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STATE OF CONNECTICUT *v.* ERIC L.*
(AC 45113)

Prescott, Moll and Cradle, Js.

Syllabus

The defendant, who had been on probation in connection with his plea of guilty to the crime of violation of a protective order, appealed to this court from the judgment of the trial court revoking his probation. During the term of his probation, in May, 2020, the defendant was arrested and charged with the crime of threatening in the second degree in violation of statute (§ 53a-62) for statements he allegedly made regarding W, who was the boyfriend of the defendant's former girlfriend. In October, 2020, while still incarcerated awaiting trial, the defendant was served with an arrest warrant, charging him with violation of probation. Following a hearing, the court determined that the state had proven by a preponderance of the evidence each of the four grounds for violation of probation that it alleged in its long form information, including, inter alia, that the defendant failed to report to his probation officer, had multiple unexcused absences from an alcoholism treatment program, and engaged in harassing behavior toward W through voicemails and a Facebook message, and the defendant appealed to this court. *Held*:

1. The trial court did not err in finding that the defendant violated his probation: although the defendant claimed that three of the four violations were only "technical in nature" and, "standing alone," were insufficient to find that he violated his probation, this court concluded that they constituted independent grounds to find that he violated his probation and declined to address the merits of his principal claims relating to the fourth ground, involving various statements that he made to a social worker that resulted in his May, 2020 arrest, and the court's finding that he violated § 53a-62 on the basis of those statements; moreover, the defendant did not claim on appeal that, as an evidentiary matter, the state had not met its burden in proving the grounds it alleged in its long form information and on which the court determined that the defendant violated his probation, as a finding that the defendant violated any one condition of his probation was sufficient to conclude that he violated his probation.
2. The defendant could not prevail on his claim that the trial court abused its discretion when it revoked his probation and imposed a sentence that included a period of incarceration, that court having thoroughly considered whether the beneficial aspects of probation would be served by merely continuing the defendant on probation, considered both the defendant's rehabilitation and the safety of the public on the basis of the whole record, and concluded that the beneficial aspects of probation were no longer being served.
3. The trial court did not abuse its discretion in failing to award the defendant presentence confinement credit for the period between his arrest for threatening and when he was served with the violation of probation arrest warrant; in light of this court's recent decision in *State* v. *Hurdle* (217 Conn. App. 453), which held that, pursuant to the express language of the statute (§ 18-98d) applicable to presentence confinement credit, the Commissioner of Correction has the sole statutory authority to determine a defendant's eligibility for presentence confinement credit and to apply such credit against a defendant's sentence, the trial court properly declined to award the defendant presentence confinement credit due under § 18-98d.

Argued October 4, 2022—officially released March 28, 2023

Procedural History

Substitute information charging the defendant with violation of probation, brought to the Superior Court in the judicial district of Litchfield, geographical area number eighteen, where the matter was tried to the

court, *Shaban*, *J.*; judgment revoking the defendant's probation, from which the defendant appealed to this court. *Affirmed*.

Lisa J. Steele, assigned counsel, for the appellant (defendant).

Laurie N. Feldman, assistant state's attorney, with whom, on the brief, was *David Shannon*, state's attorney, for the appellee (state).

Opinion

MOLL, J. The defendant, Eric L., appeals from the judgment of the trial court finding him in violation of, and revoking, his probation pursuant to General Statutes § 53a-32.[1] On appeal, the defendant claims that the court (1) erred in finding that he had violated his probation, (2) abused its discretion in revoking his probation and imposing a sentence that included a period of incarceration, and (3) abused its discretion in declining to award him presentence confinement credit. We disagree, and, accordingly, affirm the judgment of the trial court.

The following procedural history is relevant to our resolution of this appeal. In 2018, the state charged the defendant with violation of a protective order in violation of General Statutes § 53a-223, based on text messages that he had sent to Rachael C., his former girlfriend and the mother of his child.[2] On January 17, 2019, the defendant pleaded guilty to one count of violation of a protective order in violation of § 53a-223. After accepting the defendant's plea, the trial court, *Matasavage, J.*, sentenced the defendant to five years of incarceration, execution suspended, followed by five years of probation.[3] The conditions of the defendant's probation included, inter alia, that he would (1) abide by a standing criminal protective order,[4] (2) "[e]ngage in [a] substance abuse and anger management evaluation and follow treatment recommendations," (3) "not violate any criminal law of the United States, this state or any other state or territory," and (4) "[r]eport as the [p]robation [o]fficer [required] . . . ." On February 8, 2019, the defendant signed the conditions of his probation, acknowledging that he understood and would follow the conditions.

On May 6, 2020, the defendant was arrested and charged with threatening in the second degree in violation of General Statutes § 53a-62,[5] for statements that he allegedly made regarding Walter L., who was, during the relevant period, Rachael C.'s boyfriend. On October 22, 2020, while still incarcerated pretrial on the threatening in the second degree charge, the defendant was served with an arrest warrant, charging him with violation of probation in violation of § 53a-32. On that same day, the defendant was arraigned thereon, and the court, *Wu, J.*, set a cash or surety bond in the amount of $10,000. On December 28, 2020, the defendant posted bond and was released from pretrial incarceration.

