessarily* is competent, as well, to waive counsel *and* to represent himself at trial." *State v. Connor*, 292 Conn. 483, n.29. (emphasis in the original.)

defendant's pro se conduct of October 30, 2018. The constitutional infringement is that the error of the court in allowing the defendant to represent himself pervades and undermines the fairness of the trial when, as occurred here, the entire trial save closing arguments and sentencing occurred when the defendant was unrepresented and incapable of self-representation. It has been observed that: "An error is generally structural when it affects the 'framework within which the trial proceeds'; *Arizona v. Fulminante*, 499 U.S. 279 at 310 (1991); such that 'the error always results in fundamental fairness.' *Weaver v. Massachusetts*, 582 U.S. ___, 137 S.Ct. 1899, 1908, . . . (2017).'" *State v. Cushard*, 328 Conn. 558 at 570 (2018). In *Cushard*, our supreme court "reject[ed] the defendant's assertion that reversal is *always* required in cases of an inadequate waiver of the right to counsel." 328 Conn. at 578 (emphasis added). It declared that, "to determine if the error in the present case was structural, we must perform an initial review of the record to determine whether the absence of counsel had an impact on the subsequent trial that irretrievably eroded its fundamental fairness. . . . *State v. Brown*, . . . 279 Conn. at 509-11." *Id.* In the instant case, the absence of counsel had a profound and negative impact which eroded fairness of the trial. The defendant could not perform basic representational functions on October 30th. The trial court recognized this post-factum. Because the state completed its evidentiary case that day, the post-factum appointment of full counsel came too little, too late. In the words of *Arizona v. Fulminante*, supra, the "framework" of the trial was negatively "affected." Thus the error was structural and reversal is required.

C. This Court Should Exercise Its Supervisory Authority and Hold the Trial Court Erred When it Failed to Canvass the Defendant About His Constitutional Right to Testify.

The defendant argues that the trial court was required to canvass him about his constitutional right to testify. This issue was unpreserved. The second and final day of the

violation of probation hearing was May 9, 2019. That transcript is seventeen pages long. (A.166 - A.183.) The court never canvassed the defendant about his constitutional right to testify. The defendant's court-appointed counsel never informed the court that the defendant had chosen to testify or not to testify. Court-appointed counsel never asked the court to canvass the defendant about his constitutional right to testify. Court-appointed counsel never moved to re-open the state's case. Court-appointed counsel did not move to have the state's witnesses re-called so that court-appointed counsel could cross-examine them. Court-appointed counsel never even stated that the defendant rested its case. Instead, court-appointed counsel moved to have a guardian ad litem appointed and to have a third 54-56d examination of his client. These motions were summarily denied. (5-9-19 Tr. pp. 2-3.)

The defendant claims that the trial court was required to canvass the defendant about his right to testify. The defendant acknowledges that *State v. Paradise*, 213 Conn. 388 (1990) remains controlling precedent.[22] In *Paradise*, the Connecticut Supreme Court held that a defendant must affirmatively act in order to invoke the right to testify. *Id.* at 404-405. The defendant notes that in *State v. Frazier*, 181 Conn. App. 1, cert. denied, 328 Conn. 938 (2018) this court recently cited *Paradise* with approval.

> [W]e conclude that the defendant is unable to demonstrate that a constitutional violation exists because he did not represent at trial that he either wanted to testify or did not know that he could testify. Our Supreme Court has held that, in such a situation, *the trial court is under no affirmative duty to conduct a canvass to determine if a defendant's waiver of the right to testify is knowing, voluntary, and intelligent.* See *State v. Paradise*, 213 Conn. 388, 405, 567 A.2d 1221 (1990), . . . In *Paradise*, our Supreme Court held that the substantive right to testify under federal constitutional law

[22] *State v. Paradise* was overruled in part on other grounds in *State v. Skakel*, 276 Conn. 633, 693 (2006).

> does not contain a corollary procedural requirement that a trial court canvass a defendant concerning his waiver of his right to testify unless the defendant affirmatively states that he wishes to testify or that he did not know he could testify. *Id.* at 36-37 (emphasis added).

But for this recent decision, the defendant would have claimed reversibility under *State v. Golding*, 213 Conn. 233 (1989). Its third prong requires that, "the alleged constitutional violation, . . . exists and deprived the defendant of a fair trial." *Frazier* at 35, citing *Golding* at 239-40. Because *Frazier* holds that this prong of *Golding* is not satisfied, no constitutional claim under *Golding* exists.

The defendant does argue that this court should exercise its supervisory authority and impose an affirmative duty on our trial courts to canvass criminal defendants and alleged probation violators even when the defendant does not ask to testify or does not declare he will not testify. In criminal cases, through the invocation of its supervisory authority, new rules of procedure have been created, often while a defendant's conviction is simultaneously reversed based on the new rule. It was invoked in *State v. Connor*, 292 Conn. 483, 514 (2009) to require a judicial determination regarding a defendant's competence to "conduct the trial proceedings without counsel."[23] *Id.* This is the level of seriousness at stake in this appeal.

In support of this argument, the defendant points out that here in the Second Circuit, a defendant's silence does not permit a reviewing court to find that a defendant waived their right to testify. *Chang v. United States*, 250 F.3d 79 (2d. Cir. 2001).

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[23] Other examples are: *State v. Anderson*, 255 Conn. 425, 440, 441, (2001): "We also have exercised our supervisory authority to adopt 'rules intended to guide the lower courts in the administration of justice in all aspects of the criminal process.' See, e.g., *State v. Coleman*, [supra, 242 Conn.] 542 (judicial explanation required for imposition of greater sentence after trial than after plea); *State v. Gould*, 241 Conn. 1, 15, (1997) (videotaped deposition must be played in open court, not in jury room); *State v. Brown*, supra, 235 Conn. 528 (judicial inquiry on the record into allegations of juror misconduct.)"

