FLYNN, C. J., concurring. I agree with the majority that the defendant, Stephen J. Williams, cannot prevail on his claim that he was entitled to a dismissal pursuant to General Statutes § 54-56b. I reach that conclusion, however, on grounds different from those relied on by the majority. The record is clear that the defendant made a plea agreement to accept a nolle on the remaining charges, and he did not object to the nolle "at the time it [was] offered" as is required under Practice Book § 39-30.[1] He demanded neither a dismissal nor an immediate trial. Rather, he accepted the plea agreement on the record and specifically acknowledged that these were the terms of the plea agreement. He, therefore, has waived any right to a dismissal of the charges under § 54-56b.

I write separately because our Supreme Court determined in *Cislo* v. *Shelton*, 240 Conn. 590, 598, 692 A.2d 1255 (1997), only that a nolle was the equivalent of a dismissal for purposes of triggering provisions of an indemnity statute, General Statutes § 53-39a, requiring that police officers be reimbursed for their attorney's fees in certain circumstances where criminal charges against them are dismissed or the officers are found not guilty. The case did not involve a defendant's constitutional right against double jeopardy or his right under § 54-56b to demand a trial or a dismissal, and, therefore, I would not rely on *Cislo* as persuasive precedent for the present case.

Our Supreme Court made it plain in *State* v. *Herring*, 209 Conn. 52, 57–58, 547 A.2d 6 (1988), that "[e]ven if the statute of limitations as to . . . misdemeanors were to expire and the erasure statute become operative to deprive the state of access to records concerning [those] charges so as to render reinitiation of prosecution difficult or improbable, reinitiation of prosecution is not impossible." The court went on to explain that "[t]he statute of limitations is an affirmative defense, not a jurisdictional bar to prosecution . . . and the erasure statute does not foreclose the utilization of the personal and independent observation of witnesses to initiate a new prosecution." (Citation omitted.) Id., 58.

The court reasoned that "the effect of the entry of the nolles was only to terminate this particular prosecution without an acquittal and without placing the defendant in jeopardy, [and, therefore] he remains vulnerable to reinstatement of a prosecution against him." Id., 57. The court did not hold the issue moot, even where the statute of limitations had run on the underlying misdemeanor charges and the erasure statute had become effective. Accordingly, I do not agree with the majority that a nolle and a dismissal carry "the same

legal and practical effect."

[1] Practice Book § 39-30 provides: "Where a prosecution is initiated by complaint or information, the defendant may object to the entering of a nolle prosequi *at the time it is offered* by the prosecuting authority and may demand either a trial or a dismissal, except when a nolle prosequi is entered upon a representation to the judicial authority by the prosecuting authority that a material witness has died, disappeared or become disabled or that material evidence has disappeared or has been destroyed and that a further investigation is therefore necessary." (Emphasis added.)