No. 23-5968

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In The
Supreme Court Of The United States

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RICHARD LANGSTON
Petitioner,

v.

STATE OF CONNECTICUT
Respondent.

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ON PETITION FOR
WRIT OF CERTIORARI TO THE
CONNECTICUT SUPREME COURT

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a court violates a defendant's rights to due process and trial by jury when, in determining an appropriate sentence for a conviction, it considers conduct underlying a separate charge on which the jury acquitted the defendant, where the court is not bound by advisory sentencing guidelines, the consideration of such conduct does not trigger an increase in the defendant's sentencing range, and the court imposes sentence within the range authorized by the defendant's convictions.

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The decision of the Connecticut Supreme Court is reported at *State* v. *Langston*, 294 A.3d 1002 (Conn. 2023). It is included in the petitioner's appendix (Pet.App.) at 37a-74a.

JURISDICTION

The Connecticut Supreme Court entered its judgment on June 6, 2023. The petitioner filed his petition for a writ of certiorari on November 3, 2023. This Court requested a response on November 20, 2023. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257 (a).

STATEMENT OF THE CASE

1. The evidence presented at the petitioner's criminal trial supported the following facts: On March 4, 1998, at approximately 1:30 a.m., Richard Middleton was riding through Hartford, Connecticut, in a car with his sister and her boyfriend, Douglas Shorter. Transcript (T.)5/18/99 at 13-15, 56. The three wanted to purchase drugs and were looking for a dealer. Id. at 13.

After parking the vehicle, Middleton and Shorter exited and walked to a parking lot where the petitioner and a second man were standing. Id. at 16-18, 24, 31, 56-57. Middleton recognized the petitioner from having engaged in a prior drug deal with him. Id. at 35-36, 41. Shorter also recognized the petitioner from having purchased drugs from him on multiple prior occasions. Id. at 57-58, 62. Middleton and Shorter asked if the men were selling drugs. Id. at 19, 58. The petitioner and his cohort acknowledged that they were. Id.

Middleton and Shorter stated that they wanted to purchase crack cocaine. Id. at 19. The petitioner responded, "hold on a minute," and ran to a car at the edge of the lot. Id. at 19-20, 32, 58-59. He reached under the front bumper of the vehicle and retrieved an object. Id. at 58-59. The petitioner's companion remained with Middleton and Shorter and asked where their money was. Id. at 19-20, 58. Middleton then pulled out $100 in cash. Id. at 20-21, 50-51.

Eventually, the petitioner returned from the vehicle where he had retrieved the object. Id. at 20. When he did so, he showed Middleton that he had a gun tucked into his waistband and commented to Middleton, "[Y]ou look like a dude that robbed me…." Id. at 20, 34, 41-42. The petitioner then said, "[R]un it … run the money," which Middleton understood as a demand to give up his cash. Id. at 20, 34, 51, 60, 75-76. Middleton yielded the money to the petitioner and turned to leave. Id. at 20-21, 34, 42, 51-52, 60-61, 76.

As Middleton walked away, Shorter saw the petitioner pull out his gun and fire it at Middleton.[1] Id. at 61-63, 70, 74, 77. Middleton, in turn, heard two gunshots and then realized that he had sustained wounds to both of his legs. Id. at 21, 34-35, 37, 52-53, 77. Despite having been shot in his legs, Middleton was able to

[1] Shorter testified at trial that he saw the petitioner shoot Middleton. T.5/18/99 at 61-63, 70. While cross-examining Shorter, the petitioner highlighted that a statement Shorter gave to police did not reflect that he had *seen* the petitioner shoot Middleton; instead it indicated only that Shorter had heard two gunshots. Id. at 70-74. Shorter, however, averred that he had told police that he had seen the petitioner shoot Middleton and reasserted in his testimony that he saw the petitioner shoot Middleton. Id. at 73-74. Shorter then recalled that Middleton "came around the front of the car, running, hobbling, and he got into the back seat of the car and he said, [']he shot me.[']" Id. at 74. Shorter remarked, "[Middleton] was telling me something that I already knew because I seen it." Id.

run, and he and Shorter retreated back to their car, where Middleton's sister was waiting. Id. at 21-23, 38, 61, 74.

Middleton's sister then drove him to a hospital, where he remained for the next three or four days. Id. at 23. Surgeons were unable to remove some bullet fragments from his legs, and he still bears permanent scars. Id. A bullet remains lodged in his right leg.[2] Id. at 53.

2. The respondent charged the petitioner with one count each of assault in the first degree, pursuant to Conn. Gen. Stat. (Rev. to 1997) § 53a-59(a)(5); criminal possession of a firearm, pursuant to Conn. Gen. Stat. (Rev. to 1997) § 53a-217; and robbery in the first degree, pursuant to Conn. Gen. Stat. § 53a-134(a)(2). Pet.App. at 42a; *Langston* v. *Commissioner of Correction*, 931 A.2d 967, 968 (Conn. App.), cert. denied, 937 A.2d 697 (Conn. 2007). The State also charged the petitioner with the sentence enhancement of having committed a class A, B, or C felony with a firearm, pursuant to Conn. Gen. Stat. § 53-202k. Pet.App. at 42a; *Langston* v. *Commissioner of Correction*, 931 A.2d at 968. Following trial, a jury found the petitioner not guilty of assault in the first degree, but guilty of the remaining charges. Pet.App. at 42a; *Langston* v. *Commissioner of Correction*, 931 A.2d at 968.

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[2] The petitioner's criminal trial strategy challenged the State's proof as to the identity of the shooter, but he did not contest that Middleton had been shot. In closing argument, the petitioner's counsel noted that, "[a]t trial [S]horter testified that he saw the [petitioner] shoot the victim, but in his statement to police, [Shorter] stated that he only heard the gunshot. Defense counsel conceded on the basis of the medical evidence that the victim had been shot, but then argued: 'Remember, there were two people here that were involved in this, not just [the petitioner], but his unnamed partner, who might have been his partner in a drug deal or who might have taken the gun and decided, I'm going to start shooting.'" *Langston* v. *Commissioner of Correction*, 931 A.2d 967, 973 (Conn. App.), cert. denied, 937 A.2d 697 (Conn. 2007).