> We . . . agree with those circuits that have refused to find a waiver or forfeiture solely from a defendant's silence at trial. At trial, defendants generally must speak only through counsel, and, *absent something in the record suggesting a knowing waiver, silence alone cannot support an inference of such a waiver. Id.* at 83-84 (emphasis added.)

The District of Columbia Circuit Court of Appeals also requires that a judicial canvass occur. It rejected the rule requiring that a defendant affirmatively assert his right to testify. Thus it rejected

> "the demand rule, requiring that the defendant directly express to the court during the trial the desire to testify, in recognition of the impracticability of placing a burden on the defendant to assert a right of which he might not be aware or to do so in contravention of the court's instructions that the defendant speak to the court through counsel." *United States v. Ortiz*, 82 F.3d 1066 at 1071 (D.C. Cir. 1996).

The Fifth Circuit's precedent is consistent with the Second Circuit and the District of Columbia's Court of Appeals. *United States v. Mullins*, 315 F.3d 449 at 455 (5th Cir. 2002): "At trial, defendants generally must speak only through counsel, and absent something in the record suggesting a knowing waiver, silence alone cannot support an inference of such waiver."

Appellate decisions from various states also require their courts to inquire of defendants if they understand they have a constitutional right to testify. *State v. Celestine*, 415 P.3d 907 (Hawaii 2018) is illustrative. "Hawai'i law has historically protected both the right to testify and the right not to testify." *Id.* at 911. In *Celestine*, supra, the Hawaii Supreme Court relied on its 1995 decision, *Tachibana v. State*, 900 P.2d 504 (Hawaii 1995).

> There are two components of a *Tachibana* colloquy. The first is informing the defendant of fundamental principles pertaining to the right to testify and the right not to testify. . . .

> The second component of the *Tachibana* "colloquy" involves the court engaging in a true "colloquy" with the defendant . . . . This portion of the colloquy consists of a verbal exchange between the judge and the defendant "in which the *judge ascertains the defendant's understanding* of the proceedings and of the defendant's rights." . . . (quoting *Black's Law Dictionary* 300 (9th ed. 2009)).
> The verbal exchange is to ensure that the information conveyed by the judge has been understood by the defendant and that the defendant's decision not to testify has been made with an understanding of the defendant's rights. *Celestine* at 912.

The verbal exchange colloquy requires more than "yes" or "no" answers. Thus, in *Celestine*, when the court asked the defendant if anyone was forcing her not to testify and the defendant said "No sir," and when the court asked her if it was her own decision and she said, "Yes sir," as a matter of law, the canvass was defective.

> The district court thus did not engage in a sufficient verbal exchange with Celestine to ascertain whether her waiver of the right to testify was based on her understanding of the principles related by the district court. Because the court's colloquy with Celestine was deficient as to this essential requirement, the record does not demonstrate that Celestine's waiver of the right to testify was knowingly, intelligently, and voluntarily made. *Id.* at 914.

Hawaii's Supreme Court then reversed the defendant's judgment of conviction and found that the lower court's error was not harmless beyond a reasonable doubt. *Id.* p. 915. The "harmless error beyond a reasonable doubt" standard has been applied in other cases involving violations of the right to testify. See *United States v. Teague*, 908 F.2d 752 (11th Cir. 1990). In *Teague*, the Eleventh Circuit Court of Appeals explained that the burden of proving that the error was harmless beyond a reasonable doubt rests with the prosecution. *Id.* at 760. In Alaska, the Alaska Supreme Court held that there must be an on-the-record judicial inquiry regarding whether a defendant understands his or her constitutional right to testify and voluntarily waives it. *Lavigne v. State*, 812 P.2d 217, 220-22 (Alaska 1991).

Returning to Connecticut law, our supreme court exercised its supervisory authority to require a canvassing of parents who do not testify or present witnesses in termination of parental rights cases. *In Re Yasiel, R.*, 317 Conn. 773 (2015). It partially relied on the various Connecticut canvassing requirements of defendants in criminal cases.[24] Our supreme court held that, "in all termination proceedings, the trial court must canvass the respondent [parent]" and the parent "should be advised of . . . (7) the respondent's right to testify on his or her own behalf. . . ." *Id.* at 795.

Rule 1.2(a) of the Model Rules of Professional Conduct, adopted by the American Bar Association states: "In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify." Given this ethical rule of conduct, an excellent means of assuring that a defendant actually understands that his or her core constitutional right of testifying or not is not the lawyer's decision and is solely the client's decision would be to require a judicial canvass. It would not be burdensome on trial courts. Connecticut trial judges almost always canvass defendants about their right to testify or not testify. In this particular case the record is silent regarding why it did not happen.

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[24] "It is significant that Connecticut requires its trial courts to canvass, inter alia, . . . criminal defendants waiving their right to a jury trial; see *State v. Gore, supra*, 288 Conn. 786-87; criminal defendants who have been found competent to stand trial but wish to represent themselves at that trial; see *State v. Connor, supra*, 292 Conn. 518-19; and criminal defendants regarding their plea of not guilty by reason of mental defect where the state does not challenge that claim; see *Duperry v. Solnit, supra*, 261 Conn. 309; all circumstances that lead to the loss of significant personal rights. We conclude, therefore, that this case involves exceptional circumstances requiring that we employ our supervisory power." *Id.* at 793. The same should apply to violation of probation trials.

Exercising supervisory authority would serve the ends of justice. A new rule might limit post-conviction claims of ineffectiveness of defense attorneys who allegedly fail to advise their clients about their right to testify. Implementing such a rule would conform to various federal circuit courts of appeals and several states' appellate courts. It would not be burdensome to make such a canvass mandatory.

Finally, it was noted in *Rock v. Arkansas* that, "the defendant's right to testify is a fundamental constitutional right essential to due process in a fair adversary proceeding." 483 U.S. 44, 51 (1987) U.S. Const. Amend. V, VI, XIV. The waiver must be knowing and intelligent. What happened here is inconsistent with United States Supreme Court precedent which rejects any presumption of waiver of "important federal rights from a silent record." *Boykin v. Alabama*, 395 U.S. 238 at 243 (1969). For all of these reasons, this court should exercise its supervisory authority and require a judicial canvass of defendants and abandon the presumption of waiver of such an important federal right when the record is silent.

