STATE OF CONNECTICUT *v.* CARMELO T.[1]
(AC 28238)

Flynn, C. J., and DiPentima and Pellegrino, Js.

Argued April 16—officially released September 30, 2008

(Appeal from Superior Court, judicial district of New Haven, Damiani, J.)

Michael Zariphes, special public defender, for the appellant (defendant).

Raheem L. Mullins, deputy assistant state's attorney, with whom, on the brief, were *Michael Dearington*, state's attorney, and *Maxine V. Wilensky*, senior assistant state's attorney, for the appellee (state).

Opinion

PELLEGRINO, J. The defendant, Carmelo T., appeals from the trial court's judgments of conviction, which were rendered following the denial of his motion, filed pursuant to Practice Book § 39-27, to withdraw his guilty pleas to two counts of risk of injury to a child in violation of General Statutes § 53-21 (a) (2)[2] and two counts of sexual assault in the third degree in violation of General Statutes § 53a-72a (a) (1) (A). On appeal, the defendant claims that the court abused its discretion in denying his motion because his pleas were made unknowingly and involuntarily. In support of that claim, the defendant asserts that (1) he did not understand the nature of the charges to which the pleas were offered, (2) the court's plea canvass failed to comply substantially with Practice Book §§ 39-19 and 39-20, and (3) his plea counsel provided ineffective assistance. We disagree and, accordingly, affirm the judgments of the trial court.

The following facts and procedural history are relevant to our disposition of the defendant's appeal. The defendant initially was charged in two separate matters, both involving claims of sexual misconduct with two different minor children on various dates between April, 1998, and 2002. In both cases, the defendant was charged with (1) sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2), (2) sexual assault in the third degree in violation of § 53a-72a (a) (1) (A), (3) risk of injury to a child in violation of § 53-21 (a) (1), (4) risk of injury to a child in violation of § 53-21 (a) (2) and (5) unlawful restraint in violation of General Statutes § 53a-95 (a). The cases subsequently were consolidated.

In March, 2006, the state offered the defendant a plea agreement that called for him to plead guilty to two counts each of risk of injury to a child and third degree sexual assault and to receive fifteen years incarceration, suspended after seven years, and fifteen years of probation. The defendant accepted the plea agreement, conditioned on his being able to plead under the *Alford* doctrine,[3] which was agreeable with the state. On March 27, 2006, the court canvassed the defendant regarding his *Alford* pleas and accepted the pleas after concluding that he was submitting his pleas knowingly, intelligently and voluntarily.

On May 26, 2006, prior to sentencing, the defendant made an oral motion to withdraw his guilty pleas on the grounds that the court had conducted an inadequate canvass and that he had received ineffective assistance of counsel. The defendant also made an oral motion to dismiss his plea counsel, Miguel Rodriguez. The court granted the defendant's motion to dismiss Rodriguez, appointed new counsel to represent the defendant and continued the matter with respect to the withdrawal of

his guilty pleas. The defendant thereafter on August 11, 2006, filed a written motion to withdraw his guilty pleas, alleging that he was entitled to withdraw his pleas pursuant to Practice Book §§ 39-27 (1), (2) and (4).[4] Specifically, he alleged that the plea canvass did not substantially comply with Practice Book §§ 39-19[5] and 39-20,[6] thereby rendering his pleas involuntary, and that the pleas were the result of ineffective assistance of counsel.

On September 8, 2006, the court, relying on the transcript of the plea canvass, concluded that the defendant's pleas were entered knowingly, intelligently and voluntarily. Accordingly, the court denied the defendant's motion to withdraw his pleas on the ground of an inadequate plea canvass. The court thereafter held an evidentiary hearing on the defendant's motion on the ground of ineffective assistance of counsel. After taking evidence on the matter, the court concluded that Rodriguez had provided effective assistance and that the defendant's pleas were entered knowingly, intelligently and voluntarily. The court subsequently denied the defendant's motion to withdraw his pleas on the ground of ineffective assistance of counsel.

