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STATE OF CONNECTICUT *v.* BRIAN EBRON
(AC 44738)

Suarez, Clark and Seeley, Js.

Syllabus

The defendant, who had previously been convicted, following a jury trial, of manslaughter in the first degree with a firearm, appealed to this court from the judgment of the trial court dismissing his motion to correct an illegal sentence. In his motion to correct, the defendant, although he was twenty years old at the time he committed the underlying offense, claimed, inter alia, that the sentencing court unconstitutionally failed to consider his youth as a mitigating factor in sentencing him to thirty-two years of incarceration in violation of the principles announced in *Miller* v. *Alabama* (567 U.S. 460) pertaining to the sentencing of juvenile offenders. The trial court granted the state's motion to dismiss the defendant's motion to correct on the ground that the imposition of a thirty-two year sentence with the possibility of parole on a defendant who was twenty years old at the time of his offense was not unconstitutional and, therefore, the defendant failed to raise a colorable claim pursuant to the relevant rule of practice (§ 43-22). *Held*:

1. The trial court erred in granting the state's motion to dismiss the defendant's motion to correct an illegal sentence because it considered the merits of the defendant's claims instead of determining whether he had made a colorable claim that his sentence was illegal or imposed in an illegal manner: the defendant's claim that his sentence was illegal because the sentencing court failed to consider his youth as a mitigating factor plainly challenged his sentence and the sentencing proceedings, rather than his underlying conviction, and the jurisdictional and merits inquiries are separate for purposes of determining whether a claim is colorable under Practice Book § 43-22.

2. The defendant's claims failed as a matter of law and a remand for consideration of the merits of those claims would serve no useful purpose: because the defendant was sentenced to a period of thirty-two years of incarceration and because he would be eligible for parole after serving approximately twenty-seven years of his sentence, his claim fell outside of the purview of *Miller* and, thus, even if the defendant were to prevail on his claim that the state constitution provides twenty year olds with the same *Miller* protections afforded to juveniles, his claim would nevertheless fail as a matter of law because he did not receive a sentence that fell within *Miller*'s purview under our state constitution; accordingly, the judgment dismissing the motion to correct was reversed and the case was remanded with direction to render judgment denying the defendant's motion to correct.

3. The defendant could not prevail on his claim that the statutory provisions (§§ 54-91g and 54-125a (f)) requiring the consideration of youth as a mitigating factor and pertaining to parole eligibility for juvenile offenders violated his federal constitutional rights to equal protection because those provisions do not apply to defendants who were over eighteen years of age but under twenty-one years of age at the time of their offense:

   a. Even if this court agreed with the defendant that he is similarly situated to juveniles who fell within the purview of § 54-91g, § 54-91g does not apply to him because that statute does not apply retroactively to any defendant, like the defendant, who was convicted prior to October 1, 2015, the effective date of the statute.

   b. The early parole provisions of § 54-125a (f) do not violate the defendant's right to equal protection because, even assuming arguendo that twenty year old offenders are similarly situated to juvenile offenders for purposes of § 54-125a (f), the legislature had a rational basis for treating the two groups differently, as it could reasonably distinguish between juveniles and adult defendants in the realm of rehabilitation on the basis that maturity and judgment incrementally improve as one gets older, warranting harsher punishment for those defendants over the age of eighteen.

Argued January 9—officially released May 16, 2023

Procedural History

Substitute information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of Hartford, where the case was tried to the jury before *Mullarkey*, *J.*; verdict and judgment of guilty of the lesser included offense of manslaughter in the first degree with a firearm; thereafter, the defendant filed a motion to correct an illegal sentence; subsequently, the court, *Graham*, *J.*, granted the state's motion to dismiss the defendant's motion to correct an illegal sentence, and the defendant appealed to this court. *Improper form of judgment*; *reversed*; *judgment directed*.

Tamar Birckhead, assigned counsel, for the appellant (defendant).

Jonathan M. Sousa, assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, *Vicki Melchiorre*, supervisory assistant state's attorney, *Christopher Pelosi*, former senior assistant state's attorney, and *Herbert E. Carlson*, *Jr.*, former supervisory assistant state's attorney, for the appellee (state).

Opinion

CLARK, J. The defendant, Brian Ebron, appeals from the judgment of the trial court dismissing his motion to correct an illegal sentence pursuant to Practice Book § 43-22. On appeal, he argues that the court erred when it dismissed his motion for lack of subject matter jurisdiction because the motion set forth a colorable claim that his sentence is illegal or was imposed in an illegal manner. Specifically, the defendant, who was twenty years old when he committed the crime for which he was convicted, argues that his thirty-two year sentence for that conviction violates the prohibition in the eighth amendment to the United States constitution against cruel and unusual punishment, his right to due process under article first, §§ 8 and 9, of the Connecticut constitution and his state and federal constitutional rights to equal protection under the fourteenth amendment to the United States constitution and article first, § 20, of the Connecticut constitution, notwithstanding the fact that he will be parole eligible after serving approximately twenty-seven years of his thirty-two year sentence. We agree with the defendant that the court improperly dismissed his motion to correct on the ground that he failed to state a colorable claim, but we nevertheless conclude that his claims fail as a matter of law. As a result, we reverse the judgment dismissing the defendant's motion to correct an illegal sentence and remand the case with direction to render judgment denying the defendant's motion to correct.