D. Defense Counsel's Ineffectiveness Should Be Reviewed on Direct Appeal.

1. Ineffective Assistance and Prejudice Can Be Presumed.

The defendant argues that his court-appointed attorney's representation was so deficient and so apparent that this claim should be reviewed on direct appeal in the event he does not prevail on his other issues. "There may be cases in which trial counsel's ineffectiveness is so apparent from the record that appellate counsel will consider it advisable to raise the issue on direct appeal." *Massaro v. United States*, 538 U.S. 500, 508 (2003). In *State v. Webb* it was recognized, "[b]ecause the defendant's claims do not require further evidentiary development, unlike the usual claims of attorney incompetence .

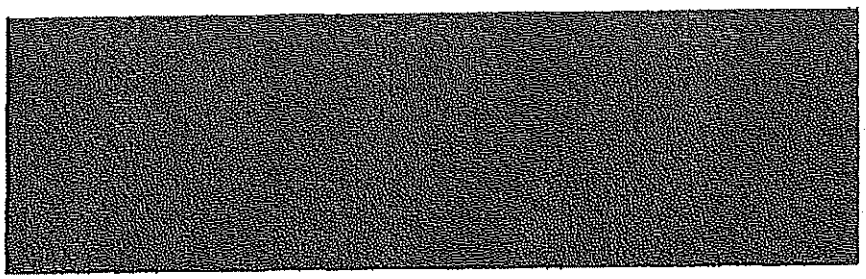
. . but may be resolved as a matter of law upon review of the existing record, we will review them on direct appeal." 238 Conn. 389, 414 n.24 (1996). This is such a case. Ineffectiveness is examined under the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984).

The defendant asserts that on May 9, 2019 his lawyer "entirely failed to subject the prosecution's case to meaningful adversarial testing." *United States v. Cronic*, 466 U.S. 648 at 658 (1984). Defense counsel failed to have the state's witnesses re-called to testify under cross-examination. The defendant's pro se attempted cross-examination was a shambles. (See pages 8 - 12 of this brief.) Assuming that counsel had read the transcript of October 30, 2018 which was State's Exhibit 1, A.60, he knew that the pro se defendant was attempting to develop that he had obtained a new residence in Bridgeport at Mr. Grady's request; that for a period of time he indeed was living at the Bridgeport Mental Health Center; that he did not willfully quit therapy and instead had been administratively discharged (State's Ex. 7) for not being "mentally stable." (10-30-18 Tr. p. 53, A.149.) The record established that on February 13, 2019 the trial court appointed Attorney Brown as the defendant's "full-time lawyer." (2-13-19 Tr. p. 4, A.149.) The court even "allow[ed]" the full-time counsel to have "any time it takes to review the transcripts and prepare your trial." (*Id.* p. 5, A.150.) The defense attorney did not need any of the defendant's mental health treatment records to prove that the defendant was living at one address he told the officer about followed by another he also told them about which was the health center. Counsel could have subpoenaed the employee mentioned by the pro se defendant in his letter to the court clerk dated December 19, 2018. (A.12.) This evidence would have been a defense to the allegation that the defendant did not keep the probation officer informed of his residential address.

Not only did defense counsel fail to subject the state's case to "meaningful adversarial testing," his closing argument advocated for his client receiving *three years* of imprisonment at *Garner Correctional Center "so . . . he will be medicated."* (5-9-19 Tr. p. 7, A.173.) emphasis added.) That counsel asked for years of incarceration so that his client could receive medication is not competent representation.

During the pro se defendant's attempted cross-examinations of the state's witnesses he was trying to explain why he was not in violation of probation and had great difficulty understanding and/or implementing the rule that he was supposed to ask relevant cross-examination questions. One reasonable inference to be drawn from this is that he wanted to tell his side of events and exercise his constitutional right to testify. As was previously pointed out, the defense attorney made no statement to the court that he had discussed the defendant's right to testify with him or that counsel was satisfied that his client was fully informed "of the circumstances of the case" regarding whether to testify on his own behalf. *Helmedach v. Commissioner of Correction*, 329 Conn. 726 at 744 (2018).

On May 9, 2019 the defense attorney was in conflict with his client. The motion for appointment of a guardian ad litem is telling.[25] The motion represents that the appointed attorney thought "that the defendant is incapable, by reason of diminished capacity, to make decisions in his own best interest." A.14. It does not represent that the defendant authorized such a motion. Paragraph (6) of the motion states:



[25] March 11, 2019 "Motion for Appointment of Guardian ad Litem." A.14.

The record is silent about whether or not the above written, filed representations of an officer of the court who was appointed to represent and assist his client, ended up leading to an investigation or arrest of his own client. On one hand, if he actually felt threatened, the attorney should have moved to withdraw as counsel and have it heard before a different judge. He never should have breached attorney-client confidentiality. If on the other hand he did not feel threatened, when he breached confidentiality and stated to the court just prior to imposition of sentence that his client had threatened him with physical violence, it is an understatement to observe that this breach was not going to assist his client in getting a fair and merciful sentence. A habeas court does not need to hear counsel's testimony about this because either way, what he said is not justified as a strategic decision of counsel and it breached confidentiality. Counsel's statement was consistent with something the prosecution might say. Such attorney conduct demonstrates a conflict of interest. The record needs no further development. The defendant's own attorney, not the prosecutor, was revealing privileged communications which portrayed the client as violent and could only harm the client. At this point, the attorney is not competently acting as the zealous advocate on behalf of his client. He is not acting as counsel at all. *Phillips v. Warden*, 220 Conn. 112 (1991) affords important analysis. The right to conflict-free counsel is applicable "where a conflict of interest *may* impair an attorney's ability to represent his client effectively." *Id.* at 135, emphasis added. Thus it is that, " . . . an attorney owes an overarching duty of undivided loyalty to his client." *Id.* at 136. The right to effective assistance of counsel entitles the client to "undivided loyalty of the one upon whom he

looks as his advocate and his champion." *Id.* at 137. Attorney Brown did not provide such loyalty.

