****

The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

****

STATE OF CONNECTICUT *v.* THADDEUS TAYLOR
(AC 25250)

Lavery, C. J., and Schaller, Dranginis, Flynn, Bishop, DiPentima, McLachlan, Harper and Dupont, Js.

Argued May 4—officially released October 4, 2005

(Appeal from Superior Court, judicial district of New Haven, geographical area number twenty-three, Clark, J.; Gold, J.)

Janet A. Reither Perrotti, deputy assistant public defender, with whom was *Kent Drager*, senior assistant public defender, for the appellant (defendant).

Melissa L. Streeto Brechlin, deputy assistant state's attorney, with whom, on the brief, were *Michael Dearington*, state's attorney, *Eugene R. Calistro, Jr.*, assistant state's attorney, and *David Newman* and *Robert O'Brien*, supervisory assistant state's attorneys, for the appellee (state).

Opinion

DUPONT, J. The defendant, Thaddeus Taylor,

appeals from the judgment of the trial court denying his motion, captioned ''Motion for Correction of Illegal Sentence.'' In his motion, the defendant asserted that he was (1) improperly deprived of his right to participate in the presentence investigation report (PSI) prepared for his sentencing in 1997, (2) improperly denied a continuance to participate properly in the preparation of the PSI and (3) not provided with a copy of the PSI in a timely manner. The defendant sought, as relief in his motion, a ''reconvening'' of the presentence investigation so that the sentence review division could review properly his application for a lesser sentence that is pending before that division. We conclude that the defendant failed to state a claim within the scope of Practice Book § 43-22[1] and therefore that the court had no jurisdiction over the subject matter of the motion. We reverse the denial of the defendant's motion and remand the matter to the trial court with direction to render judgment of dismissal.

The jury found the defendant guilty of three counts of assault on an employee of the department of correction, in violation of General Statutes § 53a-167c. On April 11, 1997, the court sentenced the defendant to a total effective term of twelve years incarceration, execution suspended after six years, and five years probation, which was to run consecutive to a federal sentence that the defendant was then serving. The defendant appealed from the judgment of conviction, which this court affirmed. *State* v. *Taylor*, 63 Conn. App. 386, 776 A.2d 1154, cert. denied, 257 Conn. 907, 777 A.2d 687, cert. denied, 534 U.S. 978, 122 S. Ct. 406, 151 L. Ed. 2d 308 (2001). The defendant also filed an application to the sentence review division, which remains pending, awaiting the resolution of this appeal. While his application for sentence review was pending, and nearly seven years after the date of his sentencing, the defendant filed the motion to correct his sentence. On February 20, 2004, after a hearing, the court denied the defendant's motion, concluding that the relief sought by the defendant ''would create material outside the parameters of appropriate sentence review analysis.''[2]

The defendant sought in his motion a new or amended PSI for use in his postjudgment application to the sentence review division, rather than a correction of a sentence imposed in an illegal manner. The claim for such relief, as described in the body of the defendant's motion, is not within the jurisdictional parameters of Practice Book § 43-22, as the defendant claims. This is not a case that involves Practice Book § 43-22, unlike those motions stating claims that fall within the section's express conditions for correction of an illegal sentence. Such a lack of jurisdiction requires a dismissal, rather than a denial of the defendant's motion.[3]

Whether the court has subject matter jurisdiction is

a question of law over which our review is plenary. *Roos* v. *Roos*, 84 Conn. App. 415, 418, 853 A.2d 642, cert. denied, 271 Conn. 936, 861 A.2d 510 (2004). ''The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal.'' *Peters* v. *Dept. of Social Services*, 273 Conn. 434, 441, 870 A.2d 448 (2005). We consider the question of subject matter jurisdiction because, once raised, the question of subject matter jurisdiction must be answered before we can address the other issues raised. *Rayhall* v. *Akim Co.*, 263 Conn. 328, 337, 819 A.2d 803 (2003).

Numerous cases provide support for the proposition that a motion is to be decided on the basis of the substance of the relief sought rather than on the form or the label affixed to the motion. *In re Haley B.*, 262 Conn. 406, 412–13, 815 A.2d 113 (2003); *Zirinsky* v. *Zirinsky*, 87 Conn. App. 257, 261 n.4, 865 A.2d 488, cert. denied, 273 Conn. 916, 871 A.2d 372 (2005); *Drahan* v. *Board of Education*, 42 Conn. App. 480, 489, 680 A.2d 316, cert. denied, 239 Conn. 921, 682 A.2d 1000 (1996); *Jaser* v. *Jaser*, 37 Conn. App. 194, 202, 655 A.2d 790 (1995); *Whalen* v. *Ives*, 37 Conn. App. 7, 16–17, 654 A.2d 798, cert. denied, 233 Conn. 905, 657 A.2d 645 (1995). It is the substance of a motion, therefore, that governs its outcome, rather than how it is characterized in the title given to it by the movant. In this case, the court, on the basis of the arguments of the defendant and the content of his motion, ruled on the question of whether he was entitled to a new or amended PSI for use in pursuing his application before the sentence review division.