We begin by setting forth the underlying facts that led to the defendant's conviction, which our Supreme Court set out in *State* v. *Ebron*, 292 Conn. 656, 659–60, 975 A.2d 17 (2009), overruled on other grounds by *State* v. *Kitchens*, 299 Conn. 447, 10 A.3d 942 (2011). "Shortly after midnight on November 18, 2003, Tameika Moore went to visit a friend who lived in an apartment at 784–786 Capitol Avenue in Hartford. When she arrived at the apartment, Moore was surprised to find the victim, nineteen year old Shomari Greene, there visiting that same friend. Moore asked the victim to leave and proceeded to escort him down the stairs and out of the building. While passing through the first floor hallway of the building, Moore and the victim encountered Lawanne Harris (Lawanne), the defendant's girlfriend, who lived in an apartment off that hallway with the defendant; her mother, Yolanda Harris (Yolanda); and her four year old sister, Destiny. The victim and Lawanne argued in the hallway for approximately thirty minutes, and the defendant and Yolanda subsequently joined in the altercation after Lawanne summoned them to tell them about a person who was 'disrespecting' her. Thereafter, the defendant and the victim proceeded to threaten each other, with the victim, who was visibly intoxicated, stating that he had 'people, too' and would come back to 'shoot up the place.' The defendant then

pointed a silver revolver at the victim and pulled the trigger, but the gun failed to fire. Moore and the victim then left the building.

"Shortly thereafter, however, the victim walked back to the apartment building and punched a hole in the glass adjacent to the building's front door in an attempt to open that door from the inside, because it had locked automatically behind him. After the victim reentered the front hallway, the defendant then shot the victim in the face with the revolver, causing his death. The defendant then fled from the scene by jumping out of the kitchen window of his apartment into the alley between buildings, pausing in the process to point his gun at Maria Ayala, a neighbor who had heard the initial altercation from her apartment and then had heard the gunshot after leaving her apartment and seeing the victim reenter the building." (Footnotes omitted.) Id.

On January 19, 2006, the defendant was convicted, following a jury trial, of manslaughter in the first degree in violation of General Statutes (Rev. to 2003) § 53a-55a (a). On March 27, 2007, following the defendant's conviction, the court, *Mullarkey*, *J.*, held a sentencing hearing. At that hearing, the court stated: "You have expressed sorrow in the presentence investigation for causing this young man's death. You have a loving girlfriend and a child. Your criminal record has not been violent up to this stage. You had a very difficult upbringing. Although your aunts did their best, as did agencies of the state . . . to keep you on the straight and narrow, they did not succeed. You have some work history, although it's incredibly minor. On the other side of the ledger, this was a senseless and unnecessary killing. The state proved beyond a reasonable doubt that it was not done in self-defense, to the jury's unanimous satisfaction. A mid to large caliber revolver was used at close range. In fact, it was unlawful for you to be in possession of the revolver since you [were] already a . . . convicted felon. Even if the court were to [credit] your story that it was just a weapon left behind by a cousin and not actually yours, there [was] evidence that it was displayed outside the apartment. The trigger was pulled. It . . . 'clicked' . . . . You went back to the apartment with it. The next time, it worked, unfortunately. . . .

"[A]t the time of this incident, [you] had one felony conviction, a number of misdemeanor convictions, one felony pending. And, then, it looks like . . . a sale [of narcotics] charge on March 24, [2004]. . . .

"[O]n the not helpful side of the ledger, [you were] a chronic marijuana user until arrested. [You were] on probation once, and that was unsatisfactory. . . . So, [your] history up to [your] current age has not been successful . . . . [Your] history at liberty is also not successful. [You have] only completed school until the tenth grade and not gotten [your] GED. [Your] work

. . . history would pass . . . in an eye blink. . . .

"Three felony convictions, a number of misdemeanor convictions, maybe [related to] your truancy or failure to [stay in] a group home, but [you spent] eighteen months in Long Lane [School, a juvenile detention facility]. This is a life you wasted. You've taken one. You wasted your own. Absolutely wasted. I know that this is little comfort to the parents, but this is one of the few defendants in whom I see any flicker of remorse. Whether that remorse is accurate or is really remorse for himself, I don't know."

After considering these factors, the court sentenced the defendant to thirty-two years of incarceration. Pursuant to General Statutes (Rev. to 2003) § 54-125a (b) (2), the defendant is eligible for parole after serving 85 percent of his sentence, which amounts to approximately twenty-seven years.[1]

On May 21, 2019, the defendant, who was self-represented, filed a motion to correct an illegal sentence pursuant to Practice Book § 43-22[2] arguing that, under *Miller* v. *Alabama*, 567 U.S. 460, 479, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the sentencing court "unconstitutionally failed to consider mitigating factors relating to [his] age." He also argued that he was entitled to an evidentiary hearing on his motion to correct pursuant to *State* v. *Miller*, 186 Conn. App. 654, 200 A.3d 735 (2018).[3] Last, he sought appointment of counsel in accordance with our Supreme Court's decision in *State* v. *Casiano*, 282 Conn. 614, 922 A.2d 1065 (2007).

