No. 25-

IN THE

Supreme Court of the United States

J.M.F.,

Petitioner,

v.

COMMISSIONER OF CORRECTION,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Sixth Amendment to the United States Constitution guarantees to criminal defendants the right to counsel. The right to counsel is the right to effective counsel. Effective counsel is conflict-free counsel. When an attorney has an personal interest opposed to that of a client, he may refrain from zealous advocacy. The Petitioner was defended in his criminal trial by an attorney whom he had previously threatened to sue for legal malpractice for an error in handling another matter. The question presented is:

Whether the threat of a civil action by a criminal defendant against his attorney is a per se denial of the right to the effective of counsel guaranteed by the Sixth Amendment of the United States Constitution, and thus does not require a defendant to make a showing of the attorney's deficient performance or prejudice in order to vacate his conviction.

PARTIES

The Petitioner, JMF, is a state prisoner, having been convicted of criminal offenses in Connecticut state court, and is currently in the custody of the Commissioner of Correction. The Respondent is the Commissioner of Correction for the State of Connecticut.

NOTICE OF RELATED CASES

Underlying Trial
Stamford-Norwalk Judicial District,
Connecticut Superior Court
State of Connecticut v. John Michael Farren,
FST-CR10-0124813-T.
Judgment entered: Nov. 11, 2014

Direct Appeal
Connecticut Appellate Court
State of Connecticut v. JMF, A.C. 37200,
170 Conn. App. 120 (2017) (judgment affirmed)
Judgment entered: Jan. 10, 2017

Petition to Connecticut Supreme Court
Connecticut Supreme Court
State of Connecticut v. JMF,
325 Conn. 912 (2017) (cert. denied)
Judgment entered: April 12, 2017

Application for Sentence Modification
Stamford-Norwalk Judicial District,
Connecticut Superior Court
State of Connecticut v. John Michael Farren,
FST-CR10-0124813-T (application denied)
Judgment entered: Jan. 19, 2023

State Habeas Corpus Proceeding
Tolland Judicial District, Connecticut
JMF v. Commissioner of Correction,
TSR-CV18-4009472-S
Judgment entered: Nov. 27, 2023
(petition for writ of habeas corpus denied)

Direct Appeal of Denial of Petition for Writ of Habeas Corpus
Connecticut Appellate Court
JMF v. Commissioner of Correction, A.C. 47218, 230 Conn. App. 903 (2025) (appeal dismissed)
Judgment entered: Feb. 25, 2025

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Judgment entered: April 24, 2025

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OPINIONS BELOW

The Connecticut Supreme Court's denial of the Petitioner's certiorari petition is not yet reported. App. 35a. The Connecticut Appellate Court's opinion dismissing the Petitioner's appeal is a memorandum decision reported at 230 Conn. App. 903 (2025). App. 33a-34a. The trial court decision denying the Petitioner's petition for a writ of habeas corpus is not reported. App. 13a-30a.

JURISDICTION

The Petitioner, John Michael Farren, a prisoner in Connecticut, respectfully petitions for a writ of certiorari to review the judgment of the Connecticut Supreme Court in this case. The Connecticut Supreme Court entered judgment on April 24, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The 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 defence.

STATEMENT OF THE CASE

I. Factual Background

The Petitioner[1] was the defendant in the criminal case docketed under FST-CR10-0124813-T in the Stamford Judicial District. He was represented at trial by attorneys Timothy Moynahan and Eugene Riccio. App. 14a. He also hired Moynahan, who did not practice in the same firm as Riccio, to represent him in a divorce action. App. 21a. Subsequently, Moynahan missed a filing deadline which resulted in the Petitioner's appeal of the divorce judgment being dismissed as untimely. App. 21a-22a. Thereafter, the Petitioner informed Moynahan by letter that he planned to sue him for $15 million and to notify his malpractice insurance carrier, which Moynahan did. App. 23a. He also informed Riccio that he did not want him communicating with Moynahan about the criminal case. App. 24a. Moynahan and Riccio moved to withdraw and the Petitioner filed an appearance in lieu of them in order to represent himself, which led the trial court to remove them as counsel and appoint them as standby counsel. Id. The Petitioner, Moynahan and Riccio all objected to that arrangement. App. 25a. Thereafter, just before trial commenced, the Petitioner indicated that he could not proceed *pro se*, which caused the trial court, over the Petitioner's objection, to reinstate Moynahan and Riccio as full trial counsel. Id. The Petitioner, in addressing the court on that objection, did not mention his threat to sue Moynahan. The case proceeded to trial.

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1. Due to the nature of the charges of the underlying case to protect the identities of the victims, the lower courts used the Petitioner's initials in the case names instead of his full name.

The Petitioner was convicted by a jury of Attempt to Commit Murder, in violation of Conn. Gen. Stat. §§ 53a-49(a)(2) and 53a-54(a), Assault in the First Degree, in violation of § 53a-59(a)(1) and Risk of Injury to a Minor, in violation of § 53-21(a)(1). App. 14a. Thereafter, he was sentenced to fifteen years of imprisonment followed by five years of special parole. App. 15a-16a. The conviction was affirmed by the Connecticut Appellate Court on Jan. 10, 2017. *State v. J.M.F.*, 170 Conn. App. 120 (2017). Certification to the Connecticut Supreme Court was denied on Apr. 12, 2017. *State v. J.M.F.*, 325 Conn. 912 (2017).

II. Legal Background

The Petitioner raised the claim of ineffective assistance of counsel by Moynahan's conflict in a petition for a writ of habeas corpus that he filed in Connecticut Superior Court on Apr. 3, 2018. Following a trial, the court denied the petition, reasoning that the Petitioner's threat of litigation against Moynahan did not create a conflict of interest for Moynahan. App. 28a. The conflict, according to the habeas court, was "nothing more than theory." App. 29a. It rejected the Petitioner's contention that Moynahan's operating under the threat of litigation constituted structural error, obviating the requirement to prove prejudice. Id. The court, apparently applying the ineffective assistance of counsel standard established by this Court in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), opined that, in addition to there being no actual conflict for Moynahan, that the Petitioner did not present evidence of deficient performance or its resulting prejudice. App. 29a-30a.

The Connecticut Appellate Court dismissed the Petitioner's direct appeal of the habeas court's decision. App. 34a. The Connecticut Supreme Court denied the Petitioner's petition for certification to appeal the Appellate Court's decision. App. 35a.

III. Procedural History

The Petitioner filed a petition for a writ of habeas corpus in Connecticut Superior Court on Apr. 3, 2018. App. 1a. A habeas corpus trial was held on Mar. 2 and Jun. 29 of 2023. The habeas corpus court (Newson, J.), in a written decision issued on Nov. 27, 2023, denied the petition, App. 30a, and subsequently denied the Petitioner's petition for certification to appeal.

The Petitioner appealed the denials of the habeas petition and certification to appeal on Dec. 19, 2023. The Connecticut Appellate Court dismissed the appeal in a memorandum decision issued on Feb. 25, 2025. The Connecticut Supreme Court denied certification on April 24, 2025.