The defendant understands that the filing of a grievance by a criminal defendant "in and of itself is insufficient to establish a violation of a defendant's Sixth Amendment rights." *State v. Vega*, 259 Conn. 374 at 388 (2002). The defendant also acknowledges that the filing of a grievance even in combination with a request for new counsel does not necessarily mean that there was a conflict of interest between the defense attorney and the defendant. See e.g., *State v. Kukucka*, 181 Conn. App. 329, 337-46, cert. denied, 329 Conn. 905 (2018.) Thus, viewed in isolation, the facts the defendant informed the court he wanted different counsel and had filed a grievance against his assigned counsel do not prove ineffectiveness of counsel. But the lack of counsel's advocacy and the statements he made to the trial court do prove ineffectiveness under *Strickland*.[26]

In the case at bar the record is troubling. The defense attorney was not acting as his client's counsel when he failed to cross-examine the state's witnesses, when he failed to call witnesses to prove the defendant actually did live at the defendant's addresses in Bridgeport, when he presented no defense case whatsoever and most importantly of all, when during closing argument he conceded guilt and asked the court to impose three years of incarceration in a non-violent "technical violation" case so his client could receive

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[26] As is well known: "A defendant seeking habeas relief for ineffective representation must prove two elements. "First, the defendant must show that counsel's performance was deficient. This requires [a] showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the [s]ixth [a]mendment. Second, the defendant must show that the deficient performance prejudiced the defense." *Helmedach v. Commissioner, supra*, at 733, quoting *Strickland v. Washington, supra*, 466 U.S. 668 at 687 (1984).

medical treatment in prison. Based on this, the ineffectiveness is glaring and it is difficult to conceive how the state can credibly argue that counsel did not "entirely fail to subject the prosecution's case to meaningful adversarial testing." *Cronic*, supra, at 658. The defendant is entitled to a new violation of probation hearing.

E. The Defendant Was Deprived of His Constitutional Right to Conflict-Free Representation. The Trial Court Had A Duty to Inquire About the Conflict of Interest Between Client and Counsel.

"A trial court *must* explore the possibility of conflict . . . when it knows or reasonably should know of a conflict . . ." *State v. Vega*, 259 Conn. 374 at 386 (2002), cert. denied, 537 U.S. 836 (2002, emphasis added.) In the case at bar, when: 1.) the assigned counsel filed the motion to appoint a guardian ad litem which published to the trial court that counsel had been threatened with physical violence, and 2.) when the court knew the client had filed a grievance against counsel and wanted Attorney Koch to represent him, and 3.) when on May 9, 2019 the defense attorney failed to cross-examine any state witnesses and failed to present any defense – the trial court was under the duty to inquire whether there was a conflict of interest. This duty of inquiry is well established.

> The duty of inquiry into a conflict of interest implicates a defendant's sixth and fourteenth amendment rights to the effective assistance of counsel. See *State v. Crespo*, 246 Conn. 665, 685-86 . . . (1998), cert. denied, 525 U.S. 1125 . . . (1999). As we have already stated, in the absence of an assertion of a conflict of interest at trial, our review on appeal is limited to determining whether the trial court knew or *had reason to believe* a particular conflict existed. *State v. Parrott*, supra, 262 Conn. at 286, 811 A.2d 705. *State v. Kukucka*, 181 Conn. App. 329 at 349, cert. denied, 329 Conn. 905 (2018) (emphasis added).

The standard of review requires "determining whether the trial court . . . had reason to believe a particular conflict existed." (*Id.*) Whether a defendant is deprived of his constitutional right to conflict-free representation "presents a question of law over which we

exercise plenary review." *State v. Parrott*, 262 Conn. 276, 286 (2003). In *Parrott*, the Connecticut Supreme Court held that conflict of interest claims will be reviewed on direct appeal "where the record is adequate for review or where a question of law is presented." *State v. Figueroa*, 143 Conn. App. 216 at 226 citing *Parrott*, supra at 286 (2013). Relying on *Mickens v. Taylor*, 535 U.S. 162 (2002), this court noted "that if a case is to be reversed, the defendant must show that the conflict adversely affected his counsel's performance." *Figueroa*, supra, at 227.

In the case at bar, an actual conflict existed because the defendant threatened his attorney with violence and his attorney published this to the court.[27] Even if one speculates that the defense attorney did not take his client's threat of physical violence seriously, publishing the threat to the court put defense counsel more in the opponent's camp than in his client's camp. Bringing this threat to the prosecution's attention and to the court's attention inflicted harm. This evidence of the attorney being threatened, *standing alone*, suffices to prove the actual conflict of interest which through publication directly and adversely affected the defense attorney's performance.[28] To state the obvious, it tended to

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[27] This court is required to construe the filed representation of counsel that his client threatened him as true. "[i]t long has been the practice that a trial court may rely upon certain representations made to it by attorneys, who are officers of the court and bound to make truthful statements of fact or law to the court. See Rules of Professional Conduct 3.3(a)(1)." *State v. Smith*, 289 Conn. 598, 609 (2008).