On March 29, 2021, the defendant filed a motion for a bill of particulars, requesting that the state give, inter alia, "[s]pecific notice of the manner in which the defendant is alleged to have violated probation . . . ." On April 16, 2021, the state filed a long form information alleging four grounds for the violation of probation charge against the defendant. Specifically, the state

alleged that the defendant violated his probation by (1) failing to report to his probation officer on September 6, 2019, (2) having multiple unexcused absences from Midwestern Connecticut Council of Alcoholism (MCCA), (3) engaging in harassing behavior toward Walter L. by leaving him voicemails and sending him one Facebook message, and (4) engaging in threatening behavior toward Walter L., resulting in the May 6, 2020 arrest for threatening in the second degree in violation of § 53a-62.

On June 18, 2021, the court, *Shaban*, *J.*, commenced a violation of probation hearing. On the basis of the evidence adduced during the evidentiary phase of the hearing, the court determined that the state had proven by a preponderance of the evidence each of the four grounds for violation of probation alleged in its long form information. On October 1, 2021, the court conducted the dispositional phase of the hearing, during which it (1) revoked the defendant's probation and sentenced him to five years of incarceration, execution suspended after six months, followed by three years and 250 days of probation, and (2) issued a ten year standing criminal protective order identifying Walter L. as the protected party.[6] This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

We first address the defendant's claim that the trial court erred in finding that he violated his probation. Specifically, the defendant contends that (1) the court improperly concluded that he committed threatening in the second degree in violation of § 53a-62, because his statements regarding Walter L. were made in the context of psychiatric treatment and his hospital discharge and, therefore, did not violate § 53a-62, (2) the court violated General Statutes § 52-146q and the rule set forth in *State* v. *Orr*, 291 Conn. 642, 969 A.2d 750 (2009), in admitting into evidence the statements that he made regarding Walter L., and (3) the other bases for the court's finding that the defendant violated his probation were technical in nature and, standing alone, were not sufficient to find that the defendant violated his probation. For the reasons that follow, we conclude that the defendant's third contention fails on the merits and, consequently, we need not address the merits of his other two claims.

We begin by setting forth the following applicable legal principles. "[R]evocation of probation hearings, pursuant to § 53a-32, are comprised of two distinct phases, [the evidentiary phase and the dispositional phase] each with a distinct purpose. . . . In the evidentiary phase, [a] factual determination by a trial court as to whether a probationer has violated a condition of probation must first be made. . . . In the dispositional phase, [i]f a violation is found, a court must next determine whether probation should be revoked

because the beneficial aspects of probation are no longer being served. . . . Since there are two distinct components of the revocation hearing, our standard of review differs depending on which part of the hearing we are reviewing." (Citation omitted; internal quotation marks omitted.) *State* v. *Gamer*, 215 Conn. App. 234, 241, 283 A.3d 16, cert. granted, 345 Conn. 920, 284 A.3d 984 (2022).

"The law governing the standard of proof for a violation of probation is well settled. . . . [A]ll that is required in a probation violation proceeding is enough to satisfy the court within its sound judicial discretion that the probationer has not met the terms of his probation. . . . It is also well settled that a trial court may not find a violation of probation unless it finds that the predicate facts underlying the violation have been established by a preponderance of the evidence at the hearing—that is, the evidence must induce a reasonable belief that it is more probable than not that the defendant has violated a condition of his or her probation. . . . In making its factual determination, the trial court is entitled to draw reasonable and logical inferences from the evidence. . . . 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. . . . In making this determination, every reasonable presumption must be given in favor of the trial court's ruling." (Internal quotation marks omitted.) Id., 241–42.

The following additional facts, as found by the trial court or as undisputed in the record, and procedural history are relevant to our resolution of the defendant's claims. On May 2, 2020, the defendant was admitted to Danbury Hospital for psychiatric treatment. When the defendant was admitted, he signed a "Verbal Release of Information Consent" form (consent form), in which he authorized Danbury Hospital to "verbally disclose pertinent clinical information regarding [his] medical and psychiatric care" to Elizabeth Atkins, his probation officer. (Emphasis omitted.) On May 4, 2020, the defendant told a licensed clinical social worker at Danbury Hospital, Nicole Knapp, that he intended to kill Walter L. after his discharge. On May 6, 2020, Knapp, in a sworn written statement to the Danbury police, reported the communications that the defendant made to her regarding his intent to kill Walter L. Knapp reported in the sworn written statement that the defendant told her that " '[w]hen I leave here, I'm a free man and I will kill Walter. I'm not going to shoot him, I want to take a knife [and] look him in [the] eyes while I twist and

turn it in his body to kill him. I want to inflict bodily harm on him. I will kill him.' " In the sworn written statement, Knapp also reported that the "specific threats were very concerning to [her], made [her] feel very uncomfortable," and that she "believe[d] that he ha[d] full intention to carry out his plan." That same day, the defendant was arrested for threatening in the second degree in violation of § 53a-62 for the statements that he made to Knapp about Walter L. He was unable to post bond at that time. On October 22, 2020, while in custody on the threatening charge, the defendant was served with an arrest warrant, issued by the court on May 14, 2020, charging him with violating the condition of his probation that he " 'not violate any criminal law of the United States, this state or any other state or territory.' "