REASONS FOR GRANTING THE PETITION

Criminal defendants are guaranteed the right to be represented by counsel by the Sixth and Fourteenth amendments to the United States Constitution. The right to counsel is the right to conflict-free counsel. See *Wood v. Georgia*, 450 U.S. 261, 271 (1981). When the Petitioner sent his attorney written notice of his intent to sue him for legal malpractice and to notify his liability insurance carrier, it created an adversarial relationship which itself created an actual, unworkable conflict of interest that so

undermined the right to effective assistance of counsel, that no deficient performance or prejudice should need to be shown.

This Court, in *Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948), stated that "the right to counsel guaranteed by the Constitution contemplates the services of an attorney devoted solely to the interests of his client." The Constitution requires of attorneys "undivided allegiance and faithful, devoted service to a client." *Id.* at 725.

I. This Court has not decided the issue of whether an attorney's representation of a criminal defendant against whom he may be situated in a civil matter constitutes a per se denial of the Sixth Amendment right to counsel.

This Court, in *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980), held that in situations involving conflicts of interest, to establish "a violation of the Sixth Amendment, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance." The standard is different, arguably less exacting, than that of *Strickland v. Washington*, 466 U.S. 668, 687 (1984), which requires a convicted defendant claiming ineffective assistance of counsel to prove that his or her attorney's performance was defective and that the "deficient performance prejudiced the defense." The *Cuyler* standard however, is not suitable for all cases of conflicts. When an attorney has a personal interest or one that is opposed to the client, he may be disinclined to reveal the conflict, and may hold back from vigorously representing the client.

This Court articulated the problem of an attorney holding back zealous representation due to a conflict of interest in *Holloway v. Arkansas*, 435 U.S. 475, 490 (1977)

> in a case of joint representation of conflicting interests the evil—it bears repeating—is in what the advocate finds himself compelled to *refrain* from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process. It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client.

This Court however, has not reached the Petitioner's situation, in which a defense attorney may be liable civilly to his client for another matter. This Court has also not defined which conflicts of interest amount to structural error, a per se Sixth Amendment violation, which would necessitate automatic reversal of a conviction without a showing of either performance or prejudice.

Lower courts have had the opportunity to review conflicts of interest in which they concluded that an attorney's interest of self-preservation in itself deprived a criminal defendant of the constitutional right to effective assistance of counsel, without a showing of deficient performance or prejudice. As stated more fully below, those conflicts include attorneys who represented clients when they were involved in their own criminal activity,

were not licensed to practice law and were being sued. The consistent reasoning is that there are certain conflicts that could cause an attorney to refrain, even subtly, from performing his obligations to his client, let alone informing a court of the existence of a conflict.

II. Federal courts of appeal have held there to be *per se* violations of the Sixth Amendment right to counsel when an attorney has a personal interest that may cause the attorney to hold back from zealously representing a criminal defendant, however when that issue is litigation or the threat of litigation against the attorney, the courts are not aligned.

An attorney has no greater conflict of interest with a client than when his own interests are involved. Federal appellate courts have held in several cases that when an attorney may be in a situation where he or she could be held back from zealously advocating for a client due to the attorney's own potential criminal, civil or professional liability, the defendant was denied the constitutional right to counsel without a showing of deficient performance or prejudice.

The United States Court of Appeals for the Second Circuit has, for instance, held that representation by defense counsel who is not licensed to practice law is a per se Sixth Amendment violation. *Solina v. United States*, 709 F.2d 160, 169 (2d. Cir. 1983). The court noted, "such a person cannot be wholly free from fear of what might happen if a vigorous defense should lead the prosecutor or the trial judge to inquire into his background and discover his lack of credentials. Yet a criminal defendant is entitled to be represented by someone free from such constraints."

Id. at 164. Later, in *United States v. Novak*, 903 F.2d 883, 884 (2d. Cir. 1990), that Court held that representation by an attorney who had fraudulently been admitted to the bar constituted a per se violation of the right to counsel. It reasoned that there was an "underlying risk that a vigorous defense could have led to a deeper probe and a discovery that [the attorney] had not been 'duly' admitted. *Id.* at 890. The court further noted that state courts in New York and Florida reached the same conclusion. *Id.* at 888. In *United States v. Cancilla*, 725 F.2d 867, 870 (2d. Cir. 1984), the Second Circuit considered the situation of an attorney who might have committed crimes with a co-conspirator of the defendant's—without the defendant's knowledge. The court held that the conflict required application of the per se rule that it had developed in *Solina.* The reasoning is that an attorney so conflicted could not, for example, provide impartial advice to his client on pleading guilty because the attorney might reasonably fear that a guilty plea would require cooperation that would then reveal the attorney's own crimes. *Id.*

Similar to the attorney who was the subject in *Cancilla*, the attorney in *Government of Virgin Islands v. Zepp*, 748 F.2d 125 (3d Cir. 1984), operated under an actual conflict of interest due to potential liability for the same charges for which the defendant was convicted, as well as being a potential witness for the prosecution. Specifically, the attorney was present in the defendant's home just before it was searched. While the defendant and attorney were in the home, the police heard the toilet flush several times. *Id.* at 128. A few days later the septic tank was searched and twenty bags of cocaine were found. *Id.* The prosecution wanted to call the attorney as a witness. Instead, the attorney stipulated that while

he was in the home, he did not flush any toilets. *Id.* at 129. The court concluded that the attorney had an actual conflict because he could have been charged criminally or disciplined for destroying evidence, even if there was no direct evidence of it. *Id*. at 136. It could not assume that the attorney "vigorously pursued his client's best interest entirely free from the influence of his concern to avoid his own incrimination." *Id.* Prejudice was presumed from the surrounding circumstances. *Id.* at 139.

Civil litigation against an attorney can be as detrimental to the representation of a client as potential criminal liability. As the District of Columbia Circuit noted in *United States v. Hurt*, 543 F.2d 162, 166 (D.C. Cir. 1976)

> most conflicts of interest seen in criminal litigation arise out of a lawyer's dual representation of co-defendants, but the constitutional principle is not narrowly confined to instances of that type. The cases reflect the sensitivity of the judiciary to an obligation to apply the principle whenever counsel is so situated that the caliber of his services may be substantially diluted. Competition between the client's interests and counsel's own interests plainly threatens that result, and we have no doubt that the conflict corrupts the relationship when counsel's duty to his client calls for a course of action which concern for himself suggests that he avoid.