On September 22, 2006, the court sentenced the defendant in accordance with the plea agreement to fifteen years in prison, execution suspended after seven years, and fifteen years probation. This appeal followed. Additional facts will be provided as necessary.

As a preliminary matter, we identify the legal principles and the standard of review germane to our discussion. "[I]t is axiomatic that unless a plea of guilty is made knowingly and voluntarily, it has been obtained in violation of due process and is therefore voidable. . . . A plea of guilty is, in effect, a conviction, the equivalent of a guilty verdict by a jury. . . . In choosing to plead guilty, the defendant is waiving several constitutional rights, including his privilege against self-incrimination, his right to trial by jury, and his right to confront his accusers. . . . The . . . constitutional essentials for the acceptance of a plea of guilty are included in our rules and are reflected in Practice Book §§ [39-19 and 39-20]. . . . The failure to inform a defendant as to all possible indirect and collateral consequences does not render a plea unintelligent or involuntary in a constitutional sense." (Internal quotation marks omitted.) *State* v. *Reid*, 277 Conn. 764, 780, 894 A.2d 963 (2006).

"Before a guilty plea is accepted a defendant may withdraw it as a matter of right. Practice Book [§ 39-26]. After a guilty plea is accepted but before the imposition of sentence the court is obligated to permit withdrawal upon proof of one of the grounds in [Practice Book § 39-27]. . . . The burden is always on the defendant to show a plausible reason for the withdrawal of a plea of guilty. . . . To warrant consideration, the defendant must allege and provide facts which justify

permitting him to withdraw his plea under [Practice Book § 39-27].'' (Citation omitted; internal quotation marks omitted.) *State* v. *Barnwell*, 102 Conn. App. 255, 258–59, 925 A.2d 1106 (2007). ''Whether such proof is made is a question for the court in its sound discretion, and a denial of permission to withdraw is reversible only if that discretion has been abused.'' (Internal quotation marks omitted.) *State* v. *Gundel*, 56 Conn. App. 805, 812, 746 A.2d 204, cert. denied, 253 Conn. 906, 753 A.2d 941 (2000). With the foregoing in mind, we now turn to the defendant's specific claims.

I

The defendant first claims that the court abused its discretion in denying his motion to withdraw his pleas under Practice Book § 39-27 (2) because the pleas were involuntary. Specifically, the defendant alleges that he did not understand the nature of the charges to which the pleas were offered, thereby rendering the pleas involuntary. We disagree.

The following additional facts are relevant to the defendant's claim. At the March 27, 2006 plea canvass, the court informed the defendant that the plea agreement called for him to plead guilty under the *Alford* doctrine to two counts of risk of injury to a child and two counts of sexual assault in the third degree and to receive a sentence of fifteen years incarceration, suspended after seven years, and fifteen years probation. The court then explained that if he chose not to plead guilty, he would go to trial on two counts of sexual assault in the first degree, rather than the two counts of sexual assault in the third degree to which he was pleading guilty. The court explained the possible consequences of being found guilty of sexual assault in the first degree, including a maximum of twenty-five years incarceration with a minimum ten years to serve and a $10,000 fine on each count. The defendant thereafter stated that he wanted to plead guilty to sexual assault in the third degree, rather than proceed to trial on the charges of sexual assault in the first degree. The court then explained the elements of sexual assault in the third degree, and the defendant pleaded guilty under the *Alford* doctrine.

On appeal, the defendant argues that he was confused about the degree of sexual assault to which he was pleading. Specifically, he asserts that the court's interjection of sexual assault in the first degree into the plea canvass led him to believe he was pleading guilty to two counts of that charge, rather than two counts of sexual assault in the third degree. We are not persuaded.

''[I]t is well established that a plea of guilty cannot be voluntary in the sense that it constitutes an intelligent admission that the accused committed the offense unless the accused has received real notice of the true nature of the charge against him, the first and most

universally recognized requirement of due process. . . . In determining whether the defendant had real notice of the charge against him, however, [a] court must consider the totality of the circumstances surrounding the entry of a plea." (Citation omitted; internal quotation marks omitted.) *State* v. *Reid*, supra, 277 Conn. 782.