On May 28, 2021, prior to the violation of probation hearing, the defendant filed a motion in limine to exclude physical evidence of the voicemails that the defendant allegedly left, and the Facebook message that the defendant allegedly sent, to Walter L. Relevant here, the defendant also sought to exclude the testimony of (1) Walter L., (2) Officer Vito Iacobellis, the Danbury police officer who took Knapp's sworn written statement, and (3) Rachael C. The defendant contended in the motion that the aforementioned evidence would be irrelevant, hearsay, impermissible character evidence, impossible to authenticate, and that its probative value would be outweighed by its prejudicial effect. The defendant filed a second motion in limine to exclude testimony from Knapp and Atkins regarding the statements that the defendant made to Knapp on May, 6, 2020, and regarding his subsequent arrest. The defendant's motion also sought to exclude his Danbury Hospital records. The defendant argued that his statements to Knapp on May 6, 2020, and any other evidence addressed in the motion, constituted privileged communications and were protected under, inter alia, § 52-146q.[7] On June 10, 2021, the state filed a response to the defendant's motions in limine. On June 14, 2021, the court, *Shaban*, *J.*, held a hearing on the defendant's motions in limine but reserved decision on both motions.

On June 18, 2021, the court held a violation of probation hearing. During the hearing, the court heard additional argument on the defendant's motions in limine. The defendant argued that Knapp was prohibited from testifying under § 52-146q and our Supreme Court's decision in *State* v. *Orr*, supra, 291 Conn. 642, which held that testimony of social workers is not admissible under § 52-146q (c) (2), i.e., the dangerous client exception to the social worker-client confidentiality rule.[8] Id., 662. The court, citing *Orr*, permitted Knapp to testify only to the fact that she had a confidential relationship with the defendant and that she warned a third party of the defendant's statements under the dangerous client

exception of § 52-146q (c) (2).[9] The court also permitted Atkins, Officer Iacobellis, Rachael C., and Walter L. to testify. Further, the court admitted as full exhibits (1) the consent form, under § 52-146q (b), (2) the sworn written statement that Knapp gave to Officer Iacobellis,[10] (3) the recordings of the voicemails that the defendant allegedly left Walter L., and (4) a screenshot of the Facebook message that the defendant allegedly sent to Walter L. The court admitted the sworn written statement as a full exhibit through the testimony of Officer Iacobellis and noted that it admitted the statement "not for the truth of the statement, but rather with respect to [Knapp's] determination that she had an obligation to prevent physical injury to another." The defendant did not call any witnesses in his case-in-chief.

On the basis of the evidence adduced at the violation of probation hearing, the court found that "the state has sustained its burden of proving by a preponderance of the evidence . . . that the defendant has, in fact, violated his probation by missing appointment[s] with his probation officer, having multiple unexcused absences at MCCA, [and] engaging in harassing behavior directed at [Walter L.] telephonically and then later via Facebook, even after having been told by Atkins to have no contact with [Walter L.]." The court further found that "[b]y engaging in behavior deemed serious enough to Knapp to compel her to report the statements . . . the defendant threatened to commit a crime of violence with the intent to terrorize [Walter L.]. In addition, the defendant threatened to commit such crime of violence in reckless disregard of the risk of causing such terror. . . . As a result, the [c]ourt finds by a preponderance of the evidence that in doing so the defendant has violated the terms of probation with respect to that charge."

With respect to its determination that the defendant missed appointments with Atkins, the court found that it "heard credible testimony from . . . Atkins . . . that the defendant failed to report to probation as scheduled on August 26, 2019 and September 6, 2019. As to the August 26, 2019 appointment, he called Atkins indicating he had been in custody in Florida and had been recently released. Atkins advised him to report on September 6, 2019. He failed to appear on that date, later claiming by email that he had been confused about the date. Atkins responded by telling him to report on September 9, 2019. The defendant did report on that date as directed, following his missed appointments."