[28] Interestingly: "*This showing by a defendant of an actual conflict of interest is less burdensome than that required to establish ineffective assistance of counsel claims....* [T]he defendant must demonstrate that his counsel's performance was affected by the conflict, but need not also establish that the difference in performance prejudiced him in the same sense as in an ineffective assistance claim.... Showing an adverse effect, however, still requires more than mere speculation . . . . See also *Eisemann v. Herbert*, 401 F.3d 102, 107 (2d Cir.2005) (" [p]rejudice is presumed ... if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance" . . . The United States Court of Appeals for the Second Circuit has explained that " a defendant need suggest only a 'plausible' alternative strategy that was not pursued at trial [because of a conflict of interest], not necessarily a

show the defendant was a bad and violent person. To put it mildly, such a representation did not assist the client in receiving a fair and lenient sentence. Moreover, in the greater context of the defendant not signing medical authorizations his counsel requested, the grievance that had been filed, no adversarial testing of the state's case and the admission of counsel that he had done little to assist in the representation of his client,[29] an actual conflict of interest is apparent. Viewed with the publication of the threat of physical violence, these facts underscore the conflict of interest and the trial court's duty to inquire regarding it. The conflict of interest described above was actual and not potential. The record is obvious the defendant was harmed but proof of prejudice is not required. All that is required is that the defendant "demonstrate that his *counsel's performance was affected by the conflict.*" *State v. Figueroa*, 143 Conn. App. 216 at 227 (2013) (emphasis added). That has been demonstrated here. The defendant's Sixth Amendment right to conflict-free counsel was violated.

III. CONCLUSION.

The defendant presents four arguments. The argument seeking the invocation of supervisory authority to require the canvassing of defendants about their constitutional right

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'reasonable' one." *Eisemann v. Herbert*, supra, at 107. This is because a true conflict of interest forecloses the use of certain strategies and thus the effect is difficult if not impossible to measure. *United States v. Ellison*, 798 F.2d 1102, 1107 (7th Cir.1986), cert. denied, 479 U.S. 1038 (1987). *State v. Figueroa*, 143 Conn. App. 216 at 227-228 (2013) (emphasis added.)

[29] On May 9, 2019 defense counsel told the court, " . . . I'm here, and I'm doing all that I can, which I admit is not much." (5-9-19 Tr. p. 2, A.168.) Defense counsel stated he could not locate defense witnesses whose names were given to him by his client. He was not doing all he could. His client's witness list contained the address of where he resided in Bridgeport, 1635 Central Avenue. (Handwritten witness list, 12-19-18, A.12.) This was a defense to the claim that the defendant failed to keep probation informed of his address.

to testify is made mindful of the fact that, as an intermediate appellate court, "it is not within our province to reevaluate" the decisions of the Connecticut Supreme Court.[30]

There are three errors of constitutional magnitude which require reversal of the judgment. First, the violation of probation hearing transcripts reveal that there was a miscarriage of justice. On February 13, 2019 when the trial court recognized that the pro se defendant could not represent himself and the ends of justice required that the defendant be fully represented, the state had already called its witnesses, introduced its evidence and rested its case. If the *Faretta* canvass had been more thorough, the initial finding that the defendant's waiver of counsel was valid would not have occurred. Because the *Faretta* canvass was constitutionally flawed, prejudice is presumed and a new violation of probation hearing should be ordered.

If it is decided that the *Faretta* canvass was not constitutionally flawed, then reversal of the judgment is nevertheless required for two additional reasons. First, the trial court record is clear that defense counsel did not put the state's case to any type of adversarial testing as is required by *Cronic*, supra, and its progeny. This issue should be reviewed on direct appeal given the circumstances of this case. Additionally, at the time of the May 9, 2019 hearing, defense counsel was in actual conflict with his client. This was a conflict so overt and serious that prejudice is presumed and reversal of the judgment is necessary.

[30] *State v. DeJesus*, 193 Conn. App. 304 at 314, cert. denied, 334 Conn. 909 (2019). This argument is made to preserve the issue if further appellate review becomes necessary.

RESPECTFULLY SUBMITTED:

THE DEFENDANT-APPELLANT,
GLEN [redacted]

BY: _____

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ATTY. SERAFINI: Back to the part A docket, Judge. Next up is Glen S[redacted]. He's at line 10 on the regular docket.

THE COURT: How you doing?

THE DEFENDANT: Hi, your Honor. I just had a short letter to the Court and then the back is information for you, your Honor, that I'd like to keep under seal.

THE COURT: Hang on one second.

THE DEFENDANT: All right.

THE COURT: So the first question is this: You have the right to an attorney. If you can't afford an attorney, the Court's going to appoint one for you, and you would certainly qualify. Now, would you like to have an attorney?

THE DEFENDANT: No, your Honor. I'm representing myself pro se, plus I don't financially qualify for public defender nor a special public defender.

Furthermore, your Honor, there is a conflict of interest in the Waterbury court. No Waterbury court prosecutor is supposed to have any contact with me, nor the Waterbury entire courthouse Public Defender's Office.

THE COURT: Mr. S[redacted]

THE DEFENDANT: Yes.

THE COURT: Relax. So the first question is this: You want to represent yourself?

your own?

THE DEFENDANT: Right.

THE COURT: You're doing that voluntarily and of your own free will. You're aware of all the disadvantages that I enumerated, right?

THE DEFENDANT: Right.

THE COURT: You're aware of the exposure in this particular case?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. I'm satisfied that you're competent, that you're capable of representing yourself.

The one other thing is you're going to have to allow the state to state its case. You're going to have to listen to the orders of the Court. You're going to have to comply with those orders and the rules of evidence and so on. You understand that?

THE DEFENDANT: Yes. I just have one request. That when I'm speaking, I don't get interrupted by the district attorney's office and vice versa. I will not interrupt the district attorney's office when they are speaking.

THE COURT: How about the Court? Are you going to interrupt them?

THE DEFENDANT: No, I'm not going to interrupt you, your Honor.