At the petitioner's June 30, 1999 sentencing hearing, the State outlined his criminal history, as detailed in a presentence investigation report (PSI). As summarized by the State, the PSI documented a "ten-year history of [the petitioner] committing crimes, getting out on bail, [and] committing more crimes while out on bail…." Pet.App. at 3a. The State particularly noted that the petitioner had been on probation for sale of narcotics at the time he committed the charged offenses, as well as two other drug offenses, for which he had received a ten-year sentence the day prior to his sentencing in the instant case. Id. at 3a-4a, 13a. The State argued that the petitioner's record revealed a pattern of increasing violence. Id. at 4a. In this regard, it noted that in the petitioner's latest offense on April 21, 1999 – subsequent to the date of the charged crimes in the instant case and only months before his sentencing here – he had fled from a motor vehicle stop and dragged a police officer ten feet with his vehicle. Id.

Thereafter, the State also asked the trial court to find, by a preponderance of the evidence, that the petitioner had committed the assault for which the jury had found him not guilty and to consider that conduct in crafting an appropriate sentence. Pet.App. at 5a, 42a. In making this request, the State cited *United States* v. *Watts*, 519 U.S. 148 (1997), in which the Court had noted that a sentencing court properly may consider a range of evidence at sentencing, including conduct underlying charges for which a jury acquitted a defendant, without violating a defendant's right against double jeopardy. Pet.App. at 5a, 42a. The State

submitted that it had proven that the petitioner committed the assault by a preponderance of the evidence. Id.

In response, the petitioner's counsel conceded that the petitioner had a criminal history and that there was "no question" that the court would impose a "fairly lengthy sentence." Id. at 6a. The petitioner's counsel, however, emphasized that the jury had found the petitioner not guilty on the assault charge and posited that the jury "felt that [the petitioner], although [he] had committed the robbery and was in possession of a firearm, might not have been the shooter. There was a second shooter there. So there is some doubt that remains." Id. 6a-7a. The petitioner's counsel asked the court to take that acquittal into account, though counsel acknowledged that the court could consider facts at sentencing that the State had proven by a preponderance of the evidence, rather than beyond a reasonable doubt. Id. at 7a.

Thereafter, in its sentencing remarks, the trial court, *Spada, J.*, recalled the evidence that it had heard during the trial:

> The circumstances resulting in this tragic mishap arose from a drug sale gone bad. The victim testified that in negotiating to buy an eight ball of cocaine from the defendant, after displaying his money of approximately $100, the defendant opened his exterior clothing to expose a handgun tucked into his belt. That seeing the gun, the victim, Mr. Middleton, turned about, started to walk away and was shot in the back of both legs by the defendant. Middleton, to this day, carries one of the bullets in his leg. He is effectively crippled and denied from enjoying the full quality of his life. All because this defendant elected to fire a handgun for the sake of stealing $100.00 from an unsuspecting victim. Further, Mr. Middleton has been denied the opportunity to pursue a meaningful vocational career. He is essentially unable to secure employment and must now, for the

> remainder of his life, be dependent on the public dole for his support and sustenance. Mr. Middleton is currently on social security disability payments and these will likely continue for the rest of his life. These payments, of course, are shouldered by the taxpayers of this country and these payments will likely total in the hundreds-of-thousands of dollars.
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> We learned at trial that Middleton underwent four days of hospitalization and major surgeries on both of his legs. He now requires, as a relatively young man, the use of a cane to walk. In effect, his life has been stolen from him. The jury found, and I agreed with their conclusion, that the evidence established beyond a reasonable doubt the defendant's guilt in the commission of a class A, B, [or] C felony with a firearm, criminal possession of a firearm and robbery in the first degree. The evidence was telling and the witnesses credible.

Id. at 9a-11a; see also id. at 42a-43a. The court further remarked:

> At best I can determine … this defendant, since 1990, has been arrested on twenty-eight different criminal charges. I recognize that many are still pending but they represent serious and predatory acts of misconduct. What has to be noted is the paucity of time served for the crimes upon which he was found guilty. Subject to correction by counsel, I note that this defendant served a total period of twenty-eight months, that being divided into eight months for pretrial detainment and twenty months for the various serious crimes upon which he has been convicted. The time, unhappily, has arrived for the piper to be paid. The behavior displayed by this defendant in these past criminal acts and right through the proceedings of this trial reflects an insensitive, inconsiderate, incorrigible, lack of conscience, lack of accountability and lack of empathy, all requiring the imposition of severe sanctions. Every opportunity was granted by society to this young man to shape and formulate a law-abiding life. He, clearly, has rejected and foreclosed all avenues for rehabilitation and help. Under these circumstances, he has effectively forfeited his right to be a viable member of our community.

Id. at 11a-12a.

Thereafter, on the petitioner's conviction for robbery in the first degree, the court sentenced the petitioner to fifteen years of incarceration. Id. at 12a. On his

conviction on the sentence enhancement of having committed a class A, B, or C felony with a firearm, the court sentenced the petitioner to five years of incarceration, consecutive to the sentence imposed on the conviction for robbery in the first degree. Id. at 12a-13a; see also id. at 13a-14a. On his conviction for criminal possession of a firearm, the court sentenced the petitioner to five years of incarceration, consecutive to the sentences imposed on the previous counts. Id. at 13a. The petitioner's total effective sentence in this file was twenty-five years of incarceration, which the court ordered to run consecutive to a ten-year sentence previously imposed in an unrelated file. Id.

3. The petitioner appealed his conviction to the Connecticut Appellate Court, but that court affirmed his convictions on November 27, 2001. *State* v. *Langston*, 786 A.2d 547 (Conn. App. 2001), cert. denied, 792 A.2d 852 (Conn. 2002). Following his direct appeal, the petitioner challenged his convictions through multiple rounds of state habeas corpus litigation, but those efforts did not succeed. *Langston* v. *Commissioner of Correction*, 197 A.3d 1034 (Conn. App.), appeal dismissed, 225 A.3d 282 (Conn. 2020); *Langston* v. *Commissioner of Correction*, 931 A.2d 967 (Conn. App.), cert. denied, 937 A.2d 697 (Conn. 2007).