As to its determination that the defendant had engaged in harassing behavior toward Walter L., the court found as follows. "[D]uring the [September 9, 2019] meeting . . . Atkins . . . discussed with [the defendant] that she had been contacted the day before by . . . [Walter L.], who complained that the defendant

had been repeatedly contacting him by phone during the last week. In those contacts by phone, the defendant had made threatening remarks toward [Walter L.] and members of his family. At the time of the calls, [Walter L.] was dating [Rachael C.], who is the defendant's ex-girlfriend. [Walter L.] was concerned enough about the nature of the calls that he contacted both the Thomaston and Winsted Police Departments, which were the towns where his family members lived. More specifically, there had been a series of calls to [Walter L.] from the defendant beginning on September 4, 2019, and concluding on the evening of September 7, 2019 . . . ."[11] The court noted that "[t]he speaker's tone on the call[s] was unmistakably one of irritation and anger. Notably, the phone number from which the calls were made was the same number that the defendant gave to Atkins two days later on September 9, [2019], as his contact information. There was additional credible testimony from [Rachael C.] that she had been in a romantic relationship with the defendant from 2014 to 2018, and they had a child in common. Once out of that relationship, she began a relationship with [Walter L.], which made the defendant extremely jealous and led him to being very threatening and angry that [Walter L.] was involved in his child's life. . . . [Rachael C.] heard the messages and recognized the defendant's voice as being the individual who left the messages on [Walter L.'s] phone. [Walter L.] also testified credibly as to the defendant's conduct and actions directed toward him. In addition to the phone calls in September, 2019, the defendant had previously called [Walter L.] at his place of employment at least four times and had spoken to him in a very aggressive manner. [Walter L.] directed the defendant not to call him anymore.

"At his September 9, 2019 meeting with Atkins, two days after the last phone calls, Atkins specifically told the defendant that he was to have no contact with [Walter L.] via telephone, social media, through a third party, and there should be no threats of violence or harassment toward him. The defendant stated that he understood . . . ." Nevertheless, on or about December 18, 2019, Walter L. reported to Atkins that he received a Facebook message from the defendant, in which the defendant wrote in relevant part that "[j]ust so you know, Rachael [C.] is playing you and me, she told me you're nothing and [is] done with you . . . ." The next day, "Atkins met with the defendant and expressly told him that any further contact with [Walter L.] would result in additional action being taken by her with regard to his probation. However, no action was taken at that time to seek a violation of probation warrant."

As to its determination that the defendant had multiple unexcused absences at MCCA, the court found that "Atkins . . . referred [the defendant] to MCCA for evaluation and treatment. After the referral, the defen-

dant missed a series of appointments with MCCA on October 7, October 17, October 21 and November 5, 2019, all without being excused. The defendant made up some but not all of the missed appointments. One of the missed appointments was due to a power outage from a storm, another due to issues with insurance coverage. There were other missed appointments for medical management on November 7, 2019 and December 10, 2019; the latter of which was made up by the defendant."

Regarding the statements that the defendant made to Knapp regarding Walter L., the court stated that "[t]he call to the police by Knapp was made following a call Knapp had made to Atkins regarding the defendant's statements. As a licensed clinical social worker, Knapp was bound by the confidentiality provisions of . . . [§] 52-146q as to any statements made to her by the defendant while at Danbury Hospital. . . . Now, while the statute generally prohibited the disclosure of any statements made by the defendant to Knapp, the exceptions embodied in the statute allowed for Knapp's disclosure of those statements to Atkins, who in turn asked Knapp to alert the police. In effect, there were two bases for the disclosure of the statements. First, pursuant to the subsection (b) of the statute, the defendant had signed a consent form upon his admission to the hospital on May 2, 2020 to the oral disclosure of information about his care and treatment. . . . The second basis for the release of the information is [§] 52-146q (c) (2) . . . . [A]lthough Knapp was statutorily prohibited from testifying in court about the statements made by the defendant in her presence, and the admission of Knapp's statement to the police was for a limited purpose, those limitations are negated by the release of information signed by the defendant on May 2, 2020, which waived any cloak of confidentiality relative to his mental health information. . . . Even if such statements were deemed to be hearsay as they were relayed by Knapp to both Atkins and the police, the [c]ourt considered them as reliable hearsay, given Knapp's credible testimony that she reported the statements under her statutory obligation as a mandated reporter." (Citations omitted.)

We now turn to the defendant's claims. The defendant principally claims that the court (1) improperly concluded that he violated § 53a-62 because his statements regarding Walter L. were made in the context of psychiatric treatment and his hospital discharge and, therefore, do not violate § 53a-62,[12] and (2) violated § 52-146q and the rule set forth in *Orr* in admitting, through Officer Iacobellis, the defendant's statements made to Knapp regarding Walter L. The defendant also, albeit somewhat cursorily, challenges the three other violations that the court found—that he missed two meetings with Atkins, missed six meetings with MCCA, and left threatening voicemails and a Facebook message with Walter

L. The defendant claims that those incidents were only "technical in nature" and, "standing alone," were insufficient to find that he violated his probation. For the reasons that follow, we conclude that the three other violations that the court found constitute independent grounds to find that the defendant violated his probation, and, accordingly, we decline to address the merits of the defendant's first two claims relating to the statements that he made to Knapp and the court's finding that he violated § 53a-62 on the basis of those statements.

