

\*\*\*\*\*

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.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

\*\*\*\*\*

ZARELLA, J., dissenting. Like the majority, I agree that the facts of the present case are largely analogous to those of *Gonzalez v. Commissioner of Correction*, 308 Conn. 463, A.3d (2013), which this court also decides today. Thus, for the reasons set forth in my dissenting opinion in *Gonzalez*, I respectfully dissent in the present case. *Id.*, 495 (*Zarella, J.*, dissenting).

Specifically, as I explained more fully in *Gonzalez*, I am not persuaded that an attorney's failure to request that an accused's bond be increased becomes, by association, a critical stage of the prosecution simply because such a request *conceivably* could have been raised during a proceeding that was itself a critical stage. *Id.*, 497 (*Zarella, J.*, dissenting). To an even greater extent than in *Gonzalez*, I am troubled by the manner in which the majority frames the relevant proceeding for purposes of its critical stage analysis and its conclusion that the petitioner in the present case, Jourdan E. Huertas, "was entitled to the effective assistance of counsel at [his] plea hearing and sentencing." As I explained in *Gonzalez*, I would focus on whether a bond hearing, rather than an arraignment or other proceeding, such as one involving the entry of a plea or sentencing, is a critical stage. The majority, however, declines to consider whether a bond hearing itself is a critical stage, instead preferring to link it to other proceedings, such as the plea hearing in the present case, even though bond hearings often occur independently of arraignments or plea hearings. In my view, the present case highlights the problem with the majority's approach to an even greater degree than *Gonzalez* because the proceeding at which the purportedly deficient representation occurred involved the entry of a guilty plea. It is difficult to imagine how the failure to address bond at such a proceeding would "derogate from the accused's right to a fair trial."<sup>1</sup> *United States v. Wade*, 388 U.S. 218, 226, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967). Thus, because I am not persuaded that a bond hearing is a critical stage; see *Gonzalez v. Commissioner of Correction*, *supra*, 308 Conn. 496 (*Zarella, J.*, dissenting); I would likewise "hold that the petitioner was not denied his constitutional right to the effective assistance of counsel at the time of the purported violation and would reverse the judgment of the [habeas] [c]ourt." *Id.*

In addition, as this court previously has explained, presentence confinement credit is a legislative grace, not a constitutional right. E.g., *Hammond v. Commissioner of Correction*, 259 Conn. 855, 878, 792 A.2d 774 (2002). Because our case law places bond matters within the trial court's sound discretion, as informed by our rules of practice, I cannot agree with the implicit

premise that an accused is entitled to an increase in bond upon request. See *Gonzalez v. Commissioner of Correction*, supra, 308 Conn. 498 (*Zarella, J.*, dissenting). See generally Practice Book § 38-4. Accordingly, because I would not conclude that the petitioner was deprived of his right to counsel at a critical stage of the prosecution, I would reverse the judgment of the habeas court.

<sup>1</sup> Citing his concurring opinion in *Gonzalez*, the concurring justice explains that he concurs in the present case for the same reasons. These reasons notably include improving the ease with which the petitioner may assist counsel in preparing for trial. See *Gonzalez v. Commissioner of Correction*, supra, 308 Conn. 495 (*Palmer, J.*, concurring). In the present case, however, the purportedly deficient representation occurred at a hearing involving the entry of a guilty plea, after which point the concerns about trial preparation are no longer relevant.

---