In the present case, we conclude that the totality of the circumstances surrounding the defendant's pleas clearly indicate that the defendant understood that he was pleading guilty to sexual assault in the third degree, rather than sexual assault in the first degree, and that his claim simply is the result of his critical dissection and artificial isolation of portions of the plea transcript. Although it is true that the court explained to the defendant the charges he faced if he rejected the plea agreement, the court also thoroughly explained during its canvass the elements of sexual assault in the third degree. On each count, the court then asked the defendant if he pleaded guilty or not guilty to the charge of sexual assault in the third degree.[7] The defendant responded, "[g]uilty," to each. Moreover, after the defendant pleaded guilty, the court reviewed with him the events that had just transpired and stated that he had pleaded guilty to sexual assault in the third degree. Similarly, both informations under which the defendant pleaded listed the charges as sexual assault in the third degree in violation of § 53a-72a (a) (1) (A). In reviewing the totality of the circumstances surrounding the entry of the defendant's pleas, we conclude that the record reflects that the court properly canvassed the defendant on the charges to which he actually pleaded and that he failed to express any confusion about what degree of sexual assault he was pleading to at the time the pleas were entered. Accordingly, this claim fails.

II

The defendant's second claim is that the court abused its discretion in denying his motion to withdraw his pleas under Practice Book § 39-27 (1) because his pleas were not knowing, intelligent and voluntary due to a defective plea canvass. Specifically, he alleges that the court failed to comply with Practice Book § 39-19 (4) by failing to inform him of the possible maximum sentences on the individual charges he faced. We are not persuaded.

Pursuant to Practice Book § 39-27 (1), the trial court is required to permit the withdrawal of a plea of guilty if the plea was accepted without substantial compliance with Practice Book § 39-19. See also *State* v. *James*, 197 Conn. 358, 361, 497 A.2d 402 (1985). Practice Book § 39-19 provides in relevant part: "The judicial authority shall not accept the plea without first addressing the defendant personally and determining that he or she fully understands . . . (4) [t]he maximum possible sentence on the charge, including, if there are several

charges, the maximum sentence possible from consecutive sentences and including, when applicable, the fact that a different or additional punishment may be authorized by reason of a previous conviction . . . ."

Our Supreme Court has stated: "Practice Book § [39-19 (4)] is an express recognition [t]hat the defendant's awareness of the maximum sentence possible is an *essential* factor in determining whether to plead guilty . . . . The length of time a defendant may have to spend in prison is *clearly crucial* to a decision of whether or not to plead guilty. . . . Accordingly, Practice Book § [39-19 (4)] *require*[*s*] that the court determine that the defendant fully understands those consequences." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *James*, supra, 197 Conn. 363.

In *State* v. *James*, supra, 197 Conn. 361–66, our Supreme Court concluded that when determining whether there has been substantial compliance with Practice Book § 39-14 (4), we must conduct a two part inquiry. Our first inquiry is to determine whether the court accepted the defendant's pleas without first determining whether he was aware of and understood the maximum possible sentence to which he was exposed. *State* v. *James*, supra, 364. Next, if we conclude that the court failed to determine whether the defendant was aware of and understood the maximum possible sentence, we examine the record to determine whether, despite the court's failure, he nevertheless had actual knowledge of the maximum possible consequences of his pleas. See id.; see also *State* v. *Bowden*, 53 Conn. App. 243, 247–52, 729 A.2d 795 (1999). If either prong is satisfied, the pleas were accepted with substantial compliance with Practice Book § 39-19 (4).