The relief the defendant sought in the claims made in the body of his motion and at the hearing on his motion is crucial to the parameters of any decision in this case. There is a vast difference between the relief of correction of a sentence by the judicial authority, pursuant to Practice Book § 43-22, due to an illegal sentence or the imposition of a sentence in an illegal manner and the relief, postsentence, of correction or amendment of a PSI report for use at a sentence review hearing on the application of a defendant pursuant to General Statutes § 51-194 et seq. The purpose of Practice Book § 43-22 is to correct a sentence that either is illegal or was imposed in an illegal manner.

''An illegal sentence is essentially one which either exceeds the relevant statutory maximum limits, violates a defendant's right against double jeopardy, is ambiguous, or is internally contradictory. . . . Sentences imposed in an illegal manner have been defined as being within the relevant statutory limits but . . . imposed in a way which violates defendant's right . . . to be addressed personally at sentencing and to speak in mitigation of punishment . . . or his right to be sentenced

by a judge relying on accurate information or considerations solely in the record, or his right that the government keep its plea agreement promises . . . .'' (Citations omitted; internal quotation marks omitted.) *State* v. *McNellis*, 15 Conn. App. 416, 443–44, 546 A.2d 292, cert. denied, 209 Conn. 809, 548 A.2d 441 (1988).

The relief of sentence correction is warranted when, for example, (1) the defendant's claim either raises issues relating to the legality of the sentence itself or to the legality of the sentencing procedure and (2) the allegations of the claim are in fact substantiated on a review of the merits of the claim. In this case, the defendant's allegations in the body of his motion do not involve a claim or a colorable claim of an illegal sentence that would, if the merits of the claim were reached and decided in the defendant's favor, require correction of a sentence. The first requisite, namely, raising a colorable claim within the scope of Practice Book § 43-22, for the relief afforded by that section has not been met, and jurisdiction is lacking. Whether jurisdiction to review the merits of a claim exists is not defined by the odds of victory on the merits of a case.

It is axiomatic that, in a criminal case, the jurisdiction of the sentencing court terminates once a defendant's sentence has begun and a court may no longer take any action affecting a sentence unless it expressly has been authorized to act. *Cobham* v. *Commissioner of Correction*, 258 Conn. 30, 37, 779 A.2d 80 (2001). One such authorization of jurisdiction to act is found in Practice Book § 43-22. No statute or rule of practice of which we are aware authorizes a trial court, after the defendant's sentence has commenced, to revise, amend or correct a PSI report for use by the sentence review division. Without such authority, jurisdiction to entertain a motion to amend a PSI report, after sentence has commenced, is lacking.

In contrast to Practice Book § 43-22, the relief of the legislation creating the sentence review division is to afford *properly* sentenced and convicted persons a limited appeal for a reconsideration of their sentence; *State* v. *Nardini*, 187 Conn. 109, 121, 445 A.2d 304 (1982); rather than an avenue to correct an illegally imposed sentence. The sentence review division offers defendants an optional, de novo hearing as to the punishment to be imposed. Id., 122. The purpose of the legislation was to create a forum in which to equalize the penalties imposed on similar offenders for similar offenses. A PSI report is used not only as an aid to the sentencing court before the sentence is imposed, but as an aid to the sentence review division in those cases in which the defendant has applied for review of a sentence properly imposed. See Practice Book §§ 43-3, 43-4, 43-7, 43-9, 43-10, 43-26.

On appeal, the defendant argues for the first time that his sentence was imposed in an illegal manner.

The defendant did not, however, raise that argument before the trial court and, therefore, the trial court decided the motion on the grounds stated in the motion and during oral argument. For purposes of the defendant's appeal, we focus on the motion that the defendant filed and the argument that he made at the hearing on that motion. On the basis of our review of both the defendant's motion and the transcript of the hearing, we conclude that the defendant failed to assert a colorable claim within the scope of Practice Book § 43-22. The defendant's postjudgment, postsentence motion was improper as a matter of law and subject to dismissal for lack of jurisdiction because it made no claim cognizable under Practice Book § 43-22 and because there is no statute or rule of practice allowing a postsentence correction of a PSI.

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

In this opinion LAVERY, C. J., and DRANGINIS, FLYNN, BISHOP, DiPENTIMA, McLACHLAN and HARPER, Js., concurred.

[1] Practice Book § 43-22, entitled "Correction of Illegal Sentence," 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."

[2] In denying the defendant's motion on its merits, the court implicitly assumed that it had subject matter jurisdiction over the motion.

[3] *State* v. *Brown*, 40 Conn. App. 483, 671 A.2d 1316 (1996), aff'd, 242 Conn. 389, 699 A.2d 943 (1997), states, as dicta and without authority, that if a dismissal is proper and a denial is not, a denial may nevertheless be rendered if there is no practical difference between the two. Id., 488 n.3. There is always a practical difference between the two, however, because one requires a review on the merits and the other does not. Just because a review on the merits does not support the appellant is no reason to conclude that the right to review and the review itself eliminate any difference between a denial and a dismissal.