"[T]o support a finding of probation violation, the evidence must induce a reasonable belief that it is more probable than not that the defendant has violated a condition of his or her probation. . . . Our law does not require the state to prove that all conditions alleged were violated; it is sufficient to prove that one was violated." (Citation omitted; internal quotation marks omitted.) *State* v. *Widlak*, 74 Conn. App. 364, 370, 812 A.2d 134 (2002), cert. denied, 264 Conn. 902, 823 A.2d 1222 (2003); see also *State* v. *Theoferlius D.*, 93 Conn. App. 88, 93–94, 888 A.2d 118 (concluding that rejection of defendant's challenge to admission of evidence regarding violation of probation based on failure to register as sex offender "render[ed] unnecessary any consideration" of defendant's challenge to admission of evidence regarding violation of probation based on discharge from treatment program), cert. denied, 277 Conn. 916, 895 A.2d 792 (2006), aff'd sub nom. *State* v. *T.D.*, 286 Conn. 353, 944 A.2d 288 (2008).

In its long form information, the state alleged that the defendant violated four conditions of his probation, in that he (1) failed to report to his probation officer on September 6, 2019, (2) missed multiple MCCA meetings, (3) harassed Walter L. through phone calls and Facebook, and (4) engaged in threatening behavior toward Walter L., resulting in his May 6, 2020 arrest for threatening in the second degree. The court found that the defendant violated his probation on the basis of each of the four aforementioned grounds.

The defendant does not claim on appeal that, as an evidentiary matter, the state has not met its burden in proving the first three grounds that it alleged in its long form information and on which the court determined that the defendant violated his probation. Instead, the defendant contends that those incidents were merely technical and, standing alone, would not have resulted in a finding that he violated his probation. We are not persuaded.[13] As this court explained, "[a] critical element of probation is the supervisory role of the state. . . . That role cannot be diluted by a claim that one or more of the conditions were not substantial. All of the conditions at issue related to the state's interest in supervising the defendant, and were not, therefore, mere technical violations." (Citation omitted.) *State* v. *Navikaukas*, 12 Conn. App. 679, 683, 533 A.2d 1214

(1987), cert. denied, 207 Conn. 804, 540 A.2d 74 (1988).

In sum, because a finding that the defendant violated any one condition of his probation is sufficient to conclude that he violated his probation and the defendant does not claim that, as an evidentiary matter, the state failed to sustain its burden of proof as to all four alleged conditions of probation, we conclude that the trial court did not err in finding that the defendant violated his probation.

II

The defendant next claims that the court abused its discretion when it revoked his probation and imposed a sentence that included a period of incarceration, contending that neither the purpose of his rehabilitation nor the safety of the public is served thereby. This claim also fails.

"The standard of review of the trial court's decision at the sentencing phase of the revocation of probation hearing is whether the trial court exercised its discretion properly by reinstating the original sentence and ordering incarceration. . . . In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Reversal is required only where an abuse of discretion is manifest or where injustice appears to have been done. . . . On the basis of its consideration of the whole record, the trial court may continue or revoke the sentence of probation . . . [and] . . . require the defendant to serve the sentence imposed or impose any lesser sentence. . . . In making this second determination, the trial court is vested with broad discretion. . . . In determining whether to revoke probation, the trial court shall consider the beneficial purposes of probation, namely rehabilitation of the offender and the protection of society. . . . The important interests in the probationer's liberty and rehabilitation must be balanced, however, against the need to protect the public." (Citation omitted; internal quotation marks omitted.) *State* v. *Rodriguez*, 130 Conn. App. 645, 649–50, 23 A.3d 826 (2011), aff'd, 320 Conn. 694, 132 A.3d 731 (2016).

The following additional procedural history is relevant to our resolution of the defendant's claim. On October 1, 2021, the court conducted the dispositional phase of the hearing during which it revoked the defendant's probation and sentenced him to five years of incarceration, execution suspended after six months, followed by three years and 250 days of probation. The court also issued a ten year standing criminal protective order identifying Walter L. as the protected person. In revoking the defendant's probation, the court concluded that he "would not be well served by . . . simply continuing on probation, as he's already been given that opportunity, and, yet . . . engaged in behavior that was harm-

ful not only to his own rehabilitation, but to the safety of the public as well." The court further reasoned that "the beneficial aspects of probation are not likely to be served in the immediate future, and the conclusion is based on the defendant's conduct in this instance and because he had already received the benefit of probation but nonetheless continued to engage in behavior that led to warnings from his probation officer and ultimately led to his arrest. This is evidenced by . . . new activity that was testified to by the witnesses in this case, including the phone calls . . . prior to the arrest as well."

The defendant claims that it would be an injustice to reincarcerate him because he is not a danger to public safety and because it would harm his rehabilitation. In support of his claim, the defendant highlights that (1) he has completed the MCCA program, has enrolled himself in a counseling program, has a job, and has not failed any drug tests, and (2) there has been no allegation that he has contacted Walter L. since the Facebook message in December, 2019. As we recited previously in this opinion, however, the court, in determining whether to revoke the defendant's probation, thoroughly considered whether the beneficial aspects of probation would be served by merely continuing the defendant on probation. Indeed, the court considered both the defendant's rehabilitation and the safety of the public on the basis of the whole record and concluded that the beneficial aspects of probation were no longer being served and revoked the defendant's probation. "Because the court was entrusted with the decision as to whether the defendant was meeting the goals of his probation and we must afford every reasonable presumption in favor of the correctness of that decision . . . on the basis of the record before us, we cannot say that it abused its discretion in finding that the rehabilitative purpose of probation could no longer be served." (Citation omitted.) *State* v. *Oliphant*, 115 Conn. App. 542, 555, 973 A.2d 147, cert. denied, 293 Conn. 912, 978 A.2d 1113 (2009).

