****

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.

****

LANDAU, J., concurring. I agree with the majority's result, but I write separately to disagree respectfully with some portions of the majority's analysis of the issues presented. I am motivated to concur, in part, by my strong belief that we need write only what is necessary to resolve the claims presented by the parties; to do otherwise often provides the gateway to a higher appeal or an inconsistent body of case law. It seems to me that one must separate that which is important from that which is merely interesting. ''More than [60] years ago, in his *Treatise on Evidence,* Dean John H. Wigmore made this point very clear as he reacted to the many thousands of judicial opinions he had studied in the course of preparing his treatise. Some of the criticisms he set down then, unfortunately are still appropriate today: 'Overconsideration of every point of law raised on the briefs . . . shows faithfulness and industry, for which we should be and are grateful. But it tends to remove the decision from the really vital issues in each case and to transform the opinion into a list of rulings on academic legal assertions. The opinion is as related to the meat of the case as a library catalogue is to the contents of the books. This is far from exercising the true and high function of an appellate court.' '' R. Aldisert, Opinion Writing (1990) pp. 86–87, quoting 1 J. Wigmore, Evidence on Trials at Common Law (1983) § 8a, p. 617.

I am also mindful of the long-standing prohibition against advisory opinions. See *Reply of the Judges*, 33 Conn. 586 (1867). Furthermore, it almost goes without saying, that just as we expect litigants to be precise, the court too must write its opinions succinctly and clearly.

In this case, the defendant claims that the trial court abused its discretion by denying her motion to withdraw the pleas of nolo contendere. In that motion, dated January 26, 1999, the defendant claims that her pleas were made involuntarily and unknowingly because the trial court's plea canvass of her was defective, and she received ineffective assistance of counsel. The defendant was subsequently permitted to amend her motion to include a claim that the court accepting her plea failed to comply with the requirements of General Statutes § 54-lj. The court denied the defendant's motion on all grounds.

I

I turn first to the provisions of our rules of practice governing the withdrawal of a nolo contendere plea. There are several Practice Book sections that concern the withdrawal of a plea. One section deals with the procedural aspects of withdrawing a plea; Practice Book § 39-26; and another deals with the substantive grounds that may form the basis for granting a motion to withdraw a plea. Practice Book § 39-27.[1]

After accepting a plea of nolo contendere, ''the judicial authority shall allow the defendant to withdraw . . . her plea upon proof of one of the grounds in Section 39-27. . . .'' Practice Book § 39-26. The defendant here filed her motion to withdraw pursuant to Practice Book § 39-27, asserting that she should be permitted to withdraw her nolo contendere pleas on the grounds that ''[t]he plea was accepted without substantial compliance with Section 39-19'' and that ''[t]he plea resulted from the denial of effective assistance of counsel.'' Practice Book § 39-27 (1) and (4), respectively. The defendant also claimed that her motion to withdraw was grounded in § 39-27 (2) (''[t]he plea was involuntary'') because the court did not comply with General Statutes § 54-lj, a statutory basis.

II

I next turn to the majority's discussion of the standard of review to be applied to the trial court's ruling on a motion to withdraw a nolo contendere plea. At footnote 7, the majority states that ''[g]uilty pleas and pleas of nolo contendere are treated by this court, for purposes of review, in much the same manner.'' I am constrained to differ. My disagreement goes to the breadth of the statement. This court does not review all appeals related to guilty pleas and pleas of nolo contendere in the same manner. The standard of review and the applicable law depend upon the reason for the review. In this instance, we are reviewing the court's denial of a defendant's motion to withdraw her nolo contendere pleas. A defendant who enters nolo contendere pleas may move to withdraw her pleas on the basis of one of the grounds set forth in Practice Book § 39-27. See *State* v. *Casado*, 42 Conn. App. 371, 375, 680 A.2d 981, cert. denied, 239 Conn. 920, 682 A.2d 1006 (1996). I agree that we review a denial of a motion to withdraw a nolo contendere plea by an abuse of discretion standard; see *State* v. *Gundel*, 56 Conn. App. 805, 812, 746 A.2d 204, cert. denied, 253 Conn. 906, 753 A.2d 941 (2000); and that is also the standard by which we review motions to withdraw guilty pleas founded on Practice

Book § 39-27; see *State* v. *Andrews*, 253 Conn. 497, 505–506, 752 A.2d 49 (2000). It is the same manner of review therefore and not "in much the same manner," as phrased by the majority.

What is most perplexing to me with respect to footnote 7 is why it is part of the opinion, as it is not necessary to our resolution of the issue. In this opinion, we are concerned only with a nolo contendere plea, not a guilty plea. This appeal presents us with nothing out of the ordinary to require that we provide jurisprudential comments or a history of the development of the law.