4. On February 16, 2021, more than two decades after the trial court had imposed sentence, the petitioner filed a motion to correct an illegal sentence or sentence imposed in an illegal manner pursuant to Conn. Practice Book § 43-22.[3]

[3] Connecticut Practice Book § 43-22 provides: "The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal

Pet.App. at 17a-29a, 45a. In his motion to correct, the petitioner claimed that his consecutive total effective sentence was illegal because the trial court had violated his right to due process under the Sixth and Fourteenth Amendments, as well as under Connecticut's state constitution, by considering conduct underlying the assault charge after the jury had found him not guilty on that count. Id. at 17a. Specifically, the petitioner highlighted that the trial court had remarked during sentencing that the petitioner had shot the victim and had remarked that the evidence was "telling" and the witness were credible. Id. at 19a. As he had during sentencing, the petitioner acknowledged *Watts*. Id. at 20a. He asserted, though, that *Nelson* v. *Colorado*, 581 U.S. 128 (2017), subsequently had overruled *Watts*. Pet.App. at 20a. The petitioner also acknowledged that prior state precedent had found that a sentencing court's consideration of conduct underlying a charge for which a jury acquitted a defendant did not violate due process. Id. at 25a-27a, citing *State* v. *Whittingham*, 558 A.2d 1009, 1014 (Conn. App. 1989), *State* v. *Huey*, 476 A.2d 613, 734 (Conn. App. 1984), aff'd, 505 A.2d 1242 (Conn. 1986).[4] Nevertheless, he argued that the state precedents were over 30 years old and that

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manner or any other disposition made in an illegal manner." See Pet.App. at 45a-46a. As revealed by the text of the rule, and as construed by Connecticut's courts, a defendant is permitted to file a motion to correct at "any time." See *State* v. *Parker*, 992 A.2d 1103, 1110 n.9 (Conn. 2010); see also *State* v. *Francis*, 140 A.3d 927, 937 (Conn. 2016).

[4] Although the petitioner cited prior precedent from the Connecticut Appellate Court in his motion, he failed to note the Connecticut Supreme Court's decision in *State* v. *Huey*, 505 A.2d 1242 (1986), which affirmed one of the Appellate Court decisions and has become a seminal state precedent on whether a sentencing court's consideration of conduct underlying a charge for which a jury acquitted a defendant violates due process.

subsequent cases – in particular *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), *United States* v. *Booker*, 543 U.S. 220 (2005), and *Alleyne* v. *United States*, 570 U.S. 99 (2013) – had modified what information a court could consider at sentencing. Pet.App. at 21a-23a, 27a-28a. The petitioner seemingly conceded, however, that, the trial court's consideration of the acquitted conduct in the instant case did not result in imposition of a sentence beyond the maximum permitted by his convictions, as required for *Apprendi* to apply. Id. at 28a. Instead, he argued that "the sentencing transcript clearly show[ed] the court's reliance on the shooting in its imposition of a twenty-five year sentence, consecutive to the ten year sentence." Id.

Following a hearing on the motion to correct, the trial court, *Graham, J.*, denied the motion. Id. at 29a, 31a-34a. First, the trial court disagreed with the petitioner's contention that the United States Supreme Court had overruled *Watts* in *Nelson* v. *Colorado*. T.3/30/21 at 6-8. Rather, the trial court also found *Nelson* distinguishable from the posture of the instant case. Id. The trial court then observed that, although some sister states had criticized *Watts* based upon their respective state constitutional provisions, such disagreement with *Watts* was not universal. Id. at 8. The trial court advised, "I'm going to rely on current Connecticut law." Id.

Next, the trial court observed that the petitioner's sentences did not exceed the maxima allowed for the charges on which the jury had found him guilty. Pet.App. at 32a. For that reason, it found his reliance on *Apprendi*, *Booker*, and *Alleyne* to be misplaced. Id. at 33a-34a.

Thereafter, the court observed that, under *Watts*, the sentencing court properly could consider conduct underlying a charge for which the jury had acquitted the petitioner, so long as the court found the conduct proven by a preponderance of the evidence. Id. at 32a. In this regard, quoting from *Watts*, the court noted that, "acquittal on criminal charges does not prove that the defendant is innocent. It merely proves the existence of a reasonable doubt as to his guilt." Id. at 33a, quoting *United States* v. *Watts*, 519 U.S. at 155. Further, the court noted that, in *State* v. *Huey*, 505 A.2d 1242, 1246 (1986), the Connecticut Supreme Court prescribed that, "as a matter of due process information may be considered as a basis for a sentence, only if it has some minimal indicium of reliability" and that "there is … no simple formula for determining what information considered by a sentencing judge is sufficiently reliable to meet the requirements of due process." Pet.App at 33a. The court then observed that the sentencing court had, in its sentencing remarks, "found the evidence to be telling and the witnesses to be credible." Id. Further, the sentencing court had "had ample opportunity to observe the witnesses and reach [its] own conclusions as to what occurred." Id. The court found that the sentencing court had been within its discretion in doing so here. Id. For these reasons, the court denied the motion to correct. Id. at 34a.

5. The petitioner appealed to the Connecticut Appellate Court, and his appeal was transferred to the Connecticut Supreme Court. Pet.App. at 44a. There, the petitioner claimed that the trial court had erred in denying his motion to correct because the sentencing court had imposed his sentence in an illegal manner by

considering conduct underlying the assault charge for which the jury had acquitted him. Id. at 41a, 44a-45a. The Connecticut Supreme Court unanimously rejected the petitioner's claim and found: "(1) a long line of both federal and state precedent has allowed significant latitude for what judges may consider during sentencing and has permitted sentencing courts to consider a wide range of conduct, including conduct related to acquitted charges, and (2) the sentence imposed by the sentencing court in this case was within the statutorily prescribed range for the counts of conviction." Id. at 41a.