The defendant entered *Alford* pleas to multiple charges. When a defendant enters pleas to multiple charges, the plea canvass must ensure that he understands both the maximum possible sentence for each individual charge and the maximum possible sentence from consecutive sentences. Practice Book § 39-19 (4). In discharging its obligations under Practice Book § 39-19, however, the court's inquiry "need not be so restricted that the [j]udge [must] mount the bench with a script in his hand"; (internal quotation marks omitted) *State* v. *James*, supra, 197 Conn. 363; although many problems would be avoided if the court used "not a script . . . but . . . some sort of checklist, as a prompter, so that whatever form the dialogue takes, all of the necessary lines will be delivered." (Internal quotation marks omitted.) Id., 363–64.

Our review of the record reveals that the court fulfilled only one of its two obligations under Practice Book § 39-19 (4). Although the court informed the defendant of the maximum possible sentence from consecutive sentences, it clearly failed to inform the defen-

dant of the maximum possible sentence for each individual charge. Although the court need not follow a script to comply with Practice Book § 39-19, it cannot simply omit necessary lines. By doing so in this case, the court accepted the defendant's pleas without first determining whether he was aware of and understood the maximum possible sentence to which he was exposed for each charge.

Having concluded that the court failed to inform the defendant of the maximum possible sentence on each charge, we next examine the record to determine whether the defendant nevertheless had actual knowledge of the maximum possible consequences of his pleas. Our review of the record reveals that the defendant did, in fact, have actual knowledge of the maximum possible sentence on each individual charge.

The following facts support our conclusion. On September 8, 2006, the court held a hearing on the defendant's motion to withdraw his guilty pleas.[8] Rodriguez testified that prior to the plea bargain, the defendant was facing charges of sexual assault in the first degree. Rodriguez explained to the defendant his exposure under those charges and that the charges were being reduced as a result of the plea bargain. Rodriguez also told the defendant on more than three occasions what the plea offer entailed and what he could expect if he was to plead guilty. Moreover, Rodriguez communicated to the defendant the advantage of the plea agreement in terms of the reduced sentence versus taking the case to trial. Rodriguez also testified that he spoke Spanish and always communicated with the defendant in that language.

The defendant thereafter offered his testimony. He first testified that he did not know how much jail time he faced had he gone to trial but then testified that he remembered the judge telling him the maximum penalties he could receive if convicted at trial. The defendant subsequently testified that he entered his guilty pleas after the judge told him the maximum penalties that he could receive.

There seems to be little question that in reaching his decision to enter *Alford* pleas, the defendant had actual knowledge of the maximum possible sentence to which he was exposed, both for the individual charges against him and for consecutive sentences. It is apparent from our review of the record that Rodriguez, in advising the defendant of the advantages of the plea agreement, informed him of the maximum possible sentence to which each individual charge exposed him. The court then apprised the defendant of the maximum possible sentence from consecutive sentences.[9] The defendant, therefore, was well aware of the maximum possible sentence to which each individual charge exposed him in addition to the maximum possible sentence from consecutive sentences pursuant to Practice Book § 39-

19. See *State* v. *James*, supra, 197 Conn. 364.[10] Accordingly, the court's plea canvass substantially complied with Practice Book § 39-19, and the court did not abuse its discretion in denying the defendant's motion to withdraw his pleas.

III

The defendant's third claim is that the court abused its discretion in denying his motion to withdraw his guilty pleas pursuant to Practice Book § 39-27 (2) because his pleas were involuntary. Specifically, the defendant claims that his pleas were involuntary because the court (1) failed to determine whether his pleas resulted from prior discussions between the prosecuting authority and the defendant or his counsel pursuant to Practice Book § 39-20, and (2) improperly used force and duress to induce him to accept the pleas.[11] In light of all of the circumstances of the plea canvass, we are not persuaded.

A

In *State* v. *Ocasio*, 253 Conn. 375, 751 A.2d 825 (2000) (per curiam), our Supreme Court explained that "only substantial, rather than literal, compliance with [Practice Book] § 39-20 is required in order to validate a defendant's plea of guilty." The test for substantial compliance with Practice Book § 39-20 "is whether, in light of all of the circumstances, the trial court's literal compliance with [Practice Book] § 39-20 would have made any difference in the trial court's determination that the plea was voluntary." *State* v. *Ocasio*, supra, 380.

