WEST, J., dissenting. I respectfully disagree with the majority's determination that "the [trial] court had before it sufficient evidence to support its finding, by a fair preponderance of the evidence, that the defendant [Maurice M.] committed the offense of risk of injury to a child" and, therefore, properly found that he had violated his probation.[1] Accordingly, I dissent. I would reverse the judgment of the trial court.

I agree with the majority's statement of the applicable law and the appropriate standard of review for this issue. I do, however, underscore that in a probation revocation proceeding, "[a] challenge to the sufficiency of the evidence is based on the court's factual findings. The proper standard of review is whether the court's findings were clearly erroneous based on the evidence. . . . A court's finding of fact is clearly erroneous and its conclusions drawn from that finding lack sufficient evidence when there is no evidence in the record to support [the court's finding of fact] . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Citation omitted; internal quotation marks omitted.) *State* v. *Hooks*, 80 Conn. App. 75, 80–81, 832 A.2d 690, cert. denied, 267 Conn. 908, 840 A.2d 1171 (2003).

The following is an excerpt of the court's findings made during the adjudicatory portion of the violation of probation hearing that is relevant to the defendant's claim.

"There are dangers in the house. And you are required under the law, if you're going to take care of the child, to make sure that those dangers are minimized.

"There are risks in the house. And that's why they have things called babyproofing houses. In this case, the child didn't fall out the second story window, but he also didn't stay in the house. And there was no—according to [Sergeant Michael Hannaford of the East Windsor police department], there was no lock on that back door or screen. There was no lock. There was nothing to prevent him from going out. [The defendant] lives in that house. It's his responsibility, and he was the caregiver at that time. It's his responsibility to make sure that those types of situations don't exist because they are risks. . . .

"The adult had no idea where [the child] was in the house, even though he was in the house for a period of time. Had no idea that [the child] had left the house. He left the house because he was able to do so. There was no lock on the door. And he managed to get himself into the middle of a highway as the result of that. That creates a risk of serious physical harm or injury to a

child. And it's not the child's fault. And it's not the . . . fault [of the child's eight year old brother]. It's [the defendant's] fault. It's his responsibility as a father and as a caregiver to make sure that that child is protected, [to] make sure that the child does not leave the house and go wandering around down the street where he didn't know where he was."

Later, during the second phase of the hearing, the court further stated: "The situation regarding [the defendant's] parenting skills is unfortunate. But this is not a parenting skill problem. This was a problem that he knew or should have known existed. It was his house. He lived in the house. He knew that there was no lock on the door. He knew that there was no fence around it, as evidenced by the fact that there is now a fence around the back door. And he knew or should have known that a child could easily get out under those circumstances. It wasn't simply that the child left the premises. He left the premises and nobody knew about it. [The defendant] didn't know about it because he wasn't supervising him. He left him in the care or supervision of another child. And that created a risk of injury to this child—a risk of severe injury."

In light of the prevailing standard of review, I am troubled by the court's finding of fact that the defendant's back door had no lock. Nowhere is this reflected in the evidence. The court referred to the testimony of Sergeant Hannaford as stating that there was no lock. A thorough review of his testimony reveals that he never testified as such.[2] Moreover, there is no testimony from any witness stating that the door was even *unlocked*. The only testimony was that there were not any "safety devices" on the doorknobs. It is apparent that the court hinged in large part its conclusion that the defendant had committed the underlying charge of risk of injury to a child on its erroneous finding that the back door had no locks.

Essentially, there are two main factual components supporting the court's ruling: (1) the "accessibility" of the back door and (2) the lack of supervision of the child. The accessibility of the door, in turn, is largely, if not wholly, based on the erroneous finding that the door had no lock. Moreover, it is clear that the court based its finding that General Statutes § 53-21 (a) (1) had been violated on the finding that there was no lock on the back door or the screen door.[3] The court concluded that the fact that there was no lock on the back door—a fact that the defendant knew or should have known—directly led to the situation that the child was placed in by the defendant. The court concluded that because the defendant knew or should have known that there was no lock on either door, his placing the two year old under the supervision of the eight year old violated the statute.