On September 9, 2020, following the appointment of counsel, the defendant filed a second motion to correct an illegal sentence, which was substantially similar to his first motion. He argued that "his thirty-two year sentence is illegal in that it is excessive, considering the defendant was only twenty years old at the time the offense was committed . . . ." He acknowledged that *Miller* applies only to defendants under the age of eighteen but argued that his sentence still violated the precepts of *Miller* and its progeny because the protections established in *Miller*—that a sentencing court must consider a juvenile offender's youth before determining that life without parole is a proportionate sentence—should also be applied to offenders under the age of twenty-one who are similarly sentenced. Citing *Omar Miller*, he requested an evidentiary hearing to "present psychological testimony regarding his underdeveloped brain's reaction to the circumstances [of the offense]."

On September 25, 2020, the defendant filed a revised motion to correct an illegal sentence, which made the same arguments as his prior motions but also cited the fifth and fourteenth amendments to the United States constitution in support of his argument that he was entitled to a new sentencing hearing.[4]

The state filed a motion to dismiss the defendant's revised motion to correct on October 21, 2020, arguing that the court lacked subject matter jurisdiction over the defendant's motion because he failed to state a colorable claim that his sentence was illegal or imposed in an illegal manner. The state argued that *Miller* protections do not apply to individuals who were eighteen or older at the time of their crime, like the defendant, and that, even if *Miller* were extended to the defendant, the sentence in this case would not be illegal because the defendant is not serving an effective life sentence and he is eligible for parole pursuant to General Statutes (Rev. to 2003) § 54-125a (b) (2).

On October 23, 2020, the defendant requested permission to file a second revised motion to correct, asserting claims under the Connecticut constitution. The court granted that motion without objection. The second revised motion to correct an illegal sentence included the same arguments made in each of the prior motions—that *Miller* should be extended to offenders who were under the age of twenty-one at the time of their offense—but also cited article first, §§ 8 and 9, of the Connecticut constitution in support of that argument.

On January 4, 2021, the state filed a motion to dismiss the defendant's second revised motion to correct, incorporating the arguments it raised in its October 20, 2020 motion to dismiss. The defendant objected to that motion on January 8, 2021.

On January 11, 2021, the court heard oral arguments on the state's motion to dismiss. On March 23, 2021, the court, *Graham*, *J.*, issued a memorandum of decision granting the motion, stating that "[t]he defendant's motion to correct may be dismissed, independently, on several grounds, each of which is sufficient in itself. First and foremost, the defendant, then twenty years old, was not a juvenile at the time of the offense. Indeed, [*Miller* and its progeny] are expressly limited to cases in which the defendant was under the age of eighteen at the time of the crime. . . . Consequently, the sentencing court was not required to consider the hallmark features of youthfulness when sentencing [the defendant]. . . .

"Second, the defendant is, and always has been, eligible for parole. . . . [U]nder [*Miller*], a sentencing court's obligation to consider youth related mitigating factors is limited to cases in which the court imposes a sentence of life, or its equivalent, without parole. . . . The defendant's sentence of thirty-two years with the possibility of parole cannot be considered a life sentence without the possibility of parole or its functional equivalent. . . .

"Finally, the defendant's contention that article first, §§ 8 and 9, of the Connecticut constitution afford

greater protection than the eighth amendment to the federal constitution is unpersuasive. The defendant provides no pertinent legal authority in support of this proposition. Our Appellate Court, however, has explicitly held that the mandatory minimum sentence of twenty-five years of incarceration imposed on a juvenile homicide offender does not violate article first, §§ 8 and 9, of the Connecticut constitution. . . . If our Appellate Court held that article first, §§ 8 and 9, of the Connecticut constitution are not violated by a sentence of twenty-five years mandatory minimum imprisonment for murder and conspiracy to commit murder imposed upon an individual who committed said crimes when he was seventeen years old, then, logically, a thirty-two year sentence with the possibility of parole imposed upon a twenty year old offender is also permissible under the state constitution." (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.)

On the basis of the foregoing, the court concluded that, "[b]ecause the defendant was over the age of eighteen at the time of the offense, and because he is, and always has been, eligible for parole, he is not entitled to consideration of youth related mitigating factors vis-à-vis his sentence. Nor does the imposition of a thirty-two year sentence with the possibility of parole upon a defendant who was twenty years old at the time of his offense violate article first, §§ 8 and 9, of the Connecticut constitution. The defendant has failed to raise a colorable claim within the scope of Practice Book § 43-22." This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first argues that the court erred in granting the state's motion to dismiss because, in so doing, the court considered the merits of his claims instead of determining whether he had made a colorable claim that his sentence was illegal or imposed in an illegal manner. We agree.

"A trial court generally has no authority to modify a sentence but retains limited subject matter jurisdiction to correct an illegal sentence or a sentence imposed in an illegal manner. . . . Practice Book § 43-22 codifies this common-law rule. . . . Therefore, we must decide whether the defendant has raised a colorable claim within the scope of . . . § 43-22 . . . . In the absence of a colorable claim requiring correction, the trial court has no jurisdiction . . . . We have emphasized, however, that [t]he jurisdictional and merits inquiries are separate; whether the defendant ultimately succeeds on the merits of his claim does not affect the trial court's jurisdiction to hear it.