Reviewing the record, including the transcript of the evidentiary hearing on the defendant's motion to withdraw his pleas, we can ascertain nothing that suggests that the defendant would have responded negatively if asked whether his guilty pleas were a result of negotiations between the prosecutor and the defendant or his attorney. The record reveals that the court thoroughly canvassed the defendant, and he specifically admitted that his pleas were voluntary[12] and that he wanted the court to accept them. Moreover, Rodriguez informed the defendant of his negotiations with the state regarding a plea offer and the ultimate terms of the state's offer once made. We simply are not persuaded by the defendant's argument that his plea agreement was not the result of negotiations between himself and the prosecutor and his attorney.

In light of the record in this case, we conclude that the court's literal compliance with Practice Book § 39-20 would not have made any difference in the defendant's decision to enter his guilty pleas or in the court's determination that he voluntarily entered pleas of guilty. We further conclude that the court's plea canvass substantially complied with Practice Book § 39-20, and, having substantially complied with the rules of practice, the court did not abuse its discretion in denying the

defendant's motion to withdraw his pleas.

B

Similarly, we are not persuaded that the court used force and duress to induce the defendant to accept the pleas. The defendant's argument is that the court twice stated that if the defendant chose to plead not guilty, they would "start picking the jury this coming Monday." The defendant characterizes these statements as coercive and claims that they pressured him into accepting the pleas. We conclude, however, that the court's statements were not coercive in nature but, rather, accurately informed the defendant of the time line of his trial should he choose not to plead guilty.

Moreover, the defendant's response to the plea canvass belies his claim that he was forced to plead guilty. The record discloses that after the court made the allegedly coercive statements, the defendant stated to the court that he had not been forced or threatened to plead guilty. "It is well established that [a] trial court may properly rely on . . . the responses of the [defendant] at the time [she] responded to the trial court's plea canvass . . . . " (Internal quotation marks omitted.) *State* v. *Monk*, 88 Conn. App. 543, 552, 869 A.2d 1281 (2005). Accordingly, this claim fails.

IV

The defendant's final claim is that the court abused its discretion in denying his motion to withdraw his pleas because the pleas resulted from the denial of effective assistance of counsel. Practice Book § 39-27 (4). We disagree.

"Our case law holds that [a] claim of ineffective assistance of counsel is generally made pursuant to a petition for a writ of habeas corpus rather than in a direct appeal. . . . Section 39-27 [(4)] of the Practice Book, however, provides an exception to that general rule when ineffective assistance of counsel results in a guilty plea. A defendant must satisfy two requirements . . . to prevail on a claim that his guilty plea resulted from ineffective assistance of counsel. . . . First, he must prove that the assistance was not within the range of competence displayed by lawyers with ordinary training and skill in criminal law . . . . Second, there must exist such an interrelationship between the ineffective assistance of counsel and the guilty plea that it can be said that the plea was not voluntary and intelligent because of the ineffective assistance. . . . In addressing this second prong, the United States Supreme Court held in *Hill* v. *Lockhart*, 474 U.S. 52, [59] 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985), that to satisfy the prejudice requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. . . . The resolution of this inquiry will largely depend on the likely success of any new

defenses or trial tactics that would have been available but for counsel's ineffective assistance." (Citations omitted; internal quotation marks omitted.) *State* v. *Scales*, 82 Conn. App. 126, 129–30, 842 A.2d 1158, cert. denied, 269 Conn. 902, 851 A.2d 305 (2004). "A reviewing court can find against the [defendant] on whichever ground is easier." (Internal quotation marks omitted.) *State* v. *Silva*, 65 Conn. App. 234, 259, 783 A.2d 7, cert. denied, 258 Conn. 929, 783 A.2d 1031 (2001).