THE COURT: All right. I appreciate that. So

CR08-[redacted]	:	SUPEROR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT
VS.	:	OF WATERBURY
GLEN S[redacted]	:	OCTOBER 4, 2018

LONG FORM INFORMATION

In the Superior Court of the State of Connecticut, the undersigned Assistant State's Attorney accuses Glen S[redacted] of 25 N[redacted] floor, Norwalk, Connecticut, of Violation of Probation and charges that within the Judicial Districts of Middlesex and Stamford, between February, 2018 and, August, 2018, the said Glen S[redacted] violated the standard and special conditions of his probation by not complying with one or more of the following conditions:

1. Failure to abide by condition that he not violate any criminal laws of the State of Connecticut.
2. Failure to report to probation officer as directed;
3. Failure to keep probation officer informed of whereabouts;
4. Failure to complete sex offender evaluation and treatment;
5. Failure to provide truthful information to Connecticut State Police Sex Offender Registry Unit, in violation of Section 53a-32(a) and Section 53a-32a of the Connecticut General Statues.

THE STATE OF CONNECTIUT

BY _____
John R. Whalen
Assistant State's Attorney

CONTINUED DIRECT EXAMINATION BY ATTY. WHALEN:

Q All right. Mr. Santiago, I would like to show you this document. Would you please take a look at it and tell us whether or not you can identify it?

A Yes.

Q What is it?

A The sex offender conditions of probation.

Q And why was that -- why did you have to go over that document with Mr. S[redacted]?

A Mr. S[redacted] was designated as a sex offender.

ATTY. WHALEN: Your Honor, I would like to offer this as a full State's Exhibit, please.

THE COURT: Okay.

ATTY. WHALEN: Do you want to see it?

MR. S[redacted] I remember.

THE COURT: State's four. Any objection?

I'm going to take that as a no.

MR. S[redacted]: No, Your Honor.

THE COURT: Okay.

THE CLERK: State's Exhibit 4, marked full.

THE COURT: Okay.

And may I see that?

THE CLERK: Yes.

THE COURT: Okay.

CONTINUED DIRECT EXAMINATION BY ATTY. WHALEN:

Q Mr. Santiago, I want to show you State's Exhibit 4 again. It has on it, 24 or 25 conditions of probation.

Q Is that the standard for sex offender --

A For a sex offender --

Q -- violators?

A -- at the level of supervision that we consider a high level of supervision, yes, standard weekly.

Q And he fit into that category?

A Yes, sir.

Q I want to draw your attention to May of this year, 2018. At some time during the course of May, some time around May 11th, did you try and contact him?

A Yes.

Q For what reason?

A Mr. S[redacted]y had missed appointments with me. I could not contact him. He no longer had a phone. I could not track him down at his place of residence or in the community, so I was trying to find him to make sure, to try to get him into compliance with supervision.

Q Do you know how many meetings he missed?

A Not off the top of my head, but numerous. Numerous. And I made numerous attempts to contact him at his place of residence.

Q What?

A Sorry.

Q What did you do to try and contact him?

A I went to his place of residence. I also went to his father's known place of residence trying to make contact with him and could not do so.

Q All right. Did he try and contact you at all?

A No.

Q And when did you first hear from him again or find out about him again?

MR. SH[redacted]: I wrote him a statement.

THE COURT: No. No. No. The question.

A The last.

THE COURT: Hang on. The question wasn't to you. You got to be able to hold your tongue.

MR. S[redacted]: I'm sorry. I just wanted to help out, Your Honor.

THE COURT: All right.

MR. S[redacted]: Sorry.

THE COURT: Thanks anyway.

Go ahead.

A So the -- after when I could not -- when I could not contact him, I took numerous steps. One of them was checking the Connecticut State Sex Offender Registry. I noticed that he had changed his place of residence with the sex offender registry to an address in Bridgeport which turned out to be the administrative office of the Greater Bridgeport Mental Health Department. And the next I heard of Mr. S[redacted], was the night of his arrest -- a new arrest.

Q I'm going to show you three documents. Please take a look at these and then tell us whether or not you can identify them.

Thank you.

Q And when Mr. S[redacted] got arrested for this incident in Norwalk on June 28, 2018, was he on probation?

A Yes, sir.

MR. S[redacted]: I just have an objection.

THE COURT: Go ahead.

MR. S[redacted] That it was a false arrest and the only criminality was on the police report part. That is why --

THE COURT: See. That's not an objection to the question that was just asked.

MR. S[redacted] Well --

THE COURT: That's your argument.

MR. S[redacted] If I could -- if I could explain, you'll see the relevance.

THE COURT: You can't right now unless you have a legitimate objection to that last question.

MR. S[redacted] Yeah. I do, because --

THE COURT: Okay. Go ahead. Again.

MR. S[redacted]: -- because I haven't been found guilty and I didn't do anything wrong. I was going to get -- I was on my way that day to my father's friend's house, who used to be a Norwalk cop, and ask him if he would rent to me when this crazy person started following me. I got off the road and said go around, go around --

THE COURT: Hey. Mr. S[redacted]

MR. S[redacted] -- wouldn't go around me. It was hot.

THE COURT: That's not a question. That's argument. And you are going to have your chance --

MR. S[redacted]: I'm just saying.

THE COURT: -- to argue, okay.

MR. S[redacted] But this case hasn't been --

THE COURT: Listen, you are going to have to calm down.

MR. S[redacted] -- dealt within Norwalk, yet.

THE COURT: Listen to me.

MR. S[redacted]: All right. But this is a motion --

THE COURT: I'm going to give you your chance.

MR. S[redacted] -- of discovery for the Norwalk case.

THE COURT: This isn't a motion for discovery, so just calm down.

MR. S[redacted]: They want to try and get evidence added in --

THE COURT: You can argue your case --

MR. S[redacted]: -- to be pulled into Norwalk.

THE COURT: -- at the appropriate time. I'm going to let you be heard.

MR. S[redacted] All right.

THE COURT: So, right now, we are doing a procedure. And you just have to --

MR. S[redacted]: I know but this is why. --

THE COURT: -- comply with the rules.

MR. S[redacted] -- what happened in the canvass of plea?

THE COURT: Don't tell me what happened because --

MR. S[redacted] -- in the original charge too.

THE COURT: -- that's argument, so stop.

All right. Ask your next question.