"[A]n illegal sentence is essentially one [that] . . . exceeds the relevant statutory maximum limits, violates

a defendant's right against double jeopardy, is ambiguous, or is internally contradictory. . . . In accordance with this summary, Connecticut courts have considered four categories of claims pursuant to [Practice Book] § 43-22. The first category has addressed whether the sentence was within the permissible range for the crimes charged. . . . The second category has considered violations of the prohibition against double jeopardy. . . . The third category has involved claims pertaining to the computation of the length of the sentence and the question of consecutive or concurrent prison time. . . . The fourth category has involved questions as to which sentencing statute was applicable. . . . We have emphasized that, in order to invoke the jurisdiction of the trial court, a challenge to the legality of a sentence must challenge the sentencing proceeding itself." (Citations omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Myers*, 343 Conn. 447, 459–60, 274 A.3d 100 (2022).

"[T]o raise a colorable claim within the scope of Practice Book § 43-22, the legal claim and factual allegations must demonstrate a possibility that the defendant's claim challenges his or her sentence or sentencing proceedings, not the underlying conviction. The ultimate legal correctness of the claim is not relevant to our jurisdictional analysis." *State* v. *Ward*, 341 Conn. 142, 153, 266 A.3d 807 (2021). "[T]he jurisdictional and merits inquiries are separate; whether the defendant ultimately succeeds on the merits of his claim does not affect the trial court's jurisdiction to hear it." (Internal quotation marks omitted.) *State* v. *Myers*, supra, 343 Conn. 459. Where a defendant's motion to correct "plausibly [challenges] the defendant's sentence," that claim is "colorable," and the court has subject matter jurisdiction over that claim even where "the . . . [claim has] no merit." Id., 459–60. "The issue of whether a defendant's claim may be brought by way of a motion to correct an illegal sentence, pursuant to Practice Book § 43-22, involves a determination of the trial court's subject matter jurisdiction and, as such, presents a question of law over which our review is plenary." (Internal quotation marks omitted.) *State* v. *Turner*, 214 Conn. App. 584, 589, 280 A.3d 1278 (2022).

The defendant's claims in this case asserted, inter alia, that his sentence was illegal because the sentencing court failed to consider his youth as a mitigating factor. The defendant plainly challenged his sentence and the sentencing proceedings in his motion to correct, rather than his underlying conviction. As a result, and because the "jurisdictional and merits inquiries are separate" for purposes of determining whether a claim is colorable under Practice Book § 43-22; (internal quotation marks omitted) *State* v. *Myers*, supra, 343 Conn. 459; the court erred in dismissing the defendant's motion to correct. See, e.g., *State* v. *Ward*, supra, 341 Conn. 153, 169.

II

Although we conclude that the defendant set forth a colorable claim for purposes of establishing the court's jurisdiction over his motion to correct, and although we typically remand cases for a consideration of their merits if we determine that they were improperly dismissed for lack of subject matter jurisdiction, where a "defendant's claim fails as a matter of law, a remand for further consideration of the merits would serve no useful purpose." *State* v. *Turner*, supra, 214 Conn. App. 591 n.5. Moreover, where, as here, the trial court "determined that it did not have subject matter jurisdiction precisely *because* it concluded that, on the merits, the defendant had failed to set forth a colorable claim," it is appropriate for this court to consider the merits of the motion on appeal. (Emphasis added.) Id. Consistent with these principles, we conclude that the defendant's claims in this case fail as a matter of law and that a remand for consideration of the merits of those claims would serve no useful purpose. See id.

We begin with the defendant's claim that the prohibition against cruel and unusual punishment and the right to due process under article first, §§ 8 and 9, of the Connecticut constitution required the sentencing court to consider his youth and its attendant characteristics before imposing his sentence.[5] In his brief, the defendant applies the six-pronged analysis articulated in *State* v. *Geisler*, 222 Conn. 672, 684–86, 610 A.2d 1225 (1993), and concludes that those factors support an interpretation of our state constitution that affords eighteen, nineteen, and twenty year olds the same protections that *Miller* affords to juveniles under the United States constitution.

The defendant fails to recognize, however, that, because he was sentenced to a period of thirty-two years of imprisonment and is parole eligible after approximately twenty-seven years, his claim falls outside the purview of *Miller* under our state constitution *even for those defendants who were under the age of eighteen at the time of their offense*. Our Supreme Court's decision in *State* v. *McCleese*, 333 Conn. 378, 215 A.3d 1154 (2019), is instructive. In *McCleese*, the defendant shot and killed one victim and injured another when he was seventeen years old. Id., 382. He received a total effective sentence of eighty-five years of imprisonment without parole eligibility. Id. The trial court, in sentencing him to the functional equivalent of life without the possibility of parole, did not consider the defendant's age and the hallmarks of adolescence as mitigating factors. Id., 382, 385. After the defendant was sentenced, "the United States Supreme Court in *Miller* held that the eighth amendment's prohibition on cruel and unusual punishments is violated when a juvenile offender serves a *mandatory* sentence of life imprisonment without the possibility of parole because

it renders youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence and poses too great a risk of disproportionate punishment. . . . Thus, an offender's age and the hallmarks of adolescence must be considered as mitigating factors before a juvenile can serve this particular sentence." (Citation omitted; emphasis added; internal quotation marks omitted.) Id., 382–83. Moreover, our Supreme Court noted that it had previously "interpreted *Miller* to apply not only to mandatory sentences for the literal life of the offender, but also to discretionary sentences and sentences that result in imprisonment for the 'functional equivalent' of an offender's life." Id., 383.