The conflict the court considered in *Hurt* was a defendant's appellate counsel being sued for libel for $2 million by the defendant's trial counsel because appellate counsel wrote

in a brief that trial counsel was ineffective at trial. *Id.* at 164. At a hearing on remand, due to the pending lawsuit, the appellate attorney asked to be excused because he believed that presenting the facts that were the basis of the ineffective assistance claim would be "considered a second publication of defamatory matter" and hurt him in the lawsuit. *Id*. The court reasoned that, although the likelihood of losing the lawsuit was small, the "suit generated far too great a dilemma for appellate counsel" to "advocate fearlessly and effectively." *Id.* at 168. In dispensing with the requirement that the defendant show prejudice, the court recognized that "lawyers frequently do not realize their own shortcomings." *Id.* It concluded that "the pressure under which appellate counsel labored may well have resulted in subtle restraints which not even he could pinpoint or define." *Id.*

The Ninth Circuit however, cautioned that while a lawsuit between a defendant and counsel could lead to an actual conflict, the threat of litigation by a defendant against his attorney should not be enough to establish an actual conflict because it could enable "defendants to manufacture a conflict in any case." *United States v. Moore*, 159 F.3d 1154, 1158 (9th Cir. 1992). The distinction between an actual lawsuit and a threat of a lawsuit is arbitrary and overlooks the actual problem and source of conflict: that an attorney facing potential civil liability may refrain or feel forced to refrain from zealously advocating for the client.

A lawyer could be liable civilly before actual litigation is commenced in much the same way that an attorney could be subject to criminal liability before charges are filed. In the aforementioned cases of *Zepp* and *Cancilla*,

the courts held that the attorneys were so conflicted because of the possibility of criminal charges, even though neither had been actually charged. The reasoning was that attorneys may hold back from zealous representation for fear of being charged. Similarly, in *Novak* and *Solina*, the attorneys could have been motivated to refrain from zealous advocacy for fear of having their credentials checked. The attorney in *Hurt* had already been sued and refused to state anything in court that he believed could cause additional civil liability. An attorney who is aware of a potential claim, even before a suit is filed, could take the same course and refuse to continue representation, or could continue the representation under considerable trepidation and apprehension.

III. The Connecticut courts' determinations that the Petitioner was not denied his Sixth Amendment right to counsel is not correct.

Considering the facts of the present case, the habeas court should have presumed a Sixth Amendment violation and issued a writ of habeas corpus reversing the Petitioner's conviction. An attorney facing the financial and professional jeopardy of a legal malpractice action with continued representation of a client is in a similar predicament as one who was involved in the same criminal conspiracy as a client, and certainly one who is involved in a lawsuit related to his representation of the client. There is a clear parallel between counsel in the aforementioned Second Circuit cases, *Zepp* and *Hurt,* and Moynahan. An attorney in such a situation may become inclined to place his own interests over those of his client.

Neither the Petitioner's threat to Moynahan nor the error that led to it were disputed. Both facts were acknowledged by the habeas court. Additionally, there is no dispute that Moynahan could have faced civil liability. The habeas court's opinion that the Petitioner's contention that Moynahan might have held back from zealously advocating for him at trial amounted to only speculation demonstrates the precise issue with applying either the standard of *Strickland*, or that of *Cuyler*, which requires a petitioner to "establish that an actual conflict of interest adversely affected his lawyer's performance." When an attorney is so personally conflicted, the entire representation is clouded with doubt.

Although *Holloway* involved an attorney representing multiple clients, the concerns apply equally to an attorney who may be involved in litigation, or the clear threat of litigation, with a client, because the attorney would, in essence, be representing both the client and himself, who may have interests opposed to the clients. That is precisely the situation in the Petitioner's case. Moynahan was representing the Petitioner, but also could have been civilly liable to the Petitioner. His own interests were at stake and in conflict with the Petitioner's. The conflict was actual, not merely theoretical. The Petitioner could not have had his trial counsel's undivided loyalty. For that reason, the court should have determined that the Petitioner was deprived of his Sixth Amendment right to counsel.

CONCLUSION

Wherefore, for the foregoing reasons, the Petitioner respectfully prays that the Court grant certiorari of the question identified herein.

Respectfully submitted,

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APPENDIX

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APPENDIX A — HABEAS CORPUS PETITION, JUDICIAL DISTRICT OF ROCKVILLE AT ROCKVILLE, FILED APRIL 3, 2018

JUDICIAL DISTRICT OF ROCKVILLE
at ROCKVILLE

RETURN DATE: MAY 15, 2015

J. MICHAEL FARREN

V.

COMMISSIONER OF CORRECTIONS.

APRIL 3, 2018

HABEAS CORPUS PETITION

1. The petitioner, J. Michael Farren, is currently serving a 15-year term of imprisonment after a jury trial and subsequent conviction in the Judicial District of Stamford on the following counts in a case bearing docket number FST CR10-0124813-T: attempt to commit murder, in violation of Connecticut General Statutes, hereinafter "C.G.S.," Sections 53a-49(a)(2) and 53a-54a(a); assault in the first degree in violation of C.G.S. Section 53a-59(a)(1); and, risk of injury to a minor in violation of C.G.S. Section 53-21(a)(1). He was arrested on site and without a warrant. His conviction was upheld by the Connecticut Appellate Court, *State v. J.M.F.*, 170 Conn. App. 120 (January 10, 2017), *certification denied*, 325 Conn. 912 (April 12, 2017). At the time of his arrest, he was initially

held on a $2 million bond. He is in the custody and control of the Connecticut Department of Corrections.

2. The facts giving rise to this conviction arose in the context of an altercation with the petitioner's wife in the marital home they shared with their two young children on January 6, 2010, two days after she had caused the petitioner to be served with a summons seeking a divorce from him. That matrimonial action was filed in the Judicial District of Stamford and bore docket number FST-FA 10-4017970-S.

3. In the days immediately following the January 6, 2010 incident, the petitioner's then wife initiated a civil action against the petitioner, applying for a pre-judgment remedy to encumber the petitioner's substantial assets. She obtained a multi-million dollar pre-judgment attachment. That action was filed in the Judicial District of Stamford and bore docket number FST-CV10-5013320. Her stated intention in seeking the pre-judgment remedy was to assure that the petitioner lacked access to the funds necessary to post bond in his criminal case.

4. The manner in which these three discrete pieces of litigation were handled, and were permitted to feed off of one another, led to a series of catastrophic judgments that bear an unjust relationship to the harm the petitioner's wife suffered in a very brief, and a very concentrated, act of uncharacteristic violence. The petitioner seeks relief here from his judgment of conviction in the criminal case.

5. In 2010, both the petitioner and his then wife were lawyers. The petitioner had recently served as

deputy White House counsel to President George W. Bush, and had long been involved in Republican politics in Washington, D.C. He had also served as general counsel to the Xerox Corporation, accumulating considerable wealth in the course of his legal career. His then wife was, on or about the time of these events, an attorney at the Manhattan law firm of Skadden Arps.

6. Immediately after the confrontation with his wife at marital home on January 6, 2010, the petitioner tried to take his own life by stabbing himself in the neck and attempting to asphyxiate himself by means of a ligature. At the time of his on-site arrest, he was immediately taken to the Stamford Hospital, and was thereafter placed on suicide watch at the Bridgeport Correctional Center, before being transferred to a mental health unit at the Garner Correctional Institution.

7. The petitioner, then a member of the bar of the State of Connecticut, also faced bar disciplinary proceedings incident to his arrest.