Therefore, we conclude that the court did not abuse its discretion when it revoked the defendant's probation and imposed a sentence that included a period of incarceration.

III

The defendant's final claim is that the court abused its discretion in failing to award him, in connection with his violation of probation file, presentence confinement credit for the period between his May 6, 2020 arrest for threatening in the second degree and October 22, 2020, when he was served with the violation of probation warrant and a bond was set at his arraignment with respect to that charge. For the reasons that follow, we reject this claim.

The following additional procedural history is relevant to the resolution of the defendant's claim. On May 6, 2020, the defendant was arrested for threatening in the second degree and remained in presentence confinement, unable to obtain bail, at Corrigan Correctional Center. More than five months later, on October 22, 2020, the defendant was served with an arrest warrant charging him with violation of probation. On that same day, the court, *Wu*, *J.*, arraigned the defendant thereon and set a $10,000 cash or surety bond. The defendant, however, remained incarcerated for another two months, until December 28, 2020, when he posted bond.

During the October 1, 2021 dispositional phase of the revocation of probation hearing, the defendant orally moved the court to specify on the judgment mittimus[14] that he should receive approximately seven and one-half months of presentence confinement credit, for the period between May 6 and December 28, 2020. The defendant argued that, because the courthouse closures caused by the COVID-19 pandemic delayed service of the violation of probation warrant, the court should award him presentence confinement credit on the violation of probation file for the period between May 6 and October 22, 2020, when he was incarcerated pretrial in the separate threatening in the second degree file. The defendant emphasized that the court should exercise its discretion in such a manner because the Commissioner of Correction (commissioner) would not award him presentence confinement credit on the violation of probation file for that period without an indication on the mittimus. The state opposed the defendant's oral motion and requested that the court defer to the commissioner to determine whether the defendant is entitled to presentence confinement credit. The court agreed, stating that the "[commissioner] typically discerns what jail credit is available to a particular individual," whereupon the court denied the defendant's oral motion. The court directed the clerk to indicate on the mittimus that the defendant is entitled to presentence confinement credit "as deemed appropriate by [the commissioner]" and that the violation of probation warrant was not served until October 22, 2020.[15] What appears on the mittimus is the following notation: "The Defendant is entitled to sentence credit of AS DEEMED APPROPRIATE BY D.O.C."

The defendant claims that the court abused its discretion when it refused to award him presentence confinement credit, most notably for the period between May 6 and October 22, 2020.[16] Specifically, the defendant claims that the COVID-19 pandemic prevented timely service of the violation of probation warrant, and, therefore, the court abused its discretion in deferring to the commissioner and not awarding the defendant jail credit for that period pursuant to General Statutes § 18-98d.[17] The state argues that it is the commissioner, and

not the trial court, that has the statutory authority to award the defendant presentence confinement credit.[18] In light of this court's recent decision in *State* v. *Hurdle*, 217 Conn. App. 453, 288 A.3d 675 (2023), the defendant's claim must fail.[19]

In *Hurdle*, this court concluded that, pursuant to the express language of § 18-98d (c), the commissioner has the sole statutory authority to determine a defendant's eligibility for presentence confinement credit and to apply such credit against a defendant's sentence. Id., 464–65. In reaching that conclusion, the court in *Hurdle* relied on the language in § 18-98d (c), which provides in relevant part that "[t]he *Commissioner of Correction* shall be responsible for ensuring that each person to whom the provisions of this section apply receives the correct reduction in such person's sentence . . . ." (Emphasis added.) See *State* v. *Hurdle*, supra, 217 Conn. App. 463–64. This court further explained in *Hurdle* that, although the language of § 18-98d does not *explicitly* bar a sentencing court from awarding a defendant presentence confinement credit at the time of sentencing, such credit is "strictly a creature of statute"; id., 466; and, therefore, "[i]f the legislature had wanted to authorize sentencing courts to calculate and apply presentence confinement credit as part of their sentencing function," it could have included, but did not include, express language granting such statutory authority to sentencing courts pursuant to § 18-98d. Id., 464.