As to the line of federal precedent on the question, the court observed that decades of federal decisions had permitted courts to consider the conduct underlying charges for which a jury acquitted a defendant when sentencing him on other counts. It noted that a "long line of cases … established the broad range of information a sentencing court may consider in its sentencing decisions." Id. at 48a. Specifically, in *Williams* v. *New York*, 337 U.S. 241, 247 (1949), the Court had remarked that "[h]ighly relevant − if not essential − to [a sentencing court's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." Pet.App. at 48a. Then, in *Williams* v. *Oklahoma*, 358 U.S. 576, 585 (1959), the Court advised that, "[i]n discharging his duty of imposing a proper sentence, the sentencing judge is authorized, if not required, to consider all of the mitigating and aggravating circumstances involved in the crime." Pet.App. at 48a. Subsequently, in *Nichols* v. *United States*, 511 U.S. 738, 747 (1994), the Court highlighted how "[s]entencing

courts have not only taken into consideration a defendant's prior convictions, but have also considered a defendant's past criminal behavior, even if no conviction resulted from that behavior," and it observed that the Court had "upheld the constitutionality of considering such previous conduct in *Williams* v. *New York*…." Pet.App. at 48a-49a. The Court then reiterated this rule in *Witte* v. *United States*, 515 U.S. 389, 397 (1995). Pet.App. at 49a. Finally, in *United States* v. *Watts*, 519 U.S. at 155, the Court drew upon this line of federal precedent and observed that an acquittal does not constitute proof that a defendant is factually innocent or that the jury rejected any specific facts. Pet.App. at 49a. Rather, an acquittal indicates only a reasonable doubt as to a defendant's guilt.[5] Id.

The Connecticut Supreme Court further noted that, subsequent to *Watts*, the Court had held in *Apprendi* v. *New Jersey*, 530 U.S. 466, 490 (2000), that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." It observed, however that *Apprendi* explicitly had also advised that "nothing in [the common law] history [of sentencing] suggests that it is impermissible for judges to exercise discretion − taking into consideration various factors relating both to offense and offender − in imposing a judgment *within the range* prescribed by statute. We have often noted that judges in this country have

[5] The court below acknowledged that *Watts* had addressed a double jeopardy claim and concluded that a sentencing court's consideration of conduct underlying a charge for which a jury acquitted a defendant did not offend double jeopardy rights. Pet.App. at 49a.

long exercised discretion of this nature in imposing sentences *within statutory limits* in the individual case." *Apprendi* v. *New Jersey*, 530 U.S. at 481; see Pet.App. at 49a. Thereafter, in *United States* v. *Booker*, 543 U.S. 220, 233 (2005), the Court declared the mandatory federal sentencing guidelines unconstitutional, but nevertheless reiterated its guidance from *Apprendi* that "[w]e have never doubted the authority of a judge to exercise broad discretion in imposing sentence within a statutory range." Pet.App. at 49a-50a. The Connecticut Supreme Court further noted that "nearly every federal court of appeals has held that considering acquitted conduct at sentencing does not violate a criminal defendant's constitutional rights, including the right to trial by jury or due process, so long as the conduct has been proven by a preponderance of the evidence and the sentence imposed does not exceed the statutory maximum for the conviction." Id. at 50a (collecting cases). Moreover, a decision from the Second Circuit, *United States* v. *Sweig*, 454 F.2d 181, 181-84 (2d Cir. 1972), which the Connecticut Supreme Court found persuasive, had found that a sentencing court properly had considered conduct underlying charges for which a defendant had been acquitted because the acquittal did "not have the effect of conclusively establishing the untruth of all the evidence introduced against the defendant." Pet.App. at 50a-51a.

The Connecticut Supreme Court further observed that decades of state precedent interpreting the federal constitution had permitted sentencing courts to consider conduct underlying acquitted charges. Specifically, in *State* v. *Huey*, 505 A.2d at 1245-46 – decided more than a decade before *Watts* – the court had

discussed the wide latitude that sentencing courts enjoyed in considering matters that would not be admissible at trial. Pet.App. at 51a-52a. Relying on *Williams* v. *Oklahoma*, 358 U.S. 584, and federal circuit precedent, *Huey* had permitted sentencing courts discretion to "conduct a broad inquiry in to the 'circumstances of the crime and [into] the convicted person's life and circumstance'…." (Brackets in original.) Pet.App. at 52a, quoting *State* v. *Huey*, 505 A.2d at 1246. Citing *Sweig*, *Huey* specifically had advised that this discretion extended to consideration of conduct underlying charges for which a jury had acquitted a defendant. Pet.App. at 52a; see *State* v. *Huey*, 505 A.2d at 1245.

Applying these precedents, the Connecticut Supreme Court found below that the trial court's consideration of conduct underlying the assault charge for which the jury had acquitted the petitioner did not violate the federal constitution. Pet.App. at 53a. The court concluded that, although neither *Watts* nor *Huey* had specifically addressed a sentencing court's consideration of conduct underlying charges for which a jury had found a defendant not guilty, both had defined "a standard for the breadth of information that a judge may consider during sentencing as a matter of due process," which generally permitted consideration of information proven by a preponderance of the evidence or that has a "minimal indicium of reliability."[6] Id. at 54a, citing *United States* v. *Watts*, 519 U.S. at 156,

[6] The Connecticut Supreme Court observed that the petitioner had "not claim[ed] that the information on which the trial court relied to craft the sentence was false, inaccurate, or misleading." Pet.App. at 53a n.6.

State v. *Huey*, 505 A.2d at 1246. It found that the trial testimony, which the sentencing court had observed, met these standards, and, therefore, its consideration of that information did not violate the petitioner's rights. Pet.App. at 53a-54a. Moreover, the Connecticut Supreme Court found that the petitioner's contention that *Apprendi* and *Booker* had undermined *Watts* and *Huey* was not well founded. Id. at 54a-55a. Rather, because the petitioner's sentence in the present case "was within the statutory ranges for the counts of conviction authorized by the jury," the trial court's consideration of the conduct underlying the assault charge did not run afoul of either *Apprendi* or *Booker*. Id. at 55a. As the court observed, "Connecticut's sentencing practices do not permit the sentencing judge to depart from the range authorized by the jury's verdicts." Id. Rather, Connecticut's "statutes clearly define the requisite sentencing ranges for various crimes or enhancements." Id. (collecting statutes).