To prove a violation of probation on the basis of

violation of § 53-21 (a) (1), the state had to establish, by a preponderance of the evidence, that the defendant wilfully or unlawfully caused or permitted a child under the age of sixteen years to be placed in such a situation that the life or limb of the child was endangered, the health of the child was likely to be injured or the morals of the child were likely to be impaired. The court expressly found by a preponderance of the evidence that the defendant, by engaging in the conduct it found he had engaged in, unlawfully placed the child in such a situation. It is clear that the court determined that the conduct that the defendant engaged in that established by a preponderance of the evidence that he violated § 53-21 (a) (1) was leaving the child unsupervised to play with another child under the circumstances that permitted the child to exit the home. Moreover, those circumstances that indicated a violation of the statute, according to the court, consisted *exclusively* of the determination that the back doors had no locks and that "[t]his was a problem that [the defendant] knew or should have known existed."

Although I conclude that this determination was clearly erroneous, the question remains whether there is sufficient evidence on the record to support the court's finding that the defendant violated § 53-21 (a) (1). After a thorough review of the record, in my opinion there was not. The court found that the conduct that was violative of § 53-21 (a) (1) was the defendant's having left the child in the care and supervision of his sibling while there were no locks on the back door. This express finding cannot be squared with the evidence. I am very troubled by the court's repeated assertion not only that there were no locks on the back door and that the defendant knew or should have known that there were none but, more to the point, that this specific circumstance was the situation created unlawfully by the defendant that directly led to the child's being placed in harm's way. Furthermore, because the record does not contain any evidence that supports this finding, I conclude that there was insufficient evidence for the court to find, by a preponderance of the evidence, that the defendant violated § 53-21 (a) (1), and, therefore, the court's finding that the defendant violated his probation was clearly erroneous.

Accordingly, respectful of the majority, I dissent. I would reverse the judgment of the trial court.

[1] Preliminarily, because "[t]his court has a basic judicial duty to avoid deciding a constitutional issue if a nonconstitutional ground exists that will dispose of the case"; (internal quotation marks omitted) *State* v. *Washington*, 39 Conn. App. 175, 176–77 n.3, 664 A.2d 1153 (1995); I will not address the defendant's claim that General Statutes § 53-21 is unconstitutionally vague as applied to his conduct. See *State* v. *Robert H.*, 71 Conn. App. 289, 293 n.5, 802 A.2d 152 (2002), aff'd, 273 Conn. 56, 866 A.2d 1255 (2005). As a result, I take no position on part I of the majority opinion. Cf. *State* v. *Smith*, 222 Conn. 1, 31, 608 A.2d 63 (*Berdon*, *J.*, dissenting), cert. denied, 506 U.S. 942, 113 S. Ct. 383, 121 L. Ed. 2d 293 (1992). Moreover, because the insufficiency of evidence claim I address would be dispositive and would result in a reversal of the judgment of the trial court, I do not address the

remaining claims and express no view on the majority opinion regarding those claims.

[2] Hannaford's complete testimony on the condition of the back door was: "I noticed that there was no safety devices on the doorknobs or such that, you know, one would normally do with young children to prevent them from opening the doors, et cetera."

[3] The court filed an articulation in response to a motion filed by the defendant. In it, the court stated: "[The defendant] knew or should have known that neither the back door nor the back screen door of his house had a lock or *child safety device*, thus permitting the child to be able to exit the house." (Emphasis added.) It is obvious that the court perceived a distinction between locks and child safety devices. Nowhere, however, in its oral decision did the court make a finding that the door had no safety devices.

"The purpose of an articulation is to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal. . . . An articulation is not an opportunity for a trial court to substitute a new decision nor to change the reasoning or basis of a prior decision." (Citation omitted; internal quotation marks omitted.) *Lusa* v. *Grunberg*, 101 Conn. App. 739, 743, 923 A.2d 795 (2007). Therefore, the court's articulation does not persuade me that its finding of fact concerning the condition of the back door at the time of the incident was not clearly erroneous.