In construing the express language of § 18-98d (c), the court in *Hurdle* also observed the distinction between a sentence, which is issued by a sentencing court, and presentence confinement credit, which is calculated by the commissioner. Presentence confinement credit is not a part of a sentence, but rather "is a calculation of the amount of credited time a defendant already has served toward completing" a sentence issued and is not meant to reduce a sentence before it is imposed. Id. *Hurdle* further emphasizes the practical considerations of having the commissioner possess the sole statutory authority to determine presentence confinement credit. That is, the process that the commissioner undertakes in determining what presentence confinement credit a defendant is entitled to requires an investigation and examination into a defendant's records, where a sentencing court may not have such records readily available at the time of sentencing, particularly when a defendant has multiple criminal files, to accurately calculate presentence confinement credit. Id., 465 (highlighting that "[t]he information necessary to make an accurate calculation regarding presentence confinement credit is in the hands of the [commissioner]"). We therefore reaffirm here, as this court concluded in *Hurdle*, that it is the commissioner that is the proper authority to ensure that a defendant receives all presentence confinement credit due under § 18-98d.

In sum, we conclude that the court neither erred in finding that the defendant had violated his probation nor abused its discretion in revoking the defendant's probation and imposing a sentence that included a period of incarceration. Furthermore, in the absence of any statutory authority to award the defendant presentence confinement credit, the court did not err in declining to award it.

The judgment is affirmed.

In this opinion the other judges concurred.

* In accordance with our policy of protecting the privacy interests of victims of family violence, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

[1] General Statutes § 53a-32 provides in relevant part: "(a) At any time during the period of probation . . . the court or any judge thereof may issue a warrant for the arrest of a defendant for violation of any of the conditions of probation . . . .

"(c) Upon . . . an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charges. At such hearing the defendant shall be informed of the manner in which such defendant is alleged to have violated the conditions of such defendant's probation . . . shall be advised by the court that such defendant has the right to retain counsel and, if indigent, shall be entitled to the services of the public defender, and shall have the right to cross-examine witnesses and to present evidence in such defendant's own behalf. . . .

"(d) If such violation is established, the court may . . . (4) revoke the sentence of probation . . . . If such sentence is revoked, the court shall require the defendant to serve the sentence imposed or impose any lesser sentence. Any such lesser sentence may include a term of imprisonment, all or a portion of which may be suspended entirely or after a period set by the court, followed by a period of probation with such conditions as the court may establish. No such revocation shall be ordered, except upon consideration of the whole record and unless such violation is established by the introduction of reliable and probative evidence and by a preponderance of the evidence."

[2] The defendant also was charged with another count of violation of a protective order in violation of § 53a-223, harassment in the second degree in violation of General Statutes (Rev. to 2017) § 53a-183, and falsely reporting an incident in the second degree in violation of General Statutes (Rev. to 2017) § 53a-180c. The record also reflects that the defendant was charged in a separate file with breach of the peace in the second degree in violation of General Statutes § 53a-181.

[3] The defendant also pleaded guilty to and was convicted of one count of breach of the peace in violation of General Statutes § 53a-181. For that conviction, the court sentenced the defendant to six months of incarceration, execution suspended, followed by one year of probation. That sentence ran concurrently with the sentence for violation of a protective order. That conviction is not germane to this appeal. See footnote 2 of this opinion.

[4] The record is unclear as to who the protected person was under the protective order.

[5] General Statutes § 53a-62 provides in relevant part: "(a) A person is guilty of threatening in the second degree when: (1) By physical threat, such person intentionally places or attempts to place another person in fear of imminent serious physical injury, (2) (A) such person threatens to commit any crime of violence with the intent to terrorize another person, or (B) such person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror . . . ."

[6] According to the parties' briefs, on October 7, 2021, a nolle prosequi was entered on the threatening in the second degree charge.

[7] General Statutes § 52-146q provides in relevant part: "(b) All communications and records shall be confidential and, except as provided in subsection (c) of this section, a social worker shall not disclose any such communications and records unless the person or his authorized representative consents to such disclosure. Any consent given shall specify the individual or agency to which the communications and records are to be disclosed, the scope of the communications and records to be disclosed, the purpose of the disclosure and the expiration date of the consent. . . ."

[8] General Statutes § 52-146q (c) provides in relevant part: "Consent of the person shall not be required for the disclosure or transmission of such person's communications and records in the following situations as specifically limited . . .

"(2) Communications and records may be disclosed when a social worker determines that there is a substantial risk of imminent physical injury by the person to himself or others, or when disclosure is otherwise mandated by any provision of the general statutes. . . ."

[9] In *Orr*, our Supreme Court held that, "[b]ecause all communications between social workers and their clients are confidential, those communications falling under the dangerous client exception are confidential as well. When a social worker determines, through communication with his or her client, that there is a substantial risk of imminent physical injury to either the client or another person, he or she is authorized by the statute to divulge this information at that point for the purpose of preventing injury. The communications, however, retain their confidential nature by virtue of the statutory mandate in § 52-146q (b)." *State* v. *Orr*, supra, 291 Conn. 655–56. In that regard, the defendant argued that, even though Knapp reported his statements to the police under an exception to the privilege pursuant to § 52-146q (c) (2), "in-court testimony by that social worker" is still prohibited. The state, however, argued that (1) because the defendant signed a consent form, and (2) in light of footnote 22 of the majority opinion of *Orr*, which suggests that social workers are permitted to testify as to "the existence of a confidential relationship" and that "the social worker warned the third party of possible injury as permitted under the statute," Knapp should be permitted to testify. *State* v. *Orr*, supra, 662 n.22.