REASONS FOR DENYING THE PETITION

The Court should deny the petition for a writ of certiorari. First, the split among the circuit courts and state courts that the petitioner alleges in his petition is not implicated by the facts of this case. The split of authority, to the extent it exists at all, arises only in the context of formerly mandatory sentencing guidelines that, in the wake of *Booker*, have become advisory regimes where the lingering shadows of the formerly mandatory regimes still guide the discretion of sentencing courts and can result in significant increases to a defendant's sentencing range beyond what the jury's convictions alone may have suggested. As the court below

rightly observed, Connecticut's sentencing statutes bear no resemblance to the operation of formerly mandatory sentencing guidelines that have stoked consternation among some courts and commentators. Second, for many of the same reasons, the decision below was correct, in that consideration of conduct underlying a charge for which the jury acquitted the defendant in exercising discretion to craft an appropriate sentence for a conviction that the jury rendered does not offend due process or trial rights. Finally, third, answering the question presented here will have no practical significance to the petitioner here because the remedy in the case would be to afford him a new sentencing hearing at which, even without consideration of the conduct underlying the assault charge, he would remain exposed to – and likely would receive – the same sentence based upon his convictions and dire record.

A. Even If a Split of Authority Exists, The Present Case Does Not Present the Question of Law Driving the Split

Connecticut's sentencing statutes are distinguishable from the sentencing guideline systems employed by federal courts and several states in which concern has arisen regarding the impact that a sentencing court's consideration of conduct not found by a jury may have on the calculation of a defendant's guidelines range, and where within that range a defendant's sentence can fall. Connecticut's sentencing statutes do not prescribe guidelines containing triggers that can serve to dramatically increase a defendant's sentencing exposure upon the finding of certain facts or circumstances. Rather, Connecticut's statutes employ straightforward sentencing ranges that, with little exception, are dependent only on the class of

felony or misdemeanor for which a jury convicted a defendant.[7] Conn. Gen. Stat. § 53a-35a. A sentencing court's consideration of pertinent information while determining an appropriate discretionary sentence within such a narrowly defined range does not present a due process concerns or infringe upon the right to trial by jury.

In *McMillan* v. *Pennsylvania*, 477 U.S. 79, 87-88 & n.4 (1986), a pre-*Apprendi*, pre-*Alleyne* case, the Court considered a state statute that cabined a court's discretion in imposing a sentence within the range otherwise authorized by the jury's verdict by requiring a mandatory minimum sentence where a defendant committed a crime while in visible possession of a firearm or replica firearm. *McMillan* upheld the statute, observing that it "neither alter[ed] the maximum penalty for the crime committed nor create[d] a separate offense calling for a separate penalty; it operates solely to limit the sentencing court's discretion in selecting a penalty within the range already available to it without the special finding of visible possession of a firearm." Id. at 87-88. Further, *McMillan* noted that "[t]he statute gives no impression of having been tailored to permit the visible possession finding to be a tail which wags the dog of the substantive offense." Id. at 88. Subsequently, in *Watts* the Court questioned, but did not decide, whether a

[7] Connecticut has certain statutory sentencing enhancements, the elements of which must be submitted to and found by a jury before they may apply. For example, here, the State charged the petitioner with the commission of a class A, B, or C felony with a firearm under Conn. Gen. Stat. 53-202k, and the jury found that the State had proven the elements of that enhancement. The petitioner does not contend that the court imposed sentence on any statutory sentence enhancement without the jury making the requisite findings.

heightened standard was appropriate where certain findings could "dramatically increase" a sentence. 519 U.S. at 156-57 & n.2.

Subsequently, *Alleyne* overruled *McMillan*'s holding that a jury need not find a fact that triggered a mandatory minimum sentence. 570 U.S. at 112; see *United States* v. *Haymond*, 139 S. Ct. 2369, 2378 (2019). Nevertheless, concern remains that a court's consideration of certain facts or circumstances could compel a significant increase in a defendant's guidelines range under even an advisory guidelines structure. See *United States* v. *Gonzalez*, 857 F.3d 46, 59-60 (1st Cir. 2017) ("[a]t the outer limits, Guidelines offense-level increases based on uncharged crimes might violate a defendant's Sixth Amendment and due process rights if the additional increases are responsible for such a disproportionate share of the sentence that they become the 'tail which wags the dog of the substantive offense'"); *United States* v. *Lombard*, 72 F.3d 170, 176-77 (1st Cir. 1995) ("[t]he Supreme Court decisions on sentencing, while generally endorsing rules that permit sentence enhancements to be based on conduct not proved to the same degree required to support a conviction, have not embraced the concept that those rules are free from constitutional constraints. On the contrary, the Court has cautioned against permitting a sentence enhancement to be the 'tail which wags the dog of the substantive offense'"; finding defendant's rights violated where "[t]he punishment imposed in view of this other conduct far outstripped in degree and kind the punishment [defendant] would otherwise have received for the offense of conviction"). Indeed, recent consternation surrounding the consideration of

acquitted conduct at sentencing has echoed this concern that reliance on conduct for which the jury did not find the defendant guilty could nevertheless result in sharp increases in the guidance that a sentencing court would receive from even advisory sentencing guidelines or statutes. See, e.g., *McClinton* v. *United States*, 143 S. Ct. 2400, 2401 (2023) (Sotomayor, J., statement respecting denial of certiorari) (noting acquitted conduct "caused [defendant's] Sentencing Guidelines range to skyrocket" and "[t]he Guidelines are the framework for sentencing and anchor the district court's discretion"); *United States* v. *Bell*, 808 F.3d 926, 931 (D.C. Cir. 2015) (*Kavanaugh, J.*, concurring in denial of rehearing en banc) (criticizing use of acquitted conduct in "structured or guided-discretion sentencing regimes"); id. at 931 (*Millett, J.*, concurring in denial of rehearing en banc) (criticizing use of acquitted conduct where "the sentence imposed so far exceeds the Guidelines range warranted for the crime of conviction itself that the sentence would likely be substantively unreasonable unless the acquitted conduct is punished too").