Our state legislature, in response to these newly recognized constitutional requirements, passed No. 15-84 of the 2015 Public Acts (P.A. 15-84), which provides in relevant part that all juvenile offenders sentenced to more than ten years in prison are retroactively eligible for parole. Id., 383. As a result, the defendant in *McCleese* would become eligible for parole after serving thirty years of his sentence, when he would be approximately fifty years old. Id., 384. Following passage of P.A. 15-84, he filed a motion to correct his sentence, alleging a *Miller* claim under the federal constitution and a similar claim under the state constitution. Id., 385. The trial court initially granted the defendant's motion to correct but, a few days later, the United States Supreme Court decided *Montgomery* v. *Louisiana*, 577 U.S. 190, 212, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), which held that, although *Miller* applied retroactively, a state can remedy a *Miller* violation by granting parole eligibility retroactively to a defendant whose *Miller* rights had been violated at sentencing. *State* v. *McCleese*, supra, 385. Relying on *Montgomery*, the state filed a motion to reconsider the ruling on the defendant's motion to correct, which the trial court granted. Id., 385–86. In light of *Montgomery*, the court concluded that, because the defendant had become eligible for parole under P.A. 15-84, his *Miller* claim was moot under both the federal and state constitutions. Id., 386.

On appeal to our Supreme Court, the defendant in *McCleese* argued that the parole eligibility provisions of P.A. 15-84 were an insufficient remedy for a *Miller* violation under the Connecticut constitution. Id., 387. Specifically, he argued that a court's failure to consider the *Miller* factors when sentencing a juvenile to fifty years or more of incarceration can be remedied only by a new sentencing hearing that complies with *Miller*, regardless of whether the juvenile is, or later becomes, eligible for parole. Id. After analyzing our state constitution pursuant to *State* v. *Geisler*, supra, 222 Conn. 684–86, our Supreme Court disagreed and concluded "that parole eligibility afforded by P.A. 15-84, § 1, is an adequate remedy for a *Miller* violation under the Connecticut constitution." *State* v. *McCleese*, supra, 333 Conn. 409. In rejecting the defendant's additional claim that

P.A. 15-84 violates the separation of powers provisions of our state constitution, the court further explained that "parole eligibility under P.A. 15-84, § 1, *negates* a *Miller* violation because the sentence no longer falls within the purview of *Miller*." (Emphasis in original.) Id., 414. The court noted that "P.A. 15-84, § 1, has the legal effect of altering the defendant's punishment so that he no longer will serve life, or its equivalent, in prison without the possibility of parole." Id. It further noted that, as it had previously stated in *State* v. *Delgado*, 323 Conn. 801, 811, 151 A.3d 345 (2016), "if a defendant has the possibility of parole, there is no *Miller* violation. . . . Thus, resentencing is not required. . . . A punishment that includes parole eligibility no longer falls within the purview of *Miller* . . . . *Miller* simply does not apply when a juvenile's sentence provides an opportunity for parole . . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *McCleese*, supra, 414.

The defendant's claim in this case—that his sentence violates the state constitution's prohibition against cruel and unusual punishment because the sentencing court failed to consider his age at the time of sentencing—cannot be reconciled with our Supreme Court's decision in *McCleese*. The defendant in *McCleese*, who was seventeen at the time he committed the offense, received an eighty-five year sentence without the possibility of parole. Id., 382. Public Act 15-84 made him eligible for parole at the age of fifty after serving thirty years of that sentence. Id., 383. Our Supreme Court held that such a sentence, which guaranteed that he would be incarcerated for no less than thirty years and up to eighty-five years, fell outside the purview of *Miller* under our state constitution. Id., 387.

The defendant in this case, who was twenty years old at the time of the offense, was sentenced to thirty-two years of incarceration. Like the defendant in *McCleese*, he will be eligible for parole at the age of fifty after serving approximately twenty-seven years of that sentence. See id. Moreover, the defendant in this case, unlike the defendant in *McCleese*, is guaranteed to be released on this sentence after serving no more than thirty-two years, at which time he will be approximately fifty-five years of age. We therefore conclude that, even if the defendant, who was twenty years old at the time he committed the offense, were to prevail on his claim that the state constitution provides twenty year olds with the same *Miller* protections afforded to juveniles, his claim would nevertheless fail as a matter of law because, consistent with the sentence at issue in *McCleese*, he did not receive a sentence that falls within the purview of *Miller* under our state constitution.[6]

Accordingly, the defendant's claim fails as a matter of law.