A

The defendant first claims that Rodriguez provided ineffective assistance by failing to conduct an adequate pretrial investigation.[13] The defendant claims that had Rodriguez conducted an adequate investigation, the allegations of the victim would have proven to be false and that potential defenses would have been exposed. We disagree.

Regarding the defendant's claim, the court found that Rodriguez had advised the defendant of the salient facts of the case and otherwise provided effective representation. To the extent that the court did not make certain findings concerning the adequacy of Rodriguez' investigation, the plaintiff sought no articulation of the court's ruling. See Practice Book § 66-5. "It is a well established principle of appellate procedure that the appellant has the duty of providing this court with a record adequate to afford review. . . . Where the factual or legal basis of the trial court's ruling is unclear, the appellant should seek articulation pursuant to Practice Book § [66-5]. . . . Accordingly, [w]hen the decision of the trial court does not make the factual predicates of its findings clear, we will, in the absence of a motion for articulation, assume that the trial court acted properly." (Internal quotation marks omitted.) *Berglass* v. *Berglass*, 71 Conn. App. 771, 789, 804 A.2d 889 (2002).

Moreover, even if we were to conclude that Rodriguez' investigation was faulty, the defendant failed to make any proffer to the court that he was prejudiced by counsel's alleged dereliction. See *State* v. *Gay*, 108 Conn. App. 211, 219, 947 A.2d 428 (2008). The defendant provided no evidence at the evidentiary hearing that additional investigation would have provided any basis for his claim of innocence. Furthermore, although the defendant claimed that Rodriguez' failure to question directly the victim's family members prejudiced the case, the defendant did not bring the victim's family members forward as witnesses, he provided no reason for their absence and no effort was made to present their evidence through other means. See id. Thus, the court was left with no basis for determining that further investigation would have been of any assistance to the defendant. In the absence of any evidentiary support, the defendant's bare assertion that further investigation was pivotal to his decision to plead guilty does not establish prejudice. See *Williams* v. *Commissioner of*

Correction, 90 Conn. App. 431, 437, 876 A.2d 1281 (2005). Accordingly, the defendant has failed to sustain his burden of proof.

B

The defendant next claims that counsel was ineffective for failing to explain the nature of the charges set forth in the original information, the nature of the charges to which he was pleading guilty, the terms of the plea agreement and the consequences of pleading guilty. Rodriguez testified, however, that he had explained to the defendant those things that the defendant now claims were left unexplained, and, as it was entitled to do, the court plainly credited that testimony in concluding that Rodriguez had provided effective representation. "[T]his court does not retry the case or evaluate the credibility of the witnesses. . . . Rather, we must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude. . . . The [trial] judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony." (Internal quotation marks omitted.) *Taylor* v. *Commissioner of Correction*, 284 Conn. 433, 448, 936 A.2d 611 (2007). Moreover, the defendant failed to seek articulation of the court's judgment. See Practice Book § 66-5. Accordingly, we conclude that the court properly denied the defendant's motion to withdraw his pleas on the ground of ineffective representation of counsel.

The judgments are affirmed.

In this opinion DiPENTIMA, J., concurred.

[1] In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to use the defendant's full name or to identify the victims or others through whom the victims' identities may be ascertained. See General Statutes § 54-86e.

[2] We note that the conduct that gave rise to the risk of injury charges allegedly occurred between April, 1998, and December, 2002. Although General Statutes § 53-21 was amended during that time, there is no dispute that the conduct in which the defendant allegedly had engaged was prohibited under all of the revisions of the statute applicable during that time period. In the interest of simplicity, we refer to the current revision of § 53-21 as the revision of the statute under which the defendant was charged.

[3] "*North Carolina* v. *Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), holds that a criminal defendant need not admit his guilt, but may consent to being punished as if he is guilty to avoid the risk of proceeding at trial." *State* v. *Sutton*, 95 Conn. App. 139, 140 n.1, 895 A.2d 805, cert. denied, 278 Conn. 920, 901 A.2d 45 (2006).