Furthermore, the statement is inaccurate to the extent that this court does not review all nolo contendere pleas and guilty pleas filed pursuant to Practice Book §§ 39-26 and 39-27 by an abuse of discretion standard. For example, where the appellant has not preserved the issue at the hearing or trial, *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), applies. See *State* v. *Silva*, 65 Conn. App. 234, 239–40, 783 A.2d 7, cert. denied, 258 Conn. 929, 783 A.2d 1031 (2001). Different standards of review and law apply to our reviews of guilty pleas and nolo contendere pleas that do not arise out of motions to withdraw. For example, motions for review of nolo contendere pleas filed pursuant to Practice Book § 61-6 (a) (2) (i)[2] are reviewed by clearly erroneous and plenary standards. See *State* v. *Duncan*, 67 Conn. App. 29, 34, 786 A.2d 537 (2001). In habeas corpus appeals concerning ineffective assistance of counsel claims, we apply the standard enunciated in *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

For these reasons, I take issue with footnote 7.

III

When addressing the defendant's claim that the trial court failed to comply substantially with the requirements of Practice Book § 39-19, the majority analyzes the trial court's conclusion that the defendant understood the maximum sentence that could be imposed on her as a result of her nolo contendere pleas. The majority correctly notes that the trial court is permitted to rely upon the defendant's responses given during the plea canvass. *State* v. *Johnson*, 253 Conn. 1, 40, 751 A.2d 298 (2000). The majority observes that the court here concluded that the defendant's responses were especially reliable and, in footnote 14, cites the trial court's findings of fact and legal conclusion. While I would affirm the trial court's finding that the defendant

understood the proceedings at her plea canvass, which is supported by appropriate adjudicative factual findings, I believe that some of the court's findings are irrelevant as to whether a Latin American is able to understand the legal proceedings in a Connecticut courtroom, where English is the spoken language.

"Adjudicative facts are those selected from the gross facts found by the fact-finder from the congeries of record evidence. Such facts are deemed necessary, relevant and material to the particular issues(s) presented for decision. There is an important reason why the facts set forth in an opinion should be selected with care. This reason goes to the heart of *stare decisis*: Like cases should be treated alike. And because our tradition is fact-specific, it is critical that the concept of 'like cases' should refer to cases that contain like material or relevant facts.

"The decision that emanates from the opinion, the case law, is used to inform, guide and govern future private and public transactions. This future use of the decision is a necessary product if we accept Holmes's definition, as I think we should, that law is nothing more pretentious than a prediction of what the courts will do in fact. To put it another way, a quality opinion will predict how similar factual scenarios will be treated." (Emphasis added.) R. Aldisert, supra, pp. 10–11.[3]

In affirming the trial court's decision, the majority compounds the scope of the irrelevant findings by incorporating them in a footnote to support its conclusion that the judgment should be affirmed. The only relevant facts found by the trial court necessary to its finding that the defendant understood the proceedings and the maximum sentence that could result from her plea were that she was in command of her faculties, intelligent, informed, confident, not hesitant, socially adept, appreciative of her surroundings and fully cognizant of what was transpiring at the time. In addition, the court also found that language did not present a barrier to her ability to understand the proceedings. The status of her family and her success and profession in Paraguay are not relevant or material to the issue of whether she understood the maximum sentence she could receive. I would not include those findings in this court's opinion.

IV

When reviewing a trial court's findings of fact, we apply the clearly erroneous standard to the court's findings. *Prial* v. *Prial*, 67 Conn. App. 7, 10, 787 A.2d 50

(2001). This court "may reverse or modify the decision of the trial court if it determines that the factual findings are clearly erroneous in view of the evidence and pleadings in the whole record . . . ." Practice Book § 60-5. In addressing the defendant's claim that she should be permitted to withdraw her nolo contendere pleas due to ineffective assistance of counsel, the majority concludes that the court's findings are not clearly erroneous. I agree.

In analyzing the claim, however, the majority does not limit itself to the facts found by the trial court. The majority summarizes the testimony of witnesses. Our Supreme Court has disapproved of this practice. "[T]he statement of what a witness testified to is not, in that form, even a statement of an evidential fact. . . . The arbitration award simply recounted the plaintiff's testimony, as evidenced by its use of such phrases as 'the Claimant's testimony was.' Such recitations of testimony are not findings." (Citation omitted, internal quotation marks omitted.) *Almeida* v. *Liberty Mutual Ins. Co.*, 234 Conn. 817, 825, 663 A.2d 382 (1995). An opinion should include only the trial court's findings of fact.

For these reasons, I respectfully concur in the majority's opinion.

[1] Practice Book § 39-28 concerns the effect of withdrawing a plea.

[2] Practice Book § 61-6, in concert with General Statutes § 54-94a, permits a defendant to enter a plea of nolo contendere to reserve the right to appeal from the trial court's denial of a motion to suppress evidence.

[3] See O. Holmes, "The Path of the Law," 10 Harv. L. Rev. 457, 460-61 (1890).