This concern remains post-*Booker* because, even where formerly mandatory sentencing guidelines may have become advisory, the guidelines still serve as the "essential framework" for sentencing. *Molina-Martinez* v. *United States*, 578 U.S. 189, 198 (2016). Regarding the federal guidelines, the Court has "made clear that the Guidelines are to be the sentencing court's 'starting point and … initial benchmark." Id., quoting *Gall* v. *United States*, 552 U.S. 38, 49 (2007). As such, "[f]ederal courts understand that they '*must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.'"

(Emphasis in original.) Id., quoting *Peugh* v. *United States*, 569 U.S. 530, 541 (2013). As the Court has directed, "[t]he post-*Booker* federal sentencing scheme aims to achieve uniformity by ensuring that sentencing decisions are anchored by the Guidelines and that they remain a meaningful benchmark through the process of appellate review." *Peugh* v. *United States*, 569 U.S. at 541. Due to the enduring sway that the federal guidelines have over federal district courts, despite being advisory after *Booker*, cases under the federal guidelines may present colorable claims. The federal guidelines, however, are so dissimilar from Connecticut's sentencing statutes that decisions and commentary under the federal guidelines cannot create a split of authority with the decision below.

Likewise, the facts of the instant case also do not create a conflict with the state precedents cited by the petitioner. *People* v. *Beck*, 939 N.W.2d 213, 216 (Mich. 2019), like the federal precedents discussed above, addressed a formerly mandatory sentencing guidelines regime. In *Beck*, a defendant faced a state sentencing guidelines range of 22 to 76 months on a charge for which a jury had convicted him.[8] Id. However, after the court considered conduct underlying, inter alia, a murder charge for which the jury had acquitted the defendant, it departed from the guidelines range and imposed a sentence of 240 to 400 months of incarceration. Id. at 216-17. Against this backdrop, *Beck* concluded that, where a jury has acquitted a

[8] Michigan's sentencing guidelines are advisory, to the extent that, after this Court decided *Booker*, the Michigan Supreme Court struck down the guidelines' mandatory aspects and deemed the guidelines to be advisory. *People* v. *Beck*, 939 N.W.2d at 219-20, citing *People* v. *Lockridge*, 870 N.W.2d 502, 524-25 (Mich. 2015).

defendant on a charge, "conduct that is protected by the presumption of innocence may not be evaluated using the preponderance-of-the-evidence standard without violating due process."[9] Id. at 225. The Michigan Supreme Court, however, conceded that its holding represented the minority position. Id. In any event, its outcome appears to have been impelled by the dramatic change that consideration of the acquitted conduct wrought upon the guidelines range, rather than any underlying theory that the consideration of acquitted conduct is never permissible. See id. at 225-26.

In contrast to these federal and state precedents, the instant case did not involve sentencing under a guideline system, mandatory or otherwise. Connecticut simply does not employ guidelines that can spur substantial departures from a base sentencing range due to the finding or consideration of a particular fact or circumstance. Instead, Conn. Gen. Stat. (Rev. to 1997) § 53a-35a established the authorized lengths of sentences for, inter alia, the various classes of felonies under Connecticut law. It provided, in pertinent part:

> For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and the term shall be fixed by the court as follows: … (3) for a class A felony other than murder, a term not less than ten years nor more than twenty-five years; … (5) for the class B felony other than manslaughter in the first degree with a

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[9] *Beck*, however, further provided that, "[w]hen a jury has made no findings (as with uncharged conduct, for example), no constitutional impediment prevents a sentencing court from punishing the defendant as if he engaged in that conduct using a preponderance-of-the-evidence standard." 939 N.W.2d at 225. *Beck* permits sentencing courts to find uncharged conduct, "[u]nless … those findings mandate an increase in the mandatory minimum or statutory maximum sentence," which circumstance is governed by *Apprendi* and *Alleyne*. Id. at 225 n.22.

> firearm … a term not less than one year nor more than twenty years, except that for a conviction under section … 53a-134(a)(2), the term shall be not less than five years nor more than twenty years; (6) for a class C felony, a term not less than one year nor more than ten years …; (7) for a class D felony, a term not less than one year nor more than five years, except that for a conviction under section … 53a-217, the term shall not be less than two years nor more than five years….[10]

Conn. Gen. Stat. (Rev. to 1997) § 53a-35a. In turn, Conn. Gen. Stat. § 53a-37 provides, in pertinent part:

> When multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms in such manner as the court directs at the time of sentence. The court shall state whether the respective maxima and minima shall run concurrently or consecutively with respect to each other, and shall state in conclusion the effective sentence imposed. When a person is sentenced for two or more counts each constituting a separate offense, the court may order that the term of imprisonment for the second and subsequent counts be for a fixed number of years each. The court in such cases shall not set any minimum term of imprisonment except under the first count, and the fixed number of years imposed for the second and subsequent counts shall be added to the maximum term imposed by the court on the first count.

"Under [Conn. Gen. Stat.] § 53a-37, [a] trial court is authorized to impose sentences on multiple counts either to run concurrently with each other or to run consecutively to each other. The determination whether to impose concurrent or consecutive sentences is a matter within the sound discretion of the trial court."

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[10] Conn. Gen. Stat. § 53a-35a has been amended since the date of the petitioner's offenses. The pertinent structure and content of Connecticut's sentencing statutes, however, remains the same.

(Footnote omitted.) *State* v. *King*, 735 A.2d 267, 294 (Conn. 1999). Under these statutes, no facts or circumstances trigger guidance as to the range in which a court may sentence a defendant. Indeed, there are no guidelines ranges. Therefore, in contrast to sentencing guidelines systems, Connecticut's statutes do not serve as an initial benchmark from which courts may then depart upon making certain findings, or which guide courts in exercising their sentencing discretion.