[4] Practice Book § 39-27 provides in relevant part: "The grounds for allowing the defendant to withdrawal his or her plea of guilty after acceptance are as follows:

"(1) The plea was accepted without substantial compliance with Section 39-19;

"(2) The plea was involuntary, or it was entered without knowledge of the nature of the charge or without knowledge that the sentence actually imposed could be imposed . . .

"(4) The plea resulted from the denial of effective assistance of counsel . . . ."

[5] Practice Book § 39-19 provides in relevant part: "The judicial authority shall not accept the plea without first addressing the defendant personally and determining that he or she fully understands:

"(1) The nature of the charge to which the plea is offered . . .

"(4) The maximum possible sentence on the charge, including, if there are several charges, the maximum sentence possible from consecutive sentences and including, when applicable, the fact that a different or additional punishment may be authorized by reason of a previous conviction . . . ."

[6] Practice Book § 39-20 provides in relevant part: "The judicial authority shall not accept a plea of guilty . . . without first determining, by addressing the defendant personally in open court, that the plea is voluntary and is not the result of force or threats or of promises apart from a plea agreement. The judicial authority shall also inquire as to whether the defendant's willingness to plead guilty . . . results from prior discussions between the prosecuting authority and the defendant or his or her counsel."

[7] In canvassing the defendant on one file, the court stated: "To the charge of sexual assault in the third degree, General Statutes § 53a-72a (a) (1) (A), do you plead guilty or not guilty? That's forcing someone else to have sexual contact, touching by force, guilty or not guilty?" The defendant responded, "[g]uilty."

In canvassing the defendant on the other file, the court stated: "And then the charge of sexual assault in the third degree, guilty or not guilty." Again, the defendant responded, "[g]uilty."

[8] We note that the court denied the defendant's motion to withdraw his pleas on the ground of a defective plea canvass prior to holding an evidentiary hearing on the defendant's motion to withdraw his pleas on the ground of ineffective assistance of counsel. The court, therefore, did not rely on the testimony of Rodriguez and the defendant in reaching its conclusion that its plea canvass was proper. Neither party, however, has argued that we may not rely on that testimony in reviewing the propriety of the defendant's pleas. Because that testimony is part of the record before us, we conclude that we may properly rely on it in reaching our judgment.

[9] The court also, on multiple occasions, informed the defendant that by pleading guilty he was avoiding a trial in which he could have received a "more severe penalty" or been convicted of "more serious offenses."

[10] We note that in *James*, our Supreme Court concluded that there was not substantial compliance with the rules of practice because the trial court failed to address Practice Book § 711 (4), now § 39-19 (4), at all. See p. 566 of the dissenting opinion. Such is not the case here. The record in this case reveals that the court addressed a portion of § 39-19 (4) when it canvassed the defendant regarding the maximum possible consecutive sentence. This, coupled with the defendant's knowledge of the maximum possible individual sentence for each charge, which he gained when Rodriguez advised him of all the salient facts of the charges against him and the consequences of his pleas, satisfied the substantial compliance requirement for § 39-19.

[11] See footnote 6.

[12] The court actually asked the defendant if anyone had forced or threatened him to plead guilty. As we explained in *State* v. *Nelson*, 67 Conn. App. 168, 175, 786 A.2d 1171 (2001), however, "[when] the trial court's question that establishes this fact [of voluntariness] was shaped to elicit a negative response . . . [t]he difference is in style and not substance. Both queries established that the pleas were entered voluntarily and without force."

[13] To the extent that the defendant claims that counsel was ineffective for failing effectively and timely to share discovery material with him, we summarily dispose of this claim. Rodriguez testified at the evidentiary hearing that he shared material with the defendant. As it was entitled to do, the court plainly credited this testimony. "[T]his court does not retry the case or evaluate the credibility of the witnesses. . . . Rather, we must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude. . . . The [trial] judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony." (Internal quotation marks omitted.) *Taylor* v. *Commissioner of Correction*, 284 Conn. 433, 448, 936 A.2d 611 (2007).