8. At the time these events unfolded, the petitioner sought legal counsel competent to meet the challenges to his liberty and property interests presented by the aforesaid litigation. A close friend recommended Attorney Timothy Moynahan as a lawyer capable of handling all of the cases. The petitioner retained Attorney Moynahan to represent him in the criminal, civil, family and bar disciplinary cases. He also retained Eugene Riccio to assist in the defense of his criminal case. The petitioner's wife's representation in the civil, family and criminal matters was coordinated by the firm Silver Golub and

Teitell of Stamford, Connecticut, whose objective was to ensure that the petitioner lacked the resources to finance a defense of himself in any forum.

9. Attorney Moynahan was aware from the onset of his representation of the petitioner that the petitioner suffered either from a mental disease or defect at the time of events of Jaunary 6, 2010, or that, in the alternative, the petitioner suffered from extreme emotional distress at the time, and there were significant mental-health issues evident throughout the course of the litigation following.

10. The petitioner suffered deep and debilitating depression during the pendency of the aforesaid proceedings.

11. The matrimonial case bearing docket number FST-FA10-4017970-S, when to judgment on June 13, 2011. Despite their unequal contributions to the marital estate, the court awarded the petitioner's wife 75 percent of the assets held in common by the couple. The petitioner sought post judgment relief through the services of Attorney Moynahan and his firm.

12. The balance of the petitioner's assets untouched by the matrimonial judgment were subject to pre-judgment attachment in the pending civil action pursued by the petitioner's ex-wife.

12. When Attorney Moynahan and his firm missed a filing deadline relating to a claim for post-judgment relief from the divorce judgment and otherwise mishandled

delicate financial issues, the petitioner, on April 3, 2013, mailed a letter to Attorney Moynahan informing him that he intended to file a legal malpractice action against Attorney Moynahan and his firm seeking damages in the amount of $15 million. The petitioner requested that Attorney Moynahan place his insurance carrier on notice of the potential claim.

13. Because the petitioner had lost faith in efforts of Attorneys Moynahan and Riccio, he applied for the services of a public defender to represent him. Attorneys Moynahan and Riccio were permitted to withdraw from the petitioner's family and civil actions, leaving him without a defense lawyer. At the time, the petitioner had no experience in the defense of a criminal case.

14. In December 2013, while he was pro se and unable to retain counsel for his defense, the civil action filed by the petitioner's wife was called to trial before a jury in the Judicial District of Stamford.

15. At or about the time his civil case was called in for trial, the petitioner was involuntarily committed to a psychiatric institution for treatment of his depression. The trial court and counsel for the petitioner's ex-wife were made aware of the involuntary commitment, but elected to proceed, nonetheless. The petitioner's wife moved for, and obtained, a default judgment against the petitioner because he had failed to appear. Thereafter, the case immediately went to a hearing in damages before a jury. That jury awarded the petitioner's wife $27.6 million in damages after a brief hearing on December 17, 2013. This

judgment was affirmed by the Connecticut Appellate Court in 2015. *Farren v. Farren*, 131 A.3d 253 (Conn. App., 2015), cert. denied, U.S. (2015).

16. The trial court denied the petitioner's request for the services of a public defender in his criminal case on grounds that he was financially ineligible, despite the fact that his then ex-wife had managed to encumber all, or substantially all, of his assets, he was not working, and was unable to work due to psychiatric disability.

17. Once the civil case had gone to judgment, the presiding criminal judge for the Judicial District of Stamford sought to call the criminal case to trial. At the time, the petitioner was representing himself. The trial court appointed both Attorneys Moynahan and Riccio as standby counsel over the objections of the petitioner and counsel. The trial court did this knowing that the petitioner had previously notified Attorney Moynahan of his intent to bring an action against him and his firm for malpractice in the handling of the matrimonial case.

18. In a manner highly unusual, and perhaps unprecedented, the presiding civil judge for the Stamford Superior Court, Mascara, J., attended one of more of the criminal pre-trials involving the petitioner.

19. The State's Attorney for the Judicial District of Stamford, David Cohen, filed an appearance on behalf of a "witness" in the civil case on the eve of the civil trial.

20. Throughout the pendency of the family, civil and criminal proceedings against the petitioner

representatives of the family, civil and criminal courts, working with counsel for the petitioner's ex-wife, exhibited an unusual degree of coordination and cooperation, evincing itself in an atmosphere saturated with disdain for the petitioner. The result was a situation in which the petitioner lacked the financial resources to defend himself in any proceeding, was deprived of the right to counsel of choice, was denied the right to a public defender in the criminal case, was appointed standby counsel over his objection, and was driven into a state of disabling despair requiring hospitalization.

21. During the period Attorney Moynahan served as standby counsel, he had direct personal knowledge of the psychiatric disability and distress under which the petitioner labored, and he took no affirmative steps to alert the trial court that the petitioner was not, in fact, competent to engage in pre-trial preparation, including the ability to take such steps as were necessary to prepare for the presentation of a defense of not guilty by reason of insanity.

22. During the period Attorney Moynahan served as standby counsel, Attorney Moynahan took few steps to communicate with the petitioner at all. Neither did Attorney Moynahan alert the trial court that there was effectively no communication with the petitioner.

23. As trial in the criminal case approached, the petitioner was again overcome with despair and distress and was unable to defend himself. The trial court appointed Attorneys Moynahan and Riccio to defend the petitioner at trial.

24. The petitioner made clear to counsel and the court that he could not endure the ordeal of trial, and made clear his intention not to attend the trial. The trial court canvassed the petitioner about the decision, and elected to proceed to trial without the petitioner present.

25. The trial court's decision to permit the petitioner not to attend his own trial in the absence of any affirmative misconduct by the petitioner was virtually unprecedented in the history of the State of Connecticut. Despite this manifest evidence that the petitioner was either unwilling or unable to assist in his own defense, the trial court did not order a competency examination, despite compelling prima facie evidence that an examination was required under Connecticut General Statutes Section 54-56d.

26. At no point from their appointment as counsel for Mr. Farren did either Attorneys Riccio or Moynahan make a motion for a competency evaluation, despite compelling prima facie evidence that an examination was required under Connecticut General Statutes Section 54-56d.

27. The criminal trial proceeded in the absence of the petitioner, and without his counsel having any effective communication with the petitioner, essentially leaving him undefended against serious felony charges.

28. As a result of the petitioner's ineffective pro se preparation of his insanity defense, the trial court precluded him, and counsel, from presenting the defense at trial. Neither trial counsel made sufficient efforts to obtain a continuance of the trial so that they could prepare

the defense, once they had been appointed to represent the petitioner.

29. During trial, neither counsel had effective or reasonable communication with the petitioner, resulting in the petitioner's being effectively without a defense at trial.

30. The petitioner was convicted on all counts on which he was brought to trial. Counsel for the petitioner were unprepared as trial began to call any witnesses on behalf of the petitioner or to engage in effective cross-examination of the petitioner's ex-wife, who was permitted to give a self-serving, exaggerated and essentially uncontested version of the events that gave rise to the prosecution of the petitioner.

32. Once the jury returned its verdict, the trial court ordered a presentence investigation, which was completed in due course. Neither counsel made any effort to review the presentence investigation with the petitioner or to communicate with him in preparation for sentencing, leaving the petitioner effectively unrepresented at a critical stage of the proceeding.

34. As a direct and proximate result of the foregoing, the petitioner's conviction was unconstitutional and he raises claims of ineffective assistance of counsel; a violation of his right to conflict-free counsel; a violation of his right to a fair trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution. He also claims a violation of his right to due process of law arising under the Fourteenth Amendment to the United States Constitution.

WHEREFORE, the petitioner requests that this Court issue a writ of habeas corpus, vacate his judgment of conviction, and remand this case to the Judicial District of Stamford for further proceedings on the criminal case.

THE PETITIONER

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APPENDIX B — RETURN, SUPERIOR COURT, JUDICIAL DISTRICT OF TOLLAND, AT GA 19, ROCKVILLE, FILED DECEMBER 14, 2020

SUPERIOR COURT
JUDICIAL DISTRICT OF TOLLAND
AT GA 19, ROCKVILLE

DOCKET NO. CV18-4009472-S

DECEMBER 14, 2020

J. MICHAEL FARREN,

Petitioner,

v.

COMMISSIONER OF CORRECTION,

Respondent.

RETURN

Now comes the respondent-warden, in accordance with Practice Book § 23-30 (a) and files this Return in response to the petitioner's Habeas Corpus Petition dated April 3, 2018.

1-2. Admitted.

3-22. Pursuant to Connecticut Practice Book § 23-29(2), petitioner fails to state a claim upon which relief can be granted.

23-25. The Petitioner cannot obtain habeas review of the claim of trial court error set forth

herein. Notwithstanding that he could have, the petitioner failed to raise this claim before the trial court or on direct appeal. Thus the claim is procedurally defaulted. Moreover, the Petitioner cannot establish "cause" for the procedural default, and "prejudice" sufficient to excuse the default and permit review of this claim for the first time in a habeas corpus proceeding.

26-33. Respondent has insufficient knowledge or information upon which to form a belief and therefore, leaves the Petitioner to his proof.

34. Denied.

Wherefore the respondent prays that the claims be denied and the petition dismissed.

Respectfully submitted,

RESPONDENT -
COMMISSIONER OF CORRECTION

BY: /s/ Michael Proto
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Juris No. 427363

APPENDIX C — MEMORANDUM OF DECISION OF THE SUPERIOR COURT OF CONNECTICUT FOR THE JUDICIAL DISTRICT OF TOLLAND, AT ROCKVILLE, DATED NOVEMBER 27, 2023

STATE OF CONNECTICUT SUPERIOR COURT
JUDICIAL DISTRICT OF TOLLAND
AT ROCKVILLE—HABEAS DIVISION

DOCKET NO: TSR-CV18-4009472

J.M.F.[1], #373413

v.

COMMISSIONER OF CORRECTION

DATE: NOVEMBER 27, 2023

MEMORANDUM OF DECISION

I. Procedural History

According to the allegations and evidence presented at trial, the petitioner was the defendant in a matter pending in the Judicial District of Stamford under docket number FST-CR10-0124813-T. During most of the time the matter

1. In following the lead of the Appellate Court policy of protecting the privacy interests of the victims of risk of injury to a child or family violence, the court declines to use the defendant's full name or identify the victims or others through whom the victims' identities may be ascertained. See General Statutes § 54-86e.

was pending before the trial court the petitioner was represented by attorneys Timothy Moynahan and Eugene Riccio, both of whom the petitioner retained privately. Following a jury trial, the petitioner was convicted of Attempt to Commit Murder, in violation of General Statutes §§ 53a-49 (a) (2) and 53a-54a (a), Assault in the First Degree, in violation of General Statutes § 53a-59 (a) (1), and Risk of Injury to a Minor, in violation of General Statutes § 53-21 (a) (1). From the evidence presented before the trial court, the jury could reasonably have found the following facts and circumstances:

> On January 6,2010, two days after having received the divorce papers, the defendant asked his wife to withdraw the dissolution action; she refused to do so, but she did agree that she would file a motion for reconciliation if the defendant would agree to go to counseling. After putting the children to bed for the evening, the defendant and his wife retired to their bedroom.
>
> In the bedroom, they began to discuss the ensuing divorce. As they did so, the defendant became enraged. He tackled his wife, knocking her to the floor, and he put his hands around her neck while slamming her head into the floor. The defendant told her: "I'm killing you." He repeatedly hit her in the face and body with his fists, pulled out her hair and put his hands around her neck. At one point, he threw her to the other side of the bedroom, where she

> landed in front of the fireplace. She "felt like [she] was dying [and] . . . was in incredible pain." The defendant then knelt on top of her and repeatedly hit her in the face and head with a metal flashlight. She lost consciousness approximately three times during the attack.
>
> After this attack, the defendant retreated to the master bathroom where he called to his wife, telling her that he was going to kill himself and that he needed her assistance to do so. She did not go into the bathroom, but, instead, believing she was dying and wanting to save her children, she accessed the security alarm in the bedroom. The defendant again became enraged and tackled her. He then told her that he was going to the kitchen to get a knife to cut his jugular vein. When the defendant went downstairs, she gathered up the children and drove them to the home of a neighbor. The neighbor called the police.
>
> When the police arrived at the defendant's home, the defendant surrendered peacefully. The police located a belt, attached to a pole in the closet, which the defendant said he used to try to hang himself.

(Page number notations omitted.) *State v. J.M.F.*, 170 Conn. App. 120, 123-25, 154 A.3d 1, cert. denied, 325 Conn. 912, 159 A.3d 230 (2017). On November 11, 2014, the trial court, *Comeford, J.*, sentenced the petitioner

to total effective sentence of fifteen-years incarceration followed by five years of special parole. The convictions were subsequently affirmed on appeal. Id.

The petitioner commenced the present action on April 3, 2018. The petition dated April 3, 2018, alleges ineffective assistance against his trial attorneys, violation of his right to conflict-free representation, a violation of his right to a fair trial, and a violation of his right to due process of law. The respondent filed a return dated December 14, 2020, which generally denied the allegations in the petition and raised the defense of procedural default as to that portion of the petitioner's claims asserting that his right to fair to fair trial or right to due process was violated by the trial proceeding in his absence and proceeding at a time when the petitioner alleges there was "compelling prima facie evidence" that his competency to assist in his own defense was in question. No Reply to the Return was ever filed by the petitioner. The matter was tried over the course of several dates beginning March 2 and June 29, 2023. The parties were then allowed to file post-trial briefs addressing the issues presented in the case. Additional procedural and factual background will be provided as necessary throughout the rest of this decision.

II. Law and Discussion

At the outset of the second day of evidence, counsel for the petitioner sought to withdraw all claims except the claim relating to attorney Moynahan's alleged conflict of interest. Given the fact that the case was in the middle of evidence and the petitioner was not present for this trial

date[2], the court refused to allow the withdrawals to enter without receiving something in writing acknowledging that the petitioner understood that withdrawals during trial would be entered with prejudice.[3] Although petitioner's counsel requested time to present a written withdrawal, no such document was ever submitted. Notwithstanding, the post-trial brief submitted by the petitioner addressed only the conflict of interest claim and failed in any way to address the claims of ineffective assistance, violation of his right to a fair trial or violation of his right to due process.

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2. In the present case, due to numerous reported health issues, the petitioner originally requested that the trial be conducted as a hybrid proceeding with the petitioner being allowed to participate via a remote audio-visual connection from the correctional facility while all other parties appeared in person. Due to unprecedented issues with the audio feed during the first day where the defendant regularly complained about being unable to hear the proceedings and where the audio of the petitioner's testimony was also regularly unable to be heard, the court ordered all remaining trial days to be conducted as in-person proceedings only. (Order #120.10, June 27, 2023). Thereafter, however, the petitioner submitted an executed written request to waive his right to appear (See, Practice Book § 23-40) at the second day of the proceedings. (Motion #122.00, Exhibit A).

3. While the plaintiff in a civil action may generally withdraw all or part of an action as a matter of right prior to the commencement of an evidentiary hearing, and usually without any direct consequence; see, *Palumbo v. Barbadimos*, 163 Conn. App. 100, 112-113, 134 A.3d 696 (2016); the right to do so without consequence does not extend where an evidentiary hearing has been conducted or where trial has commenced. *Marra v. Commissioner of Correction*, 174 Conn. App. 440, 444-45, 166 A. 3d 678 (2017) (upholding the entry of withdrawals with prejudice for certain habeas claims the petitioner sought to withdraw after trial had begun.)

Appendix C

"It is well settled that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without *substantive* discussion or citation of authorities, it is deemed to be abandoned. . . . These same principles apply to claims raised in the trial court.'" (Page notation omitted.) *Walker v. Commissioner of Correction*, 176 Conn. App. 843,856,171 A.3d 525,533-34 (2017). "[T]he idea of abandonment involves both a factual finding by the trial court and a legal determination that an issue is no longer before the court, [therefore,] we will treat this claim as one of both law and fact. . . ." (Internal quotation marks omitted.) Id. at 856. The court must consider, therefore, whether the petitioner has abandoned claims other than the one relating to conflict of interest.

The facts of the present case are similar to those in *Walker*, supra. The petitioner in *Walker* had a due process claim in his operative petition but failed to address that claim in his initial post-trial brief or in a post-trial reply brief, so the trial court deemed the issue to have been abandoned. The petitioner argued on appeal the mere failure to address the due process claim in his post-trial briefs did not constitute abandonment of that issue in the absence of some specific request by the trial judge that *all* claims be briefed. In direct response to that argument, the Appellate Court stated: "It nevertheless 'is not the responsibility of the trial judge, without some specific

request from a petitioner, to search a record, often, in a habeas case, involving hundreds of pages of transcript, in order to find some basis for relief for a petitioner.'" (Page number notation omitted.) Id. at 856-57.

In the present case, the operative petition includes claims of ineffective assistance against trial counsel for failing to adequately prepare a defense and for failing to recognize and raise mental health issues that interfered with the petitioner's ability to participate in his own defense[4], a claim that the petitioner's due process rights were violated by allowing him to waive his presence during the trial, and that attorney Moynahan labored under a conflict of interest. The petitioner presented at least some evidence in support of each of the above claims during the trial. As mentioned above, however, counsel for the petitioner attempted to withdraw all claims except the conflict of interest issue at the beginning of the second day of trial.[5] Notably, the petitioner was the sole witness

4. Giving the petitioner the benefit of the doubt, this appears to be a different claim that the one addressed on appeal regarding the trial court order prohibiting the petitioner from presenting the defense of mental disease or defect based on finding the petitioner persistently failed or refused to cooperate with the State's right to have him evaluated by their own expert. *State v. J.M.F.*, supra, 170 Conn. App. at 125-142. This claim appears fairly appears to reference an alleged change or deterioration in the petitioner's condition leading up to and during the trial.

5. As discussed briefly above, the court's refusal to accept the withdrawal was not based on a failure to recognize the petitioner's general right to abandon a claim whenever he so decided. Instead, the court needed to be sure that the petitioner was not left with the understanding that "withdrawing" his claims (i.e., removing

to testify on the first day of trial and, because of delays not the fault of any party, there was nearly a four month span between the first day of trial on March 2nd and the second day on June 29th. Therefore, the evidence would support that the petitioner was already questioning the validity of further pursuing these claims after having a lengthy period to contemplate the impact of the testimony and other evidence entered through the petitioner on the first day of trial. When considered together with the failure to address the ineffective assistance, right to fair trial or due process claims at all in his post-trial brief, the court finds the petitioner intentionally abandoned those claims. Id.

The sole remaining claim is the allegation that attorney Moynahan represented the petitioner while laboring under a conflict of interest because "the petitioner had notified attorney Moynahan of his intent to bring an action against [attorney Moynahan] and his firm for malpractice in the handling of the [petitioner's divorce] case." So, the question for this court to determine, as asserted by the petitioner, is whether a client's written threat of legal action against counsel for counsel's representation in a separate legal matter creates an actual conflict of interest that "amounts

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them from consideration prior to final judgment) in the middle of trial was going to preserve his right to resurrect the withdrawn claims at some later date. The court was merely looking to head off the possibility where those claims might be resurrected in some future petition and, since there would not have been any judgment on the merits, avoid a challenge on grounds of *res judicata*.

to a structural error of his trial" where "he need not show prejudice to have his convictions vacated."

By way of some additional background, the petitioner had also hired attorney Moynahan to represent him in a divorce proceeding his wife commenced shortly after his arrest. A judgment in the divorce case entered on June 13, 2011. The petitioner sought post-judgement relief from the trial court judgment through the services of attorney Moynahan, but that attorney missed a filing deadline, which resulted in part of his appeal being dismissed. Specifically, the petitioner filed a slew of post-judgment motions in the divorce case beginning July 6, 2011, through August 9, 2011, with the plaintiff, his former wife, filing what appear to be timely responses to each motion. *Farren v. Farren*, 142 Conn. App. 145, 148-49, 64 A.3d 352, cert. denied, 309 Conn. 903, 68 A.3d 658 (2013). Specifically, the petitioner filed a motion to reopen pursuant to Practice Book § 17-4 originally on July 6th, but that motion was not deemed received until July 7th because the original filing did not include the required fee. In her responses, the petitioner's former wife specifically moved to dismiss the motion to reopen for failing to have the memorandum of law required by Practice Book § 10-11 attached. Attorney Moynahan did subsequently file a memorandum of law in support of the motion to open and correct on July 12th. Notwithstanding, the trial court issued rulings on October 19, 2011, against the petitioner on all post-trial motions, which included granting the former wife's motion to dismiss the motion to reopen. This is important, because if the motion had not been defective and the trial court had ruled on the merits, the time for filing an appeal of

the trial court judgment would have been extended until twenty days after that ruling was issued on October 19th. See, Practice Book § 63-1 (c) (1).[6]

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6. **Practice Book § 63-1. Time to Appeal**, provides in pertinent part, as follows:

(a) General provisions

Unless a different time period is provided by statute, an appeal must be filed within twenty days of the date notice of the judgment or decision is given. The appeal period may be extended if permitted by Section 66-1(a). If circumstances give rise to a new appeal period as provided in subsection (c) of this rule, such new period may be similarly extended as long as no extension of the original appeal period was obtained.

If a motion is filed within the appeal period that might give rise to a new appeal period as provided in subsection (c) of this rule, the appeal may be filed either in the original appeal period, which continues to run, or in the new appeal period.

As used in this rule, "appeal period" includes any extension of such period obtained pursuant to Section 66-1(a).

(b) When appeal period begins

If notice of the judgment or decision is given in open court, the appeal period shall begin on that day. If notice is given only by mail or by electronic delivery, the appeal period shall begin on the day that notice was sent to counsel of record by the clerk of the trial court. The failure to give notice of judgment to a nonappearing party shall not affect the running of the appeal period.

In criminal cases where the appeal is from a judgment of conviction, the appeal period shall begin when sentence is pronounced in open court.

In civil jury cases, the appeal period shall begin when the verdict is accepted.

On November 4, 2011, the petitioner filed an appeal where he sought to challenge *both* the judgment issued on June 13, 2011, and the rulings issued October 19, 2011. Id. at 150. On February 12, 2012, the Appellate Court granted the former wife's motion to dismiss that portion of the appeal seeking to challenge the judgment issued on June 13, 2011, as untimely.[7] Id. In response to the dismissal of part of his appeal, the petitioner claims to have sent a letter to attorney Moynahan threatening to sue him for "$15 million dollars" and directing attorney Moynahan to place his malpractice insurance carrier on notice.[8]

There does not appear to be any dispute that the petitioner sent such a letter or that attorney Moynahan received it. Attorney Moynahan remembered receiving the

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(c) New appeal period

(1) How new appeal period is created

If a motion is filed within the appeal period that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion, except as provided for additur or remittitur in the next paragraph. . . ."

7. See, Practice Book § 63-1 generally requiring the appeal of any final judgment to be filed within twenty-days of notice of that judgment.

8. Although there does not appear to be any dispute between the parties that such a letter was sent, the actual letter was not submitted into evidence. Therefore, the exact date of the letter and the exact language used by the petitioner is unknown, except for agreement that he referenced the sum of "$15 million" and "malpractice carrier."

letter and testified that he turned it over to his insurance carrier. The exact date of the letter was never placed into evidence. At some point that appears to be around this same time, although the exact date was, again, not placed into evidence, all parties agree that the petitioner also sent a letter to attorney Riccio advising that he did not want attorney Riccio communicating with attorney Moynahan about the criminal. Although the petitioner claims that both Riccio and Moynahan subsequently moved to withdraw as a direct result of these issues, both counsel denied they were removed from the case because they moved to withdraw[9], but instead were removed as counsel and ordered to remain as standby after the petitioner filed an appearance in lieu of both counsel and notified the court that he wanted exercise his right to self-representation, which is supported by the trial court recore[10]and the Appellate Court decision. *State v. J.M.F.*, supra, 170 Conn. App. 142-42. Although the petitioner appears to have referenced a "hostile relationship" as part of his reasoning for seeking to proceed without

9. Although the Appellate Court decision does reference attempts to withdraw each by Moynahan and Riccio between July 30, 2012, and October 11, 2012, those motions were based on claims of financial hardship and non-payment by the petitioner and makes no mention of potential litigation between the petitioner and Moynahan.

10. Also, "The representation of the Defendant by those two attorneys continued to April the 12th, 2013; at which time a hearing was held, pursuant to which, *the Defendant, in his request to be a self-represented party*, sought the Court to appoint the Public Defender as standby counsel." (Emphasis added.) (Exhibit 1, State v. Farren, Transcript of February 20, 2014, p. 4, ln. 14-19.)

counsel, there is no evidence, at least in the Appellate Court decision, that he referenced the possibility of legal claims against counsel.

Although the court granted petitioner's request to proceed self-represented, *Judge Comeford* ordered Moynahan and Riccio to remain in as standby counsel after the petitioner's application for the appointment of standby counsel from the Office of the Public Defender was denied. There does not appear to be any dispute that this appointment was over the objection of the petitioner and both attorneys.[11] Later, on about June 12, 2014, as the criminal case was approaching the eve of trial, the petitioner began to give indication that he was not capable of proceeding to trial as a self-represented party, so *Judge Comeford* ordered attorneys Riccio and Moynahan back in as full-time counsel, again, over the petitioner's objection.

While the petitioner claims now that his objection to the reappointment of Riccio and Moynahan as counsel was based on the alleged conflict of interest created by his notice of intent to sue attorney Moynahan, he mentions no such issue when given the free opportunity to address the court about the basis for his objection on June 18, 2014.[12] In fact, he more than once mentions the cordial relationship he has with both attorneys.[13] Additionally, it does not

11. The trial court's decision on this matter is contained in Exhibit 1, Transcript of February 20, 2014.

12. Exhibit 2, Transcript of State v. Farren, June 18, 2014, p. 1-6.

13. "During the period of time that both counsels, who—*who I have a cordial relationship with*, have served as standby

appear that either the petitioner or either counsel ever mentioned the letter or any claimed conflict of interest at any time before the trial court.

The case at hand seems very similar factually to the case of *State v. Wood*, 159 Conn. App. 424,123 A.3d 111 (2015). In pertinent part, the defendant in *Wood* asserted that an alleged physical threat his defense attorney, a Public Defender, he had supposedly reported the defendant made towards her was either a lie, which exposed her to potential "professional jeopardy" or was true, meaning she was "so threatened she could not possibly represent her client in a meaningful and zealous way." Id. at 435-36. In addressing the defendant's claim that his defense lawyer had a conflict of interest, the Appellate Court stated the following:

> "Conflict between a defendant and counsel is not the same as a conflict of interest. In relevant part, [a] concurrent conflict of interest exists if . . . (2) there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer. Rules of Professional Conduct

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counsels, I have sought no advice. . . ." (Emphasis added.) (Exhibit 2, Transcript of June 18, 2014, p. 2, ln. 27—p. 3, ln. 2.)

"I think [bringing them back in as full-time counsel] it's going to have a detrimental effect on—on my going forward with trial. And, again, *I'm not questioning the cordiality that we continue to have*. But, I think it's going to be very difficult for them to serve as my legal counsel in this matter." (Emphasis added.) (Exhibit 2, p. 3, ln. 14-19.)

1.7(a). This court has said: 'To demonstrate an actual conflict of interest, the petitioner 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.' (Emphasis in original; internal quotation marks omitted.) *Rodriguez v. Commissioner of Correction*, 131 Conn. App. 336, 350, 27 A.3d 404 (2011), aff'd, 312 Conn. 345, 92 A.3d 944 (2014). A defendant's claim of a dispute or ill will between himself and counsel does not meet this standard.