The petitioner acknowledges that Connecticut does not employ sentencing guidelines and that this case does not involve application of a sentence enhancement. Petition (Pet.) at 30. He posits, however, that Connecticut's lack of a guidelines system or any controversy surrounding a sentence enhancement results in this case presenting the question of the propriety of a sentencing court's consideration of conduct underlying a charge for which a jury acquitted a defendant "distilled to its purest form." Id. However, what the petitioner claims has sanitized the issue making it ripe for review deprives the instant case of its import. Absent a guideline or statute that results in the conduct underlying a charge for which the jury acquitted the petitioner substantially increasing the guidance that the sentencing court was obliged to follow, due process and the right to trial by jury are not implicated. Instead, the sentencing court merely factored the evidence it had heard at trial – and appropriately found proven by a standard less than beyond a reasonable doubt – into its discretion to sentence the petitioner within the narrow ranges prescribed by statute for the offenses for which the jury found the defendant

guilty.[11] Therefore, because Connecticut's sentencing statutes are wholly distinguishable from guidelines or statutes that have provoked criticism over the consideration of acquitted conduct at sentencing, the decision below does not fall on either side of the split of authority claimed by the petitioner, if that split exists at all.

B. The Connecticut Supreme Court's Decision Was Correct

Next, the Court should deny the petition because the Connecticut Supreme Court's decision plainly was correct. The petitioner contends that the Connecticut Supreme Court erred by treating *Watts* as controlling because it addressed a double jeopardy claim and was a summary reversal decided without the benefit of full briefing and argument. Pet. at 11-15, 28. This is a straw man argument, which is not supported by the record. The court below did not treat *Watts* itself as controlling. Instead, it properly regarded *Watts* as synthesizing this Court's prior precedents into a comprehensive rule permitting sentencing courts to consider a broad range of information in crafting appropriate sentences.

The Connecticut Supreme Court's decision reveals that it did not simply treat *Watts* as controlling and follow it blindly. As detailed above, the court reviewed *Williams* v. *New York*, *Williams* v. *Oklahoma*, and *Nichols* v. *United States*, all of which predated *Watts*. It also considered *Witte* v. *United States*, which post-dated *Watts*. Furthermore, the Connecticut Supreme Court contemplated its own

[11] The petitioner concedes that the sentences imposed on his convictions were "within the sentencing range permitted by Connecticut's statutes…." Pet. at 5.

precedent in *State* v. *Huey*, which predated *Watts* by a decade and relied upon many of the same precedents that *Watts* later synthesized. The contention that the decision below was fatally flawed because it placed undue emphasis on *Watts* simply lacks merit.

Moreover, the precedents upon which the Connecticut Supreme Court relied fully supported its decision. As *Williams* v. *New York* observed, "both before and since the American colonies became a nation, courts in this country and in England practiced a policy under which a sentencing judge could exercise a wide discretion in the sources and types of evidence used to assist him in determining the kind and extent of punishment to be imposed *within the limits fixed by law*." (Emphasis added.) 337 U.S. at 246; see also *United States* v. *Booker*, 543 U.S. at 233; *Apprendi* v. *New Jersey*, 530 U.S. at 481. The decision below fits well within this pedigree. Connecticut's sentencing statutes establish narrow sentencing ranges for specific classes of felonies and misdemeanors. Conn. Gen. Stat. 53a-35a. A sentencing court then has discretion to sentence within that range and to consider any information that bears minimal indicia of reliability. The trial court's consideration of the evidence it had heard at trial in exercising that discretion was proper and consistent with centuries of practice.

Finally, as discussed above, Connecticut's sentencing statutes do not permit conduct not found by the jury to significantly increase a defendant's sentencing range. That is, acquitted conduct cannot become the tail which wags the dog at sentencing. Instead, the sentencing court may only consider conduct not found by

the jury to inform its exercise of discretion within the sentencing range authorized by the convictions rendered by the jury. For these reasons, the decision below was plainly correct and does not warrant further review.

C. The Petitioner Would Not Benefit from A Decision in His Favor

Finally, answering the question presented here will have no practical significance in the instant case because, following a remand for resentencing, this petitioner likely would receive the same sentence based upon his convictions and criminal record. In this regard, the petitioner's suggestion that his sentence turned on the court's belief that he assaulted the victim is unfounded. Rather, the petitioner's shooting of the victim was only one data point within a litany of facts related to the petitioner and his character that supported a lengthy sentence within the range authorized by his convictions. Specifically, as summarized above, the court considered that the petitioner had been arrested on twenty-eight criminal charges over the nine years leading up to his sentencing. Pet.App. at 11a-12a. The court appraised this record as representing "serious and predatory acts of misconduct." Id. The court observed that the petitioner's misconduct had continued up through the date of his trial on the instant charges. Id. Notably, only two months before his sentencing, the petitioner had fled from a traffic stop and dragged a police officer with his vehicle. Id. at 4a. Furthermore, the court noted that the petitioner's accrual of charges had continued while, on balance, he had served relatively little time in prison. Id. at 11a-12a. The court determined that the totality of the petitioner's accumulated record "requir[ed] the imposition of severe

sanctions." Id. As the court found, "[t]he time, unhappily, has arrived for the piper to be paid." Id. Notably, the petitioner's own criminal trial counsel conceded that there was "no question" that the court would impose a "fairly lengthy sentence." Id. at 6a

On this record, it is evident that the trial court's consideration of the conduct underlying the assault charge did not determine the length of the petitioner's sentence within the range authorized by his convictions. Even if the petitioner succeeded on his claim before this Court and received a new sentencing hearing, he likely would receive an identical sentence. For that reason as well, further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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DECEMBER 2023

No. 23-5968

RICHARD LANGSTON
Petitioner,

v.

STATE OF CONNECTICUT
Respondent.

ON PETITION FOR
WRIT OF CERTIORARI TO THE
CONNECTICUT SUPREME COURT

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

APPENDIX

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United States Code

28 U.S.C. § 1257 (a). State courts; certiorari.

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

* * *

Statutory provisions

Conn. Gen. Stat. § 53-202k. Commission of a class A, B or C felony with a firearm: Five-year nonsuspendable sentence.

Any person who commits any class A, B or C felony and in the commission of such felony uses, or is armed with and threatens the use of, or displays, or represents by his words or conduct that he possesses any firearm, as defined in section 53a-3, except an assault weapon, as defined in section 53-202a, shall be imprisoned for a term of five years, which shall not be suspended or reduced and shall be in addition and consecutive to any term of imprisonment imposed for conviction of such felony.