CONTINUED DIRECT EXAMINATION BY ATTY. WHALEN:

Q Mr. Grady, you mentioned a few minutes ago that as part of his probation he was required to register with the sex offender registry list?

A Yes, sir.

Q And what happened in May, 2018?

A He changed his address to the one that I knew him to live at to an address in Bridgeport.

Q Which was what? Do you know what that address was, the new address?

A I do not know. I don't know off the top of my head. It was -- I think it was -- was it Center Avenue in Bridgeport?

MR. S[redacted] Yes.

A Sixteen. I don't remember the number off the top of my head because it's not a place I frequent but --

Q Do you have any idea if he was actually living at that address?

A I do not believe he was living there. I believe that is the administrative offices of the Greater Bridgeport Mental Health Department.

MR. S[redacted]: Objection, Your Honor.

THE COURT: Go ahead. What's the objection?

MR. S[redacted]: The objection is, I need my double lean(phonetic) inguinal hernia surgery redone. That is where I was going to get my psychiatric treatment as per the conditions, and I --

THE COURT: See the --

MR. S[redacted]: Wait.

THE COURT: -- see the trouble is, that's not it.

MR. S[redacted]: No. That's and I was --

THE COURT: This is --

MR. S[redacted]: And I was there, inpatient.

THE COURT: He just asked a question.

MR. S[redacted]: But I was there, inpatient.

THE COURT: I asked if there is an objection. Your objection is --

MR. S[redacted]: It's the whole truth, Your Honor.

THE COURT: -- overruled. That's an argument --

MR. S[redacted]: But it's the whole truth.

THE COURT: -- that you can make at the conclusion of this case.

The objection overruled.

Quiet now.

Ask a question.

ATTY. WHALEN: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION BY ATTY. WHALEN:

Q As part of Mr. [redacted]'s probation, he was required to get sex offender treatment; correct?

A Yes, sir.

Q And did you refer him to a specific agency?

A I did not refer him but the probation officer that supervised him before me referred him to our -- The Adult Probation Office's sex offender contractor which is The Connection.

Q The Connection. Where are they located?

A Their home offices are in Middletown, Connecticut.

Q And I'm showing you this letter which is dated February 1st, 2018; have you seen that before?

A Yes.

Q What is that?

A That is a discharge letter for Mr. [redacted]

Q And what was the basis of the discharge?

A He was administratively discharged. He was unable to participate in treatment.

Q For what reason?

A They did not believe him to be mentally stable at the time.

Q Any other reason?

A The reasons as I remember them to be. This is

MR. S[redacted] Yes.

THE COURT: Was it the only disagreement concerning snitches?

A It was not the only disagreement.

Q What were the other ones?

A We disagreed on the conditions of your probation.

Q And what were the conditions that we disagreed about? Couldn't have disagreed on every one of them. That's impossible.

A Not every one of them, no. Absolutely correct. We disagreed on your computer use, we disagreed on your access to a smart phone, we disagreed on the fact that you were ordered to register as a sex offender for a life-time. We disagreed for your need to report as directed weekly. At the end, I surmised that we disagreed on the fact that you needed to let me know where you were living because you did not do that.

Q Didn't -- okay --

THE COURT: Hold it. Hold it.

Are you done with your question?

A Yes, sir.

Q All right. Didn't you tell me -- well, no, what day was it that you told me before you would transfer my file to Bridgeport, to get a Bridgeport address; yes, or no? What day was it? I'm sorry. What day was it, do you remember?

A I don't remember the date, but I do remember that I told you that numerous times.

evidence. I've tried to get -- my client has spoken to me and he's given me names of witnesses that quite frankly can't be located. I don't know if they exist, but they don't -- the details I'm being given don't match up with the details, as I understand them, from the police report, and having reviewed the transcripts in this case and speaking to the state's attorney as well.

So my concern, Your Honor, I would be remiss though, and I understand the court's ruling. And I'm not, you know, I'm here, and I'm doing all that I can, which I admit is not much. But I do not agree that my client is competent. I can't really present any evidence to you because he's -- when I've tried to engage my client, I get the similar responses or, you know, things about -- peripheral matters about, you know, the conditions of DOC or other members of my staff, some of whom have never even met him, that don't make any sense and aren't really related to the case.

So, again, Your Honor, I would ask you just for the record and, you know, the very least appoint a GAL or if you are going to find him competent, let him represent himself because, you know, I mean, I'm doing all I can which is not much but --

THE COURT: All right. And --

ATTY. BROWN: I understand the court's concern. I mean, I'm not trying to, you know, I'm certainly not going to -- you know, I just want to put that on the

record and ask the court for a ruling so that, you know, if for some reason, you know, either one of us is, you know, incorrect in our assumptions of the law, that he can be protected. But I'll make whatever arguments I can if the court denies all or both of those motions.

THE COURT: That would be my intent at this point. I think I made every opportunity to try to -- try to give him the benefit of a competency evaluation. Now we've done -- twice we've tried to do it.

ATTY. BROWN: Yes, sir.

THE COURT: One more than what is usually afforded a defendant and that's to no avail. As far as him representing himself, well, that's how this proceedings began. I gave him that opportunity to represent himself. And ultimately resulted in you being appointed because he couldn't. He couldn't and he has rights to be preserved and I wanted an attorney to be here to handle that because he clearly could not help himself.

So with that in mind then, there's no further evidence being presented to the court, I'm going to proceed to the closing arguments in connection with the matter. I think you can argue -- we won't have separate arguments, both with liability and both sentencing. We can do it all in one.

ATTY. BROWN: Yes, sir.

THE COURT: Under the circumstances here. Does that make sense?

THE COURT: All right. We're back on the record. This is a violation of probation involving Glen S[redacted]. We had, at the request of the defense, attempted another 54-56d in which Mr. S[redacted] assured me that he would cooperate with the authorities in producing an evaluation. And I have a report here that I think you've all had a chance to look at. Have you had a chance to look at the report?

ATTY. BROWN: I have, Your Honor.