III

The defendant also argues, for the first time on appeal, that the provisions of P.A. 15-84 pertaining to parole eligibility for juvenile offenders and the consideration of youth as a mitigating factor at sentencing violate his equal protection rights under the fourteenth amendment to the United States constitution and article first, § 20, of the Connecticut constitution because those provisions do not apply to defendants who were over the age of eighteen but under the age of twenty-one at the time of their offense. See General Statutes §§ 54-91g and 54-125a (f). He argues that, despite his failure to raise these claims before the trial court, he is entitled to relief pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015), in which our Supreme Court stated that "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Emphasis in original; footnote omitted.)[7] The state argues that the defendant's equal protection claims fail because adults and juveniles are not similarly situated and because §§ 54-91g and 54-125a (f) pass muster under rational basis review. For the reasons that follow, we conclude that the defendant is not entitled to relief under *Golding* with respect to his equal protection claims brought under the federal constitution.[8]

A

Section 2 of P.A. 15-84, codified at § 54-91g (a) (1), requires a sentencing court to consider, inter alia, "the hallmark features of adolescence," and the differences between the brain development of a child and an adult, before sentencing a defendant who has been convicted of a class A or B felony following a transfer of the case from the juvenile docket of the Superior Court to the regular criminal docket.[9] The defendant argues that the statute's exclusion of defendants who were under the age of twenty-one at the time of their offense violates his equal protection rights because eighteen, nineteen, and twenty year olds convicted of lengthy sentences are similarly situated to juveniles who were convicted following a transfer of their case to the regular criminal docket and defendants who were convicted as juveniles and sentenced to a total effective sentence of more than ten years.

The defendant fails to recognize, however, that, even

if we agreed with him that he is similarly situated to juveniles who fall within the purview of § 54-91g *and* that the legislature had no rational basis for excluding defendants who were under the age of twenty-one at the time of an offense, the statute does not apply to him for an independent reason that he has failed to address on appeal. Our Supreme Court, in interpreting § 54-91g, has made clear that the statute does not apply retroactively to juveniles convicted prior to October 1, 2015, the effective date of the statute. See *State* v. *Delgado*, supra, 323 Conn. 814; see also *State* v. *Coltherst*, 341 Conn. 97, 114, 266 A.3d 838 (2021) ("[t]his court's previous interpretation of § 54-91g confirms that the legislature did not intend the statute to apply retroactively to defendants who, although under the age of eighteen when they committed their offenses, were initially charged and tried as adults"). In other words, no defendants convicted of crimes committed prior to October 1, 2015, including those who were under the age of eighteen at the time of the offense, are entitled to resentencing under § 54-91g. See *State* v. *Coltherst*, supra, 116–17 ("[o]ur conclusion in *Delgado* that § 54-91g does not apply retroactively is consistent with the plain language of the statute, which . . . limits its application, effective October 1, 2015, to children convicted of a class A or B felony following transfer from the docket for juvenile matters to the regular criminal docket of the Superior Court"). The defendant was convicted in 2006 and sentenced in 2007, long before the statute's October 1, 2015 effective date.

As a result, the statute is wholly inapplicable to the defendant, and he has not satisfied his burden under *Golding* of demonstrating that the alleged constitutional violation exists and deprived him of a fair trial.

B

The defendant next argues that the early parole provisions of P.A. 15-84, which are codified at § 54-125a (f), violate his right to equal protection. Section 54-125a (f) (1) provides in relevant part: "(1) . . . [A] person convicted of one or more crimes committed while such person was under eighteen years of age, who is incarcerated on or after October 1, 2015, and who received a definite sentence or total effective sentence of more than ten years for such crime or crimes prior to, on or after October 1, 2015, may be allowed to go at large on parole in the discretion of the panel of the Board of Pardons and Paroles for the institution in which such person is confined, provided (A) if such person is serving a sentence of fifty years or less, such person shall be eligible for parole after serving sixty percent of the sentence or twelve years, whichever is greater, or (B) if such person is serving a sentence of more than fifty years, such person shall be eligible for parole after serving thirty years. . . ."[10]

We first note that "[t]he concept of equal protection

[under both the state and federal constitutions] has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. . . . Conversely, the equal protection clause places no restrictions on the state's authority to treat dissimilar persons in a dissimilar manner. . . . Thus, [t]o implicate the equal protection [clause] . . . it is necessary that the state statute . . . in question, either on its face or in practice, treat persons standing in the same relation to it differently. . . . [Accordingly], the analytical predicate [of an equal protection claim] is a determination of who are the persons [purporting to be] similarly situated." (Internal quotation marks omitted.) *State* v. *Dyous*, 307 Conn. 299, 315, 53 A.3d 153 (2012).

We conclude that the defendant's equal protection claim in this case fails because, even if we assume arguendo that twenty year old offenders are similarly situated to juvenile offenders for purposes of § 54-125a (f),[11] the legislature had a rational basis for treating the two groups differently. If a "statute does not touch upon either a fundamental right or a suspect class, its classification need only be rationally related to some legitimate government purpose in order to withstand an equal protection challenge." (Internal quotation marks omitted.) *State* v. *McCleese*, supra, 333 Conn. 427. Rational basis review applies here because the statute does not implicate a fundamental right[12] and because age is not a suspect classification. See *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 312–14, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976).