Conn. Gen. Stat. § 53a-35a. Imprisonment for felony committed on or after July 1, 1981. Definite sentence. Authorized term.

For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and, unless the section of the general statutes that defines or provides the penalty for the crime specifically provides otherwise, the term shall be fixed by the court as follows:

(1) (A) For a capital felony committed prior to April 25, 2012, under the provisions of section 53a-54b in effect prior to April 25, 2012, a term of life imprisonment without the possibility of release unless a sentence of death is imposed in accordance with section 53a-46a, or (B) for the class A felony of murder with special circumstances committed on or after April 25, 2012, under the provisions of section 53a-54b in effect on or after April 25, 2012, a term of life imprisonment without the possibility of release;

(2) For the class A felony of murder, a term not less than twenty-five years nor more than life;

(3) For the class A felony of aggravated sexual assault of a minor under section 53a-70c, a term not less than twenty-five years or more than fifty years;

(4) For a class A felony other than an offense specified in subdivision (2) or (3) of this section, a term not less than ten years nor more than twenty-five years;

(5) For the class B felony of manslaughter in the first degree with a firearm under section 53a-55a, a term not less than five years nor more than forty years;

(6) For a class B felony other than manslaughter in the first degree with a firearm under section 53a-55a, a term not less than one year nor more than twenty years;

(7) For a class C felony, a term not less than one year nor more than ten years;

(8) For a class D felony, a term not more than five years;

(9) For a class E felony, a term not more than three years; and

(10) For an unclassified felony, a term in accordance with the sentence specified in the section of the general statutes that defines or provides the penalty for the crime.

Conn. Gen. Stat. (Rev. to 1997) § 53a-35a. Imprisonment for any felony committed on or after July 1, 1981: Definite sentences; terms authorized.

For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and the term shall be fixed by the court as follows: (1) For a capital felony, a term of life imprisonment without the possibility of release unless a sentence of death is imposed in accordance with section 53a-46a; (2) for the class A felony of murder, a term not less than twenty-five years nor more than life; (3) for a class A felony other than murder, a term not less than ten years nor more than twenty-five years; (4) for the class B felony of manslaughter in the first degree with a firearm under section 53a-55a, a term not less than five years nor more than forty years; (5) for a class B felony other than manslaughter in the first degree with a firearm under section 53a-55a, a term not less than one year nor more than

twenty years, except that for a conviction under section 53a-59(a)(1), 53a-59a, 53a-70a, 53a-94a, 53a-101(a)(1) or 53a-134(a)(2), the term shall be not less than five years nor more than twenty years; (6) for a class C felony, a term not less than one year nor more than ten years, except that for a conviction under section 53a-56a, the term shall be not less than three years nor more than ten years; (7) for a class D felony, a term not less than one year nor more than five years, except that for a conviction under section 53a-60b or 53a-217, the term shall be not less than two years nor more than five years, for a conviction under section 53a-60c, the term shall be not less than three years nor more than five years, and for a conviction under section 53a-216, the term shall be five years; (8) for an unclassified felony, a term in accordance with the sentence specified in the section of the general statutes that defines the crime.

Conn. Gen. Stat. § 53a-37. Multiple sentences: Concurrent or consecutive, minimum term.

When multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms in such manner as the court directs at the time of sentence. The court shall state whether the respective maxima and minima shall run concurrently or consecutively with respect to each other, and shall state in conclusion the effective sentence imposed. When a person is sentenced for two or more counts each

constituting a separate offense, the court may order that the term of imprisonment for the second and subsequent counts be for a fixed number of years each. The court in such cases shall not set any minimum term of imprisonment except under the first count, and the fixed number of years imposed for the second and subsequent counts shall be added to the maximum term imposed by the court on the first count.

Conn. Gen. Stat. (Rev. to 1997) § 53a-59. Assault in the first degree: Class B felony: Nonsuspendable sentences.

(a) A person is guilty of assault in the first degree when: (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or (2) with intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or (3) under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person; or (4) with intent to cause serious physical injury to another person and while aided by two or more other persons actually present, he causes such injury to such person or to a third person; or (5) with intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of the discharge of a firearm.

b) Assault in the first degree is a class B felony provided (1) any person found guilty under subdivision (1) of subsection (a) shall be sentenced to a term of

imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court and (2) any person found guilty under subsection (a) shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court if the victim of the offense is a person under ten years of age.

Conn. Gen. Stat. § 53a-134. Robbery in the first degree: Class B felony.

(a) A person is guilty of robbery in the first degree when, in the course of the commission of the crime of robbery as defined in section 53a-133 or of immediate flight therefrom, he or another participant in the crime: (1) Causes serious physical injury to any person who is not a participant in the crime; or (2) is armed with a deadly weapon; or (3) uses or threatens the use of a dangerous instrument; or (4) displays or threatens the use of what he represents by his words or conduct to be a pistol, revolver, rifle, shotgun, machine gun or other firearm, except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a weapon from which a shot could be discharged. Nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, robbery in the second degree, robbery in the third degree or any other crime.

(b) Robbery in the first degree is a class B felony provided any person found guilty under subdivision (2) of subsection (a) shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.

Conn. Gen. Stat. (Rev. to 1997) § 53a-217. Criminal possession of a firearm or electronic defense weapon: Class D felony.

(a) A person is guilty of criminal possession of a firearm or electronic defense weapon when he possesses a firearm or electronic defense weapon and has been convicted of a capital felony, a class A felony, except a conviction under section 53a-196a, a class B felony, except a conviction under section 53a-86, 53a-122 or 53a-196b, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For the purposes of this section, "convicted" means having a judgment of conviction entered by a court of competent jurisdiction.

(b) Criminal possession of a firearm or electronic defense weapon is a class D felony, for which two years of the sentence imposed may not be suspended or reduced by the court.

Constitutional provisions

Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Rules of court

Conn. Practice Book § 43-22. Correction of Illegal Sentence.

The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner.