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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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STATE OF CONNECTICUT *v.* SANTOS MIRANDA
(SC 17088)

Sullivan, C. J., and Borden, Norcott, Katz, Palmer, Vertefeuille and Zarella, Js.

Argued March 24, 2004—officially released August 2, 2005

Daniel J. Krisch, with whom were *Michael S. Taylor* and, on the brief, *Kenneth J. Bartschi* and *Julia K. Ulrich*, legal intern, for the appellant (defendant).

Nancy L. Chupak, assistant state's attorney, with whom, on the brief, was *Michael Dearington*, state's attorney, for the appellee (state).

Opinion

PER CURIAM. This case is before us for a third time. See *State* v. *Miranda*, 260 Conn. 93, 794 A.2d 506, cert. denied, 537 U.S. 902, 123 S. Ct. 224, 154 L. Ed. 2d 175 (2002) (*Miranda II*); *State* v. *Miranda*, 245 Conn. 209, 715 A.2d 680 (1998) (*Miranda I*).[1] The defendant, Santos Miranda, appeals from the trial court's judgment, rendered after remand from the Appellate Court, resentencing him to a total of thirty years imprisonment for his conviction of assault in the first degree in violation of General Statutes § 53a-59 (a) (3)[2] and risk of injury to a child in violation of General Statutes (Rev. to 1991) § 53-21. On appeal to this court, the defendant claims that: (1) the judge trial referee who presided over his resentencing hearing lacked the statutory authority to do so; and (2) the judge trial referee abused his discretion by sentencing the defendant to thirty years imprisonment in light of the more lenient sentence imposed on his girlfriend, the victim's mother, in her separate criminal trial. In addition, in a supplemental brief requested by this court, the defendant contends that we should reconsider and reverse our conclusion in *Miranda I* that the defendant could be convicted of assault in the first degree in violation of § 53a-59 (a) (3) for failing to protect the victim from physical abuse by her mother.

We reject the defendant's claim that the judge trial referee who resentenced him lacked the statutory

authority to do so. We agree with the defendant, however, that we should reconsider and reverse our conclusion in *Miranda I*. We therefore reverse the defendant's conviction of two counts of assault in the first degree in violation of § 53a-59 (a) (3) and remand the case to the trial court, first, to dismiss the charges in those counts of the information and, second, for resentencing on the only remaining count on which the defendant stands convicted, risk of injury to a child, in accordance with *Miranda II*.[3]

The familiar facts and procedural history of this case are set forth in our decision in *Miranda II*, supra, 260 Conn. 93, and will not be repeated here. After our decision in *Miranda II*, the case was remanded to the trial court for resentencing. By this time, Judge Fracasse, who had presided over the defendant's initial trial nine years earlier, had reached the mandatory retirement age of seventy prescribed by article fifth, § 6, of the Connecticut constitution, as amended by article twenty-seven, § 2, of the amendments, and had been appointed a judge trial referee. The defendant refused to consent, pursuant to General Statutes § 52-434 (a) (1),[4] to a judge trial referee presiding over his resentencing and filed a motion requesting that the case be transferred to a judge of the Superior Court. Specifically, the defendant argued that, although General Statutes § 51-183g permits a judge trial referee to preside over certain ''unfinished matters pertaining to causes theretofore tried before him,'' this provision does not permit a judge trial referee to resentence a defendant without the consent of both parties as required by § 52-434 (a) (1). Judge Fracasse denied the defendant's motion, stating that ''the statute's clear that this court does have the authority to proceed with the remand from the Supreme Court because it deals with a matter of unfinished matters pertaining to causes theretofore tried by me and this includes the remand for resentencing . . . .'' Thereafter, on January 17, 2003, the trial court, after hearing arguments from both parties, rendered judgment sentencing the defendant to ten years imprisonment on one count of assault in the first degree, ten years imprisonment on the second count of assault, and ten years imprisonment on the one count of risk of injury to a child, each to be served consecutively, for a total effective sentence of thirty years imprisonment. The defendant then appealed to the Appellate Court from the trial court's judgment resentencing him and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. After hearing oral argument on the issues initially raised in this appeal, we ordered the parties to file supplemental briefs addressing two issues that we previously had resolved in *Miranda I*. Specifically, we ordered the parties to brief the following: ''Should this court reconsider its conclusion in [*Miranda I*, supra, 245 Conn. 209], that the defendant could be convicted of assault in the first