ATTY. WHALEN: Yes, Your Honor.

THE COURT: All right. And it highlights that he made a concerted effort to engage with -- I'm sorry, did not make a concerted effort to engage with the evaluators, did not provide relevant responses to any questions, lack of cooperation. Claimed he didn't know his name, date of birth, how to spell his name. Did not answer questions pertaining to any understanding of the criminal proceedings.

So that was a bust again and that will be the last opportunity. As I've indicated previously, I think he is competent, just doesn't care to cooperate or engage appropriately in proceedings. And, in fact, he's presumed competent unless he's found not to be competent. So at this juncture he is competent. We have had evidence produced by the state to this point.

Does the defense intend to put on anything further?

ATTY. BROWN: Your Honor, I can't put on any

§ 53a-32. Violation of probation or conditional discharge. Notice to victim or victim advocate. Arrest. Pretrial release conditions and supervision. Hearing. Disposition

(a) At any time during the period of probation or conditional discharge, the court or any judge thereof may issue a warrant for the arrest of a defendant for violation of any of the conditions of probation or conditional discharge, or may issue a notice to appear to answer to a charge of such violation, which notice shall be personally served upon the defendant. Any such warrant shall authorize all officers named therein to return the defendant to the custody of the court or to any suitable detention facility designated by the court. Whenever a probation officer has probable cause to believe that a person has violated a condition of such person's probation, such probation officer may notify any police officer that such person has, in such officer's judgment, violated the conditions of such person's probation and such notice shall be sufficient warrant for the police officer to arrest such person and return such person to the custody of the court or to any suitable detention facility designated by the court. Whenever a probation officer so notifies a police officer, the probation officer shall notify the victim of the offense for which such person is on probation, and any victim advocate assigned to assist the victim, provided the probation officer has been provided with the name and contact information for such victim or victim advocate. Any probation officer may arrest any defendant on probation without a warrant or may deputize any other officer with power to arrest to do so by giving such other officer a written statement setting forth that the defendant has, in the judgment of the probation officer, violated the conditions of the defendant's probation. Such written statement, delivered with the defendant by the arresting officer to the official in charge of any correctional center or other place of detention, shall be sufficient warrant for the detention of the defendant. After making such an arrest, such probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to any defendant arrested under the provisions of this section. Upon such arrest and detention, the probation officer shall immediately so notify the court or any judge thereof.

(b) When the defendant is presented for arraignment on the charge of violation of any of the conditions of probation or conditional discharge, the court shall review any conditions previously imposed on the defendant and may order, as a condition of the pretrial release of the defendant, that the defendant comply with any or all of such conditions in addition to any conditions imposed pursuant to section 54-64a. Unless the court, pursuant to subsection (c) of section 54-64a, orders that the defendant remain under the supervision of a probation officer or other designated person or organization, the defendant shall be supervised by the Court Support Services Division of the Judicial Branch in accordance with subsection (a) of section 54-63b.

(c) Upon notification by the probation officer of the arrest of the defendant or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charges. At such hearing the defendant shall be informed of the manner in which such defendant is alleged to have violated the conditions of such defendant's probation or conditional discharge, shall be advised by the court that such defendant has the right to retain counsel and, if indigent, shall be entitled to the services of the public defender, and shall have the right to cross-examine witnesses and to present evidence in such defendant's own behalf. Unless good cause is shown, a charge of violation of any

APPENDIX G

of the conditions of probation or conditional discharge shall be disposed of or scheduled for a hearing not later than one hundred twenty days after the defendant is arraigned on such charge.

(d) If such violation is established, the court may:

(1) Continue the sentence of probation or conditional discharge;

(2) modify or enlarge the conditions of probation or conditional discharge;

(3) extend the period of probation or conditional discharge, provided the original period with any extensions shall not exceed the periods authorized by section 53a-29; or

(4) revoke the sentence of probation or conditional discharge. If such sentence is revoked, the court shall require the defendant to serve the sentence imposed or impose any lesser sentence. Any such lesser sentence may include a term of imprisonment, all or a portion of which may be suspended entirely or after a period set by the court, followed by a period of probation with such conditions as the court may establish. No such revocation shall be ordered, except upon consideration of the whole record and unless such violation is established by the introduction of reliable and probative evidence and by a preponderance of the evidence.

§ 53a-167a. Interfering with an officer: Class A misdemeanor or class D felony

(a) A person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer, special policeman appointed under section 29-18b or firefighter in the performance of such peace officer's, special policeman's or firefighter's duties.

(b) Interfering with an officer is a class A misdemeanor, except that, if such violation causes the death or serious physical injury of another person, such person shall be guilty of a class D felony.

§ 53a-181. Breach of the peace in the second degree: Class B misdemeanor

(a) A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person:

(1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or

(2) assaults or strikes another; or

(3) threatens to commit any crime against another person or such other person's property; or

(4) publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person; or

(5) in a public place, uses abusive or obscene language or makes an obscene gesture; or

(6) creates a public and hazardous or physically offensive condition by any act which such person is not licensed or privileged to do. For purposes of this section, "public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(b) Breach of the peace in the second degree is a class B misdemeanor.

§ 54-86e. Confidentiality of identifying information pertaining to victims of certain crimes. Availability of information to accused. Protective order information to be entered in registry

The name and address of the victim of a sexual assault under section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or section 53a-70, 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or family violence, as defined in section 46b-38a and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

Sec. 53a-70b. Sexual assault in spousal or cohabiting relationship: Class B felony. (a) For the purposes of this section:

(1) "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the victim's body; and

(2) "Use of force" means: (A) Use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against the victim.

(b) No spouse or cohabitor shall compel the other spouse or cohabitor to engage in sexual intercourse by the use of force against such other spouse or cohabitor, or by the threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to fear physical injury.

(c) Any person who violates any provision of this section shall be guilty of a class B felony for which two years of the sentence imposed may not be suspended or reduced by the court.