"Under rational basis review, [i]t is irrelevant whether the conceivable basis for the challenged distinction actually motivated the legislature. . . . [The law] must be upheld . . . if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. . . . [T]he [statutory scheme] is presumed constitutional . . . and [t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *McCleese*, supra, 333 Conn. 427.

Applying this standard to § 54-125a (f), we conclude that there are several rational justifications for treating juveniles differently than adults and, thus, the statute does not violate equal protection. The legislature could reasonably distinguish between juvenile and adult defendants in the realm of rehabilitation on the basis that maturity and judgment incrementally improve as one gets older, warranting harsher punishment for those eighteen years of age and older. Indeed, the United States Supreme Court has noted marked differences between these two groups in this context. In *Graham* v. *Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), for instance, the court noted that

"developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." It also has noted that "[o]nly a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood." (Internal quotation marks omitted.) *Roper* v. *Simmons*, 543 U.S. 551, 570, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). These distinctions alone could conceivably warrant treating juveniles differently than adults for purposes of determining parole eligibility. Thus, because the legislature had a rational basis for limiting § 54-125a (f) to juvenile offenders, the defendant has not satisfied his burden under *Golding* of demonstrating that the alleged constitutional violation exists and deprived him of a fair trial.

The form of the judgment is improper, the judgment dismissing the defendant's motion to correct an illegal sentence is reversed and the case is remanded with direction to render judgment denying the defendant's motion to correct an illegal sentence.

In this opinion the other judges concurred.

[1] General Statutes (Rev. to 2003) § 54-125a provides in relevant part: "(b) . . . (2) A person convicted of an offense . . . where the underlying facts and circumstances of the offense involve the use, attempted use or threatened use of physical force against another person shall be ineligible for parole under subsection (a) of this section until such person has served not less than eighty-five per cent of the definite sentence imposed."

[2] Practice Book § 43-22 provides: "The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner."

[3] For ease of reference, we hereinafter refer to *Miller* v. *Alabama*, supra, 567 U.S. 460, as "*Miller*" and *State* v. *Miller*, supra, 186 Conn. App. 654, as "*Omar Miller*."

[4] The defendant cited to the fourteenth amendment in the opening paragraph of the revised motion to correct. He provided no analysis of that amendment or its application to his sentence however. The defendant conceded in his appellate brief that his equal protection claims are being raised for the first time on appeal.

[5] In his principal brief, the defendant also argues, for the first time on appeal, that the Connecticut constitution's prohibition against cruel and unusual punishment affords all offenders under the age of twenty-one the right to the specific early parole benefits that General Statutes § 54-125a (f) extends to offenders who were under the age of eighteen at the time of their offense. The defendant fails, however, to provide any meaningful analysis of that claim, such as a discussion of why the state constitution provides *any* defendant with the right to those precise statutory benefits. Because the defendant has not adequately briefed his claim that the state constitution's prohibition against cruel and unusual punishment requires the state to afford him the precise early parole benefits extended to juveniles in § 54-125a (f), we decline to address the merits of that claim. See *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 803, 256 A.3d 655 (2021) ("Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.)).

The defendant also argues for the first time on appeal that General Statutes § 54-91g violates article first, §§ 8 and 9, of the Connecticut constitution because "current norms of decency" require that § 54-91g be extended to eighteen, nineteen, and twenty year olds. As explained more fully in part

III A of this opinion, this claim fails as a matter of law because § 54-91g does not apply retroactively to convictions, like the defendant's, that occurred prior to the statute's October 1, 2015 effective date. See *State* v. *Delgado*, 323 Conn. 801, 814, 151 A.3d 345 (2016) (recognizing that § 54-91g became effective October 1, 2015, and does not apply retroactively).

[6] For the same reason, we reject the defendant's related claim that he was entitled to an evidentiary hearing on his claims pursuant to this court's decision in *Omar Miller*. See *State* v. *Miller*, supra, 186 Conn. App. 654. In that case, which was decided prior to our Supreme Court's decision in *McCleese*, this court reversed a trial court's sua sponte denial, without a hearing, of a motion to correct a thirty-five year sentence imposed on a defendant who was nineteen at the time he committed the underlying offense. Id., 655–56. This court held that the trial court erred when it denied the motion to correct without first holding a hearing on that motion. Id., 663–64. In so holding, the court also ordered that, on remand, the defendant was entitled to present evidence in support of his "novel" claim that his sentence, which allegedly was entered without taking into consideration his youth as a mitigating factor, violated our state constitution's prohibition against cruel and unusual punishment. Id., 663. The court expressed no view, however, on the merits of the defendant's claim. Id. In light of our Supreme Court's subsequent decision in *McCleese* and our conclusion that the defendant's sentence in the present case did not trigger *Miller* protections under our state constitution, we conclude that remanding the defendant's motion in this case for an evidentiary hearing would serve no useful purpose. See *State* v. *Turner*, supra, 214 Conn. App. 591 n.5 ("a remand for further consideration of the merits would serve no useful purpose").