degree in violation of . . . § 53a-59 (a) (3)? More particularly, should we reexamine our conclusions that: (1) the failure to protect a child from abuse could constitute a violation of § 53a-59 (a) (3) for recklessly engaging in conduct that caused serious physical injury; and (2) the defendant, who was not a parent of the child victim, nevertheless had a legal duty under the circumstances of that case, to protect the victim from abuse by her parent?'' The parties thereafter filed supplemental briefs as ordered.

I

The defendant's first claim on appeal is that Judge Fracasse, a judge trial referee, lacked the statutory authority to preside over the defendant's resentencing hearing. Specifically, the defendant claims that § 52-434 (a) (1) allows a judge trial referee to preside over criminal proceedings only with the consent of both parties. Because the defendant expressly refused to consent to a judge trial referee, he claims that the trial court's reliance on § 51-183g, which permits a judge trial referee to settle and dispose of ''all matters relating to appeal cases'' and ''unfinished matters'' from his tenure as a Superior Court judge, was improper. The state maintains that the trial court properly concluded that § 51-183g permits a judge trial referee to resentence a defendant when he had presided over the defendant's trial as a Superior Court judge. We agree with the state. The six justices of this court who agree with this conclusion, however, do not arrive at that conclusion using the same analysis. The reasoning of these justices is set forth in the two concurring opinions issued herewith.

II

After consideration of the supplemental briefs filed by the parties at our direction, we have decided to reconsider and reverse our conclusion in *Miranda I* that the defendant could be convicted of assault in the first degree in violation of § 53a-59 (a) (3) for failing to protect the victim from physical abuse by her mother. *Miranda I*, supra, 245 Conn. 230. We conclude that the principle of stare decisis does not bar us from reconsidering our prior interpretation of § 53a-59 (a) (3), because although that principle plays an important role in our system of jurisprudence, there are occasions when the goals of stare decisis are outweighed by the need to overturn a previous decision in the interest of reaching a just conclusion in a matter. We conclude that this is such an occasion.

''This court has repeatedly acknowledged the significance of stare decisis to our system of jurisprudence because it gives stability and continuity to our case law.'' *Conway* v. *Wilton*, 238 Conn. 653, 658, 680 A.2d 242 (1996). The doctrine of stare decisis ''is justified because it allows for predictability in the ordering of conduct, it promotes the necessary perception that the

law is relatively unchanging, it saves resources and it promotes judicial efficiency.'' Id., 658–59. Despite this adherence to past precedent, this court also has concluded that, ''[t]he value of adhering to precedent is not an end in and of itself, however, if the precedent reflects substantive injustice. Consistency must also serve a justice related end.'' Id., 659. When a previous decision clearly creates injustice, ''the court should seriously consider whether the goals of stare decisis are outweighed, rather than dictated, by the prudential and pragmatic considerations that inform the doctrine to enforce a clearly erroneous decision. . . . The court must weigh [the] benefits of [stare decisis] against its burdens in deciding whether to overturn a precedent it thinks is unjust.'' (Citation omitted; internal quotation marks omitted.) Id., 659–60. ''It is more important that the court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations.'' *Barden* v. *Northern Pacific R. Co.*, 154 U.S. 288, 322, 14 S. Ct. 1030, 38 L.Ed. 934 (1894). ''[T]here is a well recognized exception to stare decisis under which a court will examine and overrule a prior decision that is clearly wrong.'' *White* v. *Burns*, 213 Conn. 307, 335, 567 A.2d 1195 (1990). ''In short, consistency must not be the only reason for deciding a case in a particular way, if to do so would be unjust. Consistency obtains its value best when it promotes a just decision.'' *Conway* v. *Wilton*, supra, 662.