The alleged incident did not create any conflict of interest. It happened outside of court proceedings, and the defendant himself chose to share it with the court. The incident had no relation to the case against the defendant, and neither defense counsel nor the state attempted to raise it during the hearing. Thus, Pells had no personal interest to protect. There was no threat she would be called to testify about the incident, and what she did or did not tell her boss was not conduct worthy of 'criminal charges or significant disciplinary actions.' *State v. Figueroa*, 143 Conn. App. 216, 225, 67 A.3d 308 (2013); cf. id., at 228, 67 A.3d 308 (defense counsel was accused of facilitating witness intimidation on defendant's behalf). If Pells had truly felt threatened she could have requested to withdraw from the case, but she

> did not. Instead she told the court that she was prepared to go forward. Pells' performance in the hearing showed no evidence of competing interests between her and the defendant. She informed the court that her client wanted to testify, she cross-examined the state's witness, she raised an affirmative defense to the defendant's unauthorized change in residence, and she questioned whether the positive drug test could have been a result of drug abuse that occurred before probation began. On its face, the defendant's revelations of the alleged threat and lie did not raise the possibility of a conflict of interest."

(Page number notation omitted; internal quotation marks omitted.) Id. at 435-37.

Factually, *Woods* is very similar to the petitioner's claim that attorney Moynahan was operating under the threat the petitioner had made to bring a civil action against his malpractice carrier because of issues with attorney Moynahan's alleged failure to properly litigate postjudgment matters in the divorce case. Although the issue likely resulted in "conflict" between the petitioner and attorney Moynahan, it did not, in and of itself, create a conflict of interest. Id. Further, like *Woods*, there is no evidence that the alleged dispute was significant enough that either party bothered to mention it before the court, not even when the petitioner was objecting to attorney Moynahan's reappointment as full-time counsel in June 2014. Other than a rather convoluted theory set forth in the

post-trial brief that the threat of the civil lawsuit caused attorney Moynahan to labor under a desire to ensure that the petitioner suffered a lengthy period of incarceration in the criminal case and "impermissibly used Mr. Farren's criminal trial to resolve his own legal issues. . . . Moynahan knew that Mr. Farren could not afford to bring a claim against him if Mr. Farren was in prison and unable to work." In other words, the petitioner alleges that attorney Moynahan "tanked" his criminal defense in order to ensure that the petitioner remained in prison, which, in theory, would personally benefit attorney Moynahan because it would supposedly prohibit the petitioner from bringing a legal malpractice action against him.

The overwhelming problem with the petitioner's claim is that is all rests upon nothing more than theory. The petitioner has failed to present any actual evidence of a single instance during the criminal prosecution where attorney Moynahan, or attorney Riccio, failed to do anything—failed to call a viable witness, failed to challenge certain evidence, failed to investigate possible defenses, or failed to present available evidence for the defense. In fact, as aptly pointed out by the respondent, the petitioner relied on a claim that his threatened legal action against attorney Moynahan resulted in a "structural error" because the alleged conflict of interest was so central to attorney Moynahan's duty of loyalty that he did not need to prove any prejudice, so the petitioner offered none. The fact that there was no actual conflict; see, *State v. Wood*, supra, 159 Conn. App. 424, 123 A.3d 111; and petitioner's failure to offer any evidence of counsel's alleged deficient performance or the prejudice

he allegedly suffered as a result are fatal to petitioner's claims. "In its analysis, a reviewing court may look to the performance [1st] prong or to the prejudice [2nd] prong, and the petitioner's failure to prove either is fatal to a habeas petition." (Internal quotation marks omitted.) *Hall v. Commissioner of Correction*, 124 Conn. App. 778, 783, 6 A.3d 827 (2010), cert. denied, 299 Conn. 928, 12 A.3d 571 (2011).

III. Conclusion

Based on the foregoing, the petition for writ of habeas corpus is **DENIED**.

/s/ John M. Newson, juris #431663
Hon. John M. Newson
Judge of the Superior Court

Copies sent to:

Petitioner w/pet cert/illegible
Attorney Norm Paths w/pet cert/illegible
Attorney Michael Proto
Attorney Angela Macchiarulo
Reporter of Judicial Decisions
Judge Newson
by: Kathryn Stackpole, First Asst. Clerk
11/27/2023

APPENDIX D — CERTIFICATION TO APPEAL OF THE STATE OF CONNECTICUT SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF TOLLAND, AT ROCKVILLE, DATED NOVEMBER 27, 2023

[STATE OF CONNECTICUT SUPERIOR COURT]

PART II — PETITION FOR CERTIFICATION (HABEAS CORPUS)

JUDICIAL DISTRICT OF TOLLAND AT ROCKVILLE — HABEAS DIVISION

DOCKET NUMBER
TSR-CV18-4009472

J.M.F., #373413,

Petitioner,

v.

COMMISSIONER OF CORRECTION,

Respondent.

DATE: November 27, 2023

Judge John M. Newson, who tried case or, if the judge is not available, to the judge of the Superior Court designated by the Chief Court Administrator to certify this matter.

Appendix D

I request a certification that a question is involved in the decision on my habeas corpus petition which ought to be reviewed by the Connecticut Appellate Court. **A statement of grounds (the question(s) involved) for your request must written on this page, and any additional pages must be firmly attached to your petition. If you have completed an *Application for Waiver of Fees, Costs and Expenses and Appointment of Counsel On Appeal*, form JD-CR-73, you should attach a copy of that application to this petition.** The grounds for my request for certification are:

whether the trial court erred when it concluded that the petitioner was not deprived his right to effective assistance of counsel when he was represented at trial, over his objection, by a lawyer he had threatened to sue for malpractice in a related matter.

NOTICE:
This petition must be filed within 10 days from the date of decision and sent to the clerk of the Superior Court for the Judicial District named above.

Signed /s/ [Illegible] Counsel for Petitioner
[Illegible] *(Petitioner)*

APPENDIX E — OPINION OF THE CONNECTICUT APPELLATE COURT, FILED FEBRUARY 25, 2025

[CONNECTICUT APPELLATE COURT]

(AC47218)

J.M.F.

v.

COMMISSIONER OF CORRECTION

Argued: February 18, 2025
Officially released: February 25, 2025

Alvord, Cradle and Westbrook, Js.

The "officially released" date that appears near the beginning of an opinion is the date the opinion will be published in the Connecticut Law Journal or the date it is released as a slip opinion. The operative date for the beginning of all time periods for the filing of postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the version appearing in the Connecticut

Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

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

Per Curiam. The appeal is dismissed.

APPENDIX F — ORDER OF THE SUPREME COURT FOR THE STATE OF CONNECTICUT, FILED APRIL 24, 2025

SUPREME COURT
STATE OF CONNECTICUT

PSC-240306

J. M. F.

v.

COMMISSIONER OF CORRECTION

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

The petitioner J. M. F.'s petition for certification to appeal from the Appellate Court, 230 Conn. App. 903 (AC 47218), is denied.

Christopher DeMatteo, in support of the petition.
Nicholas L. Scarlett, deputy assistant state's attorney, in opposition.

Decided April 24, 2025

By the Court,

/s/
Peter Keane
Assistant Clerk – Appellate

Appendix F

Notice Sent: April 24, 2025
Petition Filed: March 14, 2025
Hon. John M. Newson
Clerk, Superior Court, TSR-CV18-4009472-S
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record