[7] The state argues that we should not consider the defendant's equal protection claims because they challenge neither the sentence nor the sentencing process and, thus, fall outside a court's limited jurisdiction on a motion to correct an illegal sentence. The state cites *State* v. *Henderson*, 93 Conn. App. 61, 75, 888 A.2d 132, cert. denied, 277 Conn. 927, 895 A.2d 800 (2006), for the proposition that, when a defendant attacks a statute on its face, "he challenges the constitutionality of the legislative enactment itself and not the action of the trial court in applying the proper law in the proper manner. . . . Such challenges are not within the scope of [the] court's expressly authorized jurisdiction for a motion to vacate an illegal sentence." (Internal quotation marks omitted.) See also, e.g., *State* v. *Jin*, 179 Conn. App. 185, 195–96, 179 A.3d 266 (2018); *State* v. *Rivera*, 177 Conn. App. 242, 277–78, 172 A.3d 260 (2017), cert. denied, 333 Conn. 937, 218 A.3d 1046 (2019); *State* v. *Starks*, 121 Conn. App. 581, 592, 997 A.2d 546 (2010). We conclude that the court has jurisdiction over the defendant's claims and that they are reviewable in light of our Supreme Court's decision in *State* v. *McCleese*, supra, 333 Conn. 425 n.23. There, as in the present case, the defendant filed a motion to correct an illegal sentence and then, on appeal, asserted that a resentencing statute violated his right to equal protection because it did not apply to him. Id., 425. Our Supreme Court noted that the defendant failed to raise this equal protection claim before the trial court but stated: "To the extent that the record supports it, we nonetheless review it under . . . *Golding* . . . ." (Citation omitted.) Id., 425 n.23; see also, e.g., *State* v. *Arnold*, 205 Conn. App. 863, 868 n.9, 259 A.3d 716 ("[b]ecause we are bound by [our Supreme Court's decision in *McCleese*] . . . we will consider the defendant's claim under *Golding*" (citation omitted)), cert. denied, 339 Conn. 904, 260 A.3d 1225 (2021). As such, we will consider the defendant's equal protection claims in this case pursuant to *Golding* because the defendant's claims are of a constitutional magnitude and the record is adequate for our review. See *State* v. *Castro*, 200 Conn. App. 450, 456–57, 238 A.3d 813 (setting forth four *Golding* prongs), cert. denied, 335 Conn. 983, 242 A.3d 105 (2020).

[8] We consider the defendant's equal protection claims under the United States constitution, but we decline to consider his equal protection claims under the Connecticut constitution because he failed to analyze these claims independently from his fourteenth amendment claims. See, e.g., *State* v. *McCleese*, supra, 333 Conn. 425 n.23; *State* v. *Allen*, 289 Conn. 550, 580 n.19, 958 A.2d 1214 (2008).

[9] General Statutes § 54-91g (a) provides: "If the case of a child, as defined in section 46b-120, is transferred to the regular criminal docket of the Superior Court pursuant to section 46b-127 and the child is convicted of a class A or B felony pursuant to such transfer, at the time of sentencing, the court shall: (1) Consider, in addition to any other information relevant to sentencing, the defendant's age at the time of the offense, the hallmark

features of adolescence, and any scientific and psychological evidence showing the differences between a child's brain development and an adult's brain development; and (2) Consider, if the court proposes to sentence the child to a lengthy sentence under which it is likely that the child will die while incarcerated, how the scientific and psychological evidence described in subdivision (1) of this subsection counsels against such a sentence."

[10] As discussed in part II of this opinion, a separate subsection of this statute establishes the defendant's current parole eligibility. See General Statutes (Rev. to 2003) § 54-125a (b) (2); see also footnote 1 of this opinion.

[11] The defendant argues that "offenders under eighteen who are convicted of class A or B felonies and sentenced to more than ten years are similarly situated to offenders who are eighteen, nineteen, and twenty and in the same posture. There is no difference between these two groups other than chronological age." The state argues that the two groups are not similarly situated based on the United States Supreme Court's decisions in *Miller* v. *Alabama*, supra, 567 U.S. 471, *Graham* v. *Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), and *Roper* v. *Simmons*, 543 U.S. 551, 570, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). "Although perhaps a sufficient distinction, we nonetheless assume, without deciding, that the offenders are similarly situated for equal protection purposes." *State* v. *McCleese*, supra, 333 Conn. 427 n.26.

[12] The defendant suggests in his brief that intermediate review should apply because the statute involves " 'a significant interference with [his] liberty,' " citing *Kerrigan* v. *Commissioner of Public Health*, 289 Conn. 135, 161, 957 A.2d 407 (2008). As the defendant admits, however, our Supreme Court has consistently rejected the argument that intermediate review should apply to claims that involve interference with liberty as a result of criminal punishment. See, e.g., *State* v. *McCleese*, supra, 333 Conn. 427 n.27; *State* v. *Higgins*, 265 Conn. 35, 66, 826 A.2d 1126 (2003); *State* v. *Wright*, 246 Conn. 132, 140–41, 716 A.2d 870 (1998).