After careful reconsideration, we have become persuaded that our conclusion in *Miranda I*, supra, 245 Conn. 230, that the defendant could be convicted of assault in the first degree in violation of § 53a-59 (a) (3) was clearly wrong and should be overruled. The six justices of this court who agree with this conclusion and join in this opinion do not, however, arrive at that conclusion by employing the same analysis. As a result, the reasoning of these six justices is set forth in the two concurring opinions issued herewith.

The judgment is reversed in part and the case is remanded with direction to dismiss the two counts of the information for assault in the first degree and for resentencing on the one count of risk of injury to a child.[5]

[1] We issued a brief per curiam opinion in the present case as a slip opinion on December 22, 2004, reversing our conclusion in *Miranda I* that the defendant could be convicted of assault in the first degree in violation of § 53a-59 (a) (3) and, accordingly, remanding the case to the trial court with instruction to dismiss the two assault counts in the information. *State* v. *Miranda*, 272 Conn. 430, 431, 864 A.2d 1 (2004) (en banc per curiam with one justice dissenting). We further ordered that the defendant be released on a written promise to appear as an appeal bond on the only remaining count of the information for risk of injury to a child; id., 432; and stated that a full opinion would follow in due course. We now issue this more substantive opinion together with the concurring and dissenting opinions issued simultaneously herewith.

[2] General Statutes § 53a-59 provides in relevant part: ''(a) A person is guilty of assault in the first degree when . . . (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 . . . .''

We recognize that § 53a-59 has been amended several times since the time of the defendant's offenses, however, subsection (a) (3) has remained unchanged. References herein are to the current revision of the statute.

[3] In his initial brief filed in connection with this appeal, the defendant claimed that the trial court abused its discretion in resentencing the defendant by failing to consider adequately the sentence received by the victim's mother. Specifically, the defendant claims that the court abused its discretion by resentencing him to thirty years incarceration, while the victim's mother, who purportedly was the person who actually abused the victim, received a more lenient sentence. Subsequent to the defendant's initial sentencing, the victim's mother pleaded nolo contendre to charges of intentional assault in the first degree and risk of injury to a child. *Miranda II*, supra, 260 Conn. 99 n.4, citing *Miranda I*, supra, 245 Conn. 211–12 n.4. She received a sentence of twelve years incarceration suspended after seven years. In light of our conclusion that the defendant's conviction for assault in the first degree in violation of § 53a-59 (a) (3) must be reversed and the charges dismissed, the defendant's sentence for the one remaining count of risk of injury to a child under § 53-21 cannot exceed ten years imprisonment, the maximum penalty. Thus, the defendant's sentence, which, we note, he already has served in full, will be shorter than the twelve year sentence imposed on the victim's mother, and we need not address this claim.

[4] General Statutes § 52-434 (a) (1) provides in relevant part: ''The Superior Court may, with the consent of the parties or their attorneys, refer any criminal case to a judge trial referee who shall have and exercise the powers of the Superior Court in respect to trial, judgment, sentencing and appeal in the case, except that the Superior Court may, without the consent of the parties or their attorneys, (A) refer any criminal case, other than a criminal jury trial, to a judge trial referee assigned to a geographical area criminal court session, and (B) refer any criminal case, other than a class A or B felony or capital felony, to a judge trial referee to preside over the jury selection process and any voir dire examination conducted in such case, unless good cause is shown not to refer.''

[5] In *Miranda II*, supra, 260 Conn. 129, we endorsed the Appellate Court's adoption of the ''aggregate package'' theory of sentencing. See *State* v. *Raucci*, 21 Conn. App. 557, 563, 575 A.2d 234, cert. denied, 215 Conn. 817, 576 A.2d 546 (1990). Pursuant to that theory, we must vacate a sentence in its entirety when we invalidate any part of the total sentence. On remand, the resentencing court may reconstruct the sentencing package or, alternatively, leave the sentence for the remaining valid conviction or convictions intact. *Miranda II*, supra, 129. Thus, we must remand this case for resentencing on the sole count on which the defendant stands convicted.