[10] The defendant also argued that the sworn written statement should not be admitted into evidence as a full exhibit because the statements are privileged and because of the hearsay rule. Specifically, the defendant argued that admitting the sworn written statement through Officer Iacobellis would circumvent § 52-146q (b) and the rule set forth in *Orr*.

[11] The court found that the defendant left a total of eight voicemails for Walter L., the contents of which are detailed in its decision.

[12] The defendant also claims that he did not know that the statements that he communicated to Knapp would be shared with Walter L., which is necessary for a violation of § 53a-62. For the reasons set forth in this opinion, we decline to address the merits of this claim.

[13] We do not mean to imply that a defendant, in order to obtain review of the merits of a claim that the trial court improperly found him to be in violation of his probation in a particular way, must always successfully challenge on appeal each and every ground on which the court found him to be in violation. If a defendant adequately briefs a claim that a court's alleged error in finding one particular ground during the adjudicatory phase materially affected the severity of the sentence it imposed during the dispositional phase, the court should review the claim because the alleged error may "have had some bearing on [the] disposition the court ordered and, if the court ordered the defendant to serve some portion of his suspended sentence as to that disposition, what that sentence would be." *State* v. *Benjamin*, 299 Conn. 223, 231–32, 9 A.3d 338 (2010). The defendant has not adequately briefed such a claim in this case.

[14] "[A] judgment mittimus is . . . a clerical document by virtue of which a person is transported to and rightly held in prison." (Internal quotation marks omitted.) *State* v. *Montanez*, 149 Conn. App. 32, 34 n.1, 88 A.3d 575, cert. denied, 311 Conn. 955, 97 A.3d 985 (2014).

[15] In his principal appellate brief, the defendant highlights the fact that the court did not indicate on the mittimus that the violation of probation warrant was not served until October 22, 2020, and argues that such failure also constitutes an abuse of its discretion. For the reasons set forth in part III of this opinion, we do not address the merits of that argument.

[16] In his appellate briefs, the defendant repeatedly states that he should be awarded approximately seven and one-half months of presentence confinement credit for the period between his May 6, 2020 arrest and his release

on bond on December 28, 2020. Nevertheless, in his principal appellate brief, the defendant acknowledges that the commissioner "will give [him] credit for the time between his bond being set and his posting his bond and being released pretrial." Thus, we discern the defendant's claim to be that the court improperly failed to award him jail credit for the period May 6 to October 22, 2020.

[17] General Statutes § 18-98d provides in relevant part: "(a) (1) (A) Any person who is confined to a community correctional center or a correctional institution for an offense committed on or after July 1, 1981, and prior to October 1, 2021, under a mittimus or because such person is unable to obtain bail or is denied bail shall, if subsequently imprisoned, earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed; provided (i) each day of presentence confinement shall be counted only once for the purpose of reducing all sentences imposed after such presentence confinement; and (ii) the provisions of this section shall only apply to a person for whom the existence of a mittimus, an inability to obtain bail or the denial of bail is the sole reason for such person's presentence confinement . . . ."

Section 18-98d (a) (1) was amended by No. 21-102, § 21, of the 2021 Public Acts, but the changes do not affect our analysis in this appeal. Accordingly, we refer to the current revision of the statute.

[18] The state argues that, because the commissioner has not yet determined whether to award the defendant presentence confinement credit for the period between May 6 and October 22, 2020, the defendant's claim is not ripe for judicial review, and, therefore, not justiciable. We construe the state's argument to be in response to the defendant's interpretation of § 18-98d that the trial court may award the defendant presentence confinement credit, and to argue that only the commissioner has the statutory authority under § 18-98d to award the defendant such credit. See part III of this opinion. The state also argues that once the defendant's claim regarding such credit is ripe for judicial review, the appropriate procedural mechanism with which to bring this claim would be to file a petition for a writ of habeas corpus challenging the actions of the commissioner, rather than those of the trial court. This issue has been squarely addressed in this court's recent decision in *State* v. *Hurdle*, 217 Conn. App. 453, 288 A.3d 675 (2023), in which this court concluded that, because the commissioner has the sole statutory authority under § 18-98d to determine whether a defendant is entitled to presentence confinement credit, only after that determination is made will the issue of such credit be ripe for judicial review by way of a writ of habeas corpus. Id., 462 n.6.

[19] The defendant also claims that the trial court's denial of presentence confinement credit, particularly in light of the unique circumstances created by the COVID-19 pandemic, violated his due process rights. This claim is predicated on the trial court, rather than the commissioner, having the statutory authority to award presentence confinement credit. Because we reaffirm our recent holding in *Hurdle* that the commissioner, and not a trial court, possesses the sole statutory authority under § 18-98d to calculate and apply presentence confinement credit to a defendant's sentence, we need not address this claim further.