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ALVORD, J., concurring. I agree with the majority opinion because it appears to be the result required by our Supreme Court's decision in *State v. Lawrence*, 281 Conn. 147, 913 A.2d 428 (2007). In *Lawrence*, our Supreme Court stated that “for the trial court to have jurisdiction to consider the defendant’s claim of an illegal sentence, *the claim must fall into one of the categories of claims* that, under the common law, the court has jurisdiction to review.” (Emphasis added.) *Id.*, 155. I write separately, however, because I believe that the common law does not extend jurisdiction to situations implicated by the defendant’s claim, and I am concerned that our Supreme Court did not intend us to interpret *Lawrence* as enlarging the common law to afford jurisdiction to all *claims* that superficially fall within the four categories set forth in that opinion.¹ See *State v. Lawrence*, *supra*, 155–57.

The majority, like our Supreme Court in *Lawrence*, cites several cases in which Connecticut courts have considered motions to correct an illegal sentence. A review of these cases, however, reveals that postexecution jurisdiction was often presumed because the issue of an illegal sentence was presented via a direct appeal.² That is not the case here.

A review of the remainder of the cases cited by the majority and the *Lawrence* court shows that jurisdiction was found only when the challenged sentence was in fact illegal.³ That also is not the case here.

In the present case, the defendant argues that his sentence of three years probation is illegal because it exceeds the maximum statutory limits prescribed for the crime for which he was convicted. I agree with the majority that the record of the sentencing proceeding is inadequate. The trial court’s jurisdiction to review the defendant’s motion would be determined by whether the defendant’s sentence fell within the permissible range of sentences for the crimes charged in this case. The defendant argues that the permissible range of probation pursuant to General Statutes § 20-427, *as applied to the facts of this case*, has a maximum of two years. The state argues that the permissible range has a maximum of five years because the defendant has failed to provide an adequate record to allow for a review of the sentencing court’s factual findings in this case. On the basis of the common law, it appears that the state correctly argues that the permissible range of sentences has a maximum of five years because the defendant failed to provide Judge Fischer with an adequate record. See *Orcutt v. Commissioner of Correction*, 284 Conn. 724, 738 n.25, 937 A.2d 656 (2007) (“in the absence of an articulation—which the appellant is responsible for obtaining—we presume that the trial

court acted properly”).

I also find persuasive the state’s argument that neither *Lawrence*, nor the cases cited in it, have found jurisdiction when the court imposed a sentence that was plainly authorized by a statute but was arguably illegal because the court did not make a determination required by the sentencing statute.⁴

In this case, the record of the sentencing proceeding is, as the majority notes, at best ambiguous. Because of the inadequacy of the record, the determination of the sentencing court, *Wollenberg, J.*, with regard to the defendant’s ability to repay his victims within the usual two year statutory limit is not clear. On the basis of the record, I cannot say that five years is not the permissible statutory limit. I, therefore, would find that the defendant’s sentence is facially valid and that the common-law exceptions would not apply to grant jurisdiction in this case. Accordingly, I would conclude that the general rule, that a court loses jurisdiction over a defendant’s sentence after it has been executed, applies and, therefore, would reverse the judgment and remand the case with direction to dismiss the motion to correct an illegal sentence.

Because, however, we appear to be bound by our Supreme Court’s analysis of the common law in *Lawrence*, I respectfully concur.

¹ Our Supreme Court in *Lawrence* had no need to and did not fully analyze the parameters of whether a claim within those categories need be valid, colorable or a bare claim because, under the facts in that case, it found that the trial court lacked jurisdiction when the defendant’s motion to correct an illegal sentence was based on a challenge to the underlying conviction, not the legality of the sentence. *State v. Lawrence*, supra, 281 Conn. 158–59.

² See *State v. Daniels*, 207 Conn. 374, 387, 542 A.2d 306 (on state’s direct appeal, no double jeopardy violation because Practice Book § 935 [now § 43-22] provides “the power, at any time, to correct a sentence that is illegal”), after remand for articulation, 209 Conn. 225, 550 A.2d 885 (1988), cert. denied, 489 U.S. 1069, 109 S. Ct. 1349, 103 L. Ed. 2d 817 (1989); *State v. Guckian*, 27 Conn. App. 225, 245, 605 A.2d 874 (1992) (on state’s appeal from sentencing, state not required to file motion to correct in trial court because both “the trial court and this court, on appeal, have the power, at any time, to correct a sentence that is illegal”), aff’d, 226 Conn. 191, 627 A.2d 407 (1993); see also *State v. Davis*, 190 Conn. 327, 334–35, 461 A.2d 947 (on direct appeal, trial court was without authority to open judgment because sentence was within permissible range for crimes charged), cert. denied, 464 U.S. 938, 104 S. Ct. 350, 78 L. Ed. 2d 315 (1983); *State v. Shipp*, 79 Conn. App. 427, 433–34, 830 A.2d 368 (on direct appeal, sentence illegal because defendant’s fine of \$200 exceeded statutory maximum of \$100), cert. denied, 267 Conn. 902, 838 A.2d 212 (2003); *State v. Barksdale*, 79 Conn. App. 126, 139, 829 A.2d 911 (2003) (on direct appeal, sentence illegal when defendant sentenced to twenty years because at time he committed crime, it was class C felony for which maximum period of incarceration was ten years); *State v. Mitchell*, 37 Conn. App. 228, 232–33, 655 A.2d 282 (1995) (on direct appeal, double jeopardy claim moot because trial court corrected sentence); *State v. McNellis*, 15 Conn. App. 416, 443–50, 546 A.2d 292 (on direct appeal, defendant’s claim that sentence imposed in illegal manner meritless), cert. denied, 209 Conn. 809, 548 A.2d 441 (1988).

³ See *State v. Cator*, 256 Conn. 785, 804–805, 781 A.2d 285 (2001) (motion to correct illegal sentence proper when initial sentence violates right against double jeopardy and exceeds maximum statutory limit); *State v. Mollo*, 63 Conn. App. 487, 490–91, 776 A.2d 1176 (no jurisdiction to consider motion to correct when sentence imposed was facially valid), cert. denied, 257 Conn. 904, 777 A.2d 194 (2001); *State v. Elliott*, 8 Conn. App. 566, 574–75,

513 A.2d 1285 (no jurisdiction for court to impose increased sentence where execution of original legal sentence has commenced), cert. denied, 201 Conn. 813, 517 A.2d 630 (1986); see also *State v. Tabone*, 279 Conn. 527, 533–45, 902 A.2d 1058 (2006) (jurisdiction when total sentence of twenty years exceeds statutory limit of ten years); but see *State v. Banks*, 59 Conn. App. 145, 147–48, 763 A.2d 1046 (2000) (no jurisdictional analysis when finding that trial court properly denied state’s motion to correct that claimed General Statutes § 53a-37 did not authorize court to impose concurrent sentence).

Although these cases indicate a somewhat circular analysis, namely, that the merits of a claim raised in a motion to correct must be addressed before jurisdiction is found, the analysis was born out of the common law and thus arose to create only a narrow exception pursuant to which the court retains jurisdiction to correct sentences that are truly illegal.

⁴ It is important to note that the present case is not one in which either (1) as a matter of law, the sentencing court could not determine that the defendant could fully repay his victims within the usual period of probation or (2) the sentencing court explicitly and unambiguously determined that the defendant could fully repay his victims within the usual period of probation. In such a case, we might very well be constrained to hold that the relevant statutory limit for a period of probation for a violation of § 20-427 is two years.
