MCDONALD, J., dissenting. I do not agree with the majority that the defendant, Franklyn E. Adams, did not present an adequate record to review his claim that the sum of $2744 was improperly taken from him after plea bargaining. As the majority notes, the defendant asked this court to take judicial notice of the official transcripts of the statement of the plea bargain and his *Alford*[1] plea of May 23, 2007, of his sentencing on August 22, 2007, and of the court's ruling on his motion to open the judgment for the return of property on September 21, 2007, and this court agreed. In *State* v. *Samuel*, 94 Conn. App. 715, 718 n.4, 894 A.2d 363, cert. denied, 278 Conn. 911, 899 A.2d 39 (2006), this court found the transcript of a plea canvass adequate to review the sufficiency of the canvass, an issue similar to the issue in this case.

The majority faults the defendant for failing to seek articulation of the court's rationale for ordering the forfeiture of the $2744. The record, to the contrary, shows that the court in doing so stated on the record that it had indicated at the time of the defendant's plea and the imposition of sentence that moneys would be forfeited and that that still was the court's position.

The plea bargain as presented by the state on the record on May 23, 2007, did not provide that any moneys were to be forfeited to the state. In presenting the facts concerning the defendant's plea, the only money the state referred to was the sum of $724 seized when the defendant was arrested on the charges to which he was pleading guilty. The record also did not reflect that the state stated that it agreed to nolle four other charges pending against the defendant. After the defendant's plea was accepted, the court inquired about whether the $724 seized was to be forfeited, and the defendant's counsel stated that that was what the state "has maintained." The court then stated that it wanted "to make sure we understand that and that doesn't become a hangup later."

On August 22, 2007, after sentence was imposed and stayed at the defendant's request, the state entered nolles of the other pending charges against the defendant. The state then asked that the moneys seized be forfeited. The defendant's counsel stated, as to the cases in which the defendant entered the *Alford* plea, that forfeiture is "routine," but counsel contested "the state's authority to forfeit money on a nolle charge." The court then asked the clerk for the "inventory" of the files, and the clerk replied that there was $2744 in one of the nolled files and $724 in another docket. The court then ordered that all moneys be forfeited to the state.

Thereafter, the defendant filed a motion to open the judgment, requesting, inter alia, the return of the $2744. On September 21, 2007, with respect to that motion, the court stated that it was the court's recollection that moneys were to be forfeited and that the motion questioned forfeiture as to money seized in nolled cases. The court stated that if the defendant understood differently, he could withdraw his plea and have a trial, otherwise the court would lift the stay and assume that all moneys seized had been forfeited. The defendant told the court that he was not withdrawing anything and that he had agreed only to the forfeiture of the $724. The court stated that that was not the agreement. After a recess, the court lifted the stay and stated that the moneys would be forfeited. The court stated that at the time of the plea and imposition of sentence, the court had indicated that the moneys would be forfeited and that that was still the court's position. The court added that if the defendant took issue with that, he could file an appeal.

The state then erroneously stated to the court that it believed the forfeiture of all moneys in the defendant's nolled case was on the record at the time of the defendant's guilty plea. The court thereafter denied the defendant's motion to open the judgment for the return of the $2744.

The defendant is an unrepresented prisoner who was given a stay of execution of his sentence to obtain his high school diploma. On appeal, the defendant's pro se brief argues, albeit in rough form, that the court abused its discretion and ordered the $2744 forfeited without following the procedure under General Statutes § 54-33g, which governs seizure of property and in rem actions. Section 54-33g sets forth the procedure by way of summons and a hearing in which the state must prove the allegations that the property was used to commit a criminal offense. During oral argument before us, the state conceded that the in rem procedure had not been followed as to the $2744.

The defendant's brief claims that the trial court abused its discretion in acting as it did, citing *State* v. *Rivers*, 283 Conn. 713, 931 A.2d 185 (2007). Our Supreme Court in *Rivers* held that the terms of the plea bargain should be stated clearly and unambiguously so that the defendant in assenting to waive certain rights knows what is expected of him and what he can expect in return. The Supreme Court further stated in *Rivers* that any ambiguous language must be construed against the state. In this case, the forfeiture of the $2744 was not put on the record as part of the plea bargain, and the court explicitly stated at the time of the plea that the sum of $744 was to be forfeited. Applying *Rivers*, I would conclude that the plea bargain was not kept.

In *Rivers*, our Supreme Court also discussed a rem-

edy for the state's failure to honor a plea bargain. The court cited authority that either an opportunity to withdraw a guilty plea or specific performance of a plea bargain is to be offered. In its discussion, the court cited authority that specific performance is preferred. It also alluded to Justice Douglas' concurrence in *Santobello* v. *New York*, 404 U.S. 257, 267, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971), which stated that a defendant's preference is to be accorded considerable, if not controlling, weight.

In this case, the state received the benefit of its bargain with the defendant in the defendant's waiver of a trial and his guilty plea. A sentence within the limits agreed on was then imposed but the forfeiture of the $2744 was added. The court's offer to allow the defendant to withdraw his plea could not place him in the same position as the offer he had accepted and on which he had pleaded guilty. The majority states that if the defendant no longer wanted to accept the plea bargain to which he had agreed, the remedy was to withdraw his plea, as the court offered. The defendant, on the record, however, did not agree at any time to the forfeiture of the $2744, and the state's attorney and the court mistakenly disregarded the record plea bargain, which reflected the forfeiture of only the $724.

Santobello v. *New York*, supra, 404 U.S. 260–61, recognizes, as has our Connecticut court system; see *Copas* v. *Commissioner*, 234 Conn. 139, 153–54, 662 A.2d 718 (1995); that plea bargaining is an integral part of our criminal justice system. Bargains struck on the record must be adhered to by the state if plea bargaining is to continue. Because the court did not require the state to present evidence that the $2744 represented the means or proceeds of illegal activities,[2] and absent a waiver of such a hearing by the defendant, I would reverse the order forfeiting the $2744.

I respectfully dissent.

[1] See *North Carolina* v. *Alford*, 400 U.S. 25, 35, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

[2] The majority refers to *State* v. *Garcia*, 108 Conn. App. 533, 550–55, 949 A.2d 499, cert. denied, 289 Conn. 916, 957 A.2d 880 (2008), which was released after the proceedings in this case, as a possible basis of the court's order of forfeiture. *Garcia*, however, involved a forfeiture after a trial in which the court heard evidence that there was a nexus between the moneys seized and illegal narcotics trafficking and made such a finding. There was no evidence heard by the court in this case on which to make such a finding and no such finding was made.