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SCHALLER, J., concurring. I concur in the result reached by the majority, although I respectfully disagree that the trial court initially lacked jurisdiction to consider the motion filed by the defendant, Thaddeus Taylor. In my view, the defendant's "Motion For Correction of Illegal Sentence" raised a claim that was within the ambit of Practice Book § 43-22.¹ As a result of the defendant's subsequent failure to pursue that avenue of relief and his choice, instead, to proceed solely with a claim concerning a new presentence investigation (PSI) report, I believe that the court was divested of jurisdiction. Accordingly, I agree with the majority that the defendant's claim should be dismissed.

In order to explain my disagreement with the majority, it is necessary to set forth certain aspects of the factual and procedural history pertaining to this case. The defendant applied for review of his term of incarceration by the sentence review division (division).² On January 2, 2004, his counsel filed a motion pursuant to Practice Book § 43-22 captioned "Correction of Illegal Sentence," which stated: "Defendant's attorney respectfully requests that the Superior Court for the 23rd Geographical Area, Judicial District of New Haven, State of Connecticut, pursuant to [Practice Book §] 43-22 correct the illegal sentence imposed upon the defendant on April 11, 1997 before the Honorable Joseph Clark.

"Defendant did not waive or refuse to participate in his Presentence Investigation. However, defendant was denied participation in the report preparation pursuant to [Practice Book §] 43-5. Judge Clark erroneously ordered the sentencing to proceed and denied a continuance so that the defendant could participate in a properly conducted PSI. Further, the defendant was not furnished a copy of said PSI report pursuant to Connecticut General Statutes [§ 54-91b] at least twenty-four hours prior to the date set for sentencing.

"Defendant's attorney moves that the interview be reconvened pursuant to [Practice Book §] 43-4 in order that the defendant's application before the . . . [d]ivision can be heard and defendant's attorney can have the necessary information to proceed.

"The denial of a continuance for purposes of securing a PSI has severely prejudiced the defendant's application before the . . . [d]ivision by limiting the materials, information, reports, and exhibits that can be considered pursuant to [Practice Book §] 43-28.

"The denial by the trial court of a properly conducted PSI has severely hampered the assistance of defendant's attorney in her capacity as his attorney before the . . . [d]ivision."

That motion contained two avenues for legal relief;

first, the correction of an illegal sentence and, second, a new PSI for use before the division. I believe that the first two paragraphs of the defendant's motion properly presented a claim pursuant to Practice Book § 43-22 that his sentence was imposed in an illegal manner³ as a result of deficiencies in the PSI process.⁴ In my view, the court, therefore, possessed jurisdiction to hear and decide the motion.⁵ Of course, it is axiomatic that "[s]ubject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *O'Bryan v. O'Bryan*, 67 Conn. App. 51, 53–54, 787 A.2d 15 (2001), *aff'd*, 262 Conn. 355, 813 A.2d 1001 (2003); see also *Amodio v. Amodio*, 247 Conn. 724, 728, 724 A.2d 1084 (1999).

At the February 20, 2004 hearing, the defendant effectively waived or abandoned his claim that his sentence was imposed in an illegal manner and, instead, limited the issue before the court solely to whether a new PSI should be completed. Counsel for the defendant indicated that she needed to obtain a proper and accurate PSI report for the proceedings before the division. She specifically requested the court "to order a [PSI] report and to correct [the failure to order the new PSI] by the trial court." The court inquired whether the division would be able to use an amended PSI report because its review is limited to the materials before the sentencing court. Practice Book § 43-26;⁶ see also *State v. Relliford*, Superior Court, judicial district of New London, Docket No. 243018 (February 22, 2005). The state argued that use of a new PSI by the division would be improper. The following colloquy occurred:

"[The Prosecutor]: Well, yes, I thought that what we are doing is arguing a request for a PSI to be prepared for the [division] because that is where I am appearing and, I believe, that is where counsel is—

"The Court: Isn't that what the motion calls for?

"[The Prosecutor]: Yes.

"[Defense Counsel]: Yes, Your Honor."

The court then stated that the motion, despite its caption, sought only the relief of a new PSI report for use by the division when reviewing the defendant's sentence. Counsel for the defendant did not inform the court that she also wanted the court to correct the defendant's sentence pursuant to Practice Book § 43-22.

I believe that the original motion alleged two separate and independent legal grounds for relief, the first of which was within the scope of Practice Book § 43-22 because it alleged that the defendant was denied participation in the PSI process and, thus, was sentenced in an illegal manner. Our jurisprudence contains the well-founded principle that in determining whether a court has subject matter jurisdiction, every presumption should be made toward resolving the question in favor of jurisdiction. *Loricco Towers Condominium Assn. v. Pantani*, 90 Conn. App. 43, 48, 876 A.2d 1211 (2005). That principle supports my conclusion that the first two paragraphs of the motion set forth a claim within the scope of Practice Book § 43-22 and, accordingly, the court had jurisdiction to hear and to consider the merits of the motion.

As a result of the events at the hearing, it is clear that the defendant failed to pursue his claim pursuant to Practice Book § 43-22 and expressly limited the scope of his motion to his request for a new PSI report for use before the division.⁷ At that point, therefore, the only issue before the court was one that clearly did not fall within the scope of Practice Book § 43-22. Because there is no other authority by which the court could act, the court lacked jurisdiction over that request for relief. In reaching that conclusion, I am mindful of our cases which have stated: “[A]s a general rule, jurisdiction once acquired is not lost or divested by subsequent events. . . . *Loulis v. Parrott*, 241 Conn. 180, 198, 695 A.2d 1040 (1997), overruled in part on other grounds, *Munroe v. Zoning Board of Appeals*, 261 Conn. 263, 272, 802 A.2d 55 (2002); *Bailey v. Mars*, 138 Conn. 593, 601, 87 A.2d 388 (1952); *State v. One 1976 Chevrolet Van*, 19 Conn. App. 195, 199, 562 A.2d 62 (1989).” (Internal quotation marks omitted.) *In re Shonna K.*, 77 Conn. App. 246, 258, 822 A.2d 1009 (2003). That rule, however, is not without exception. For example, “[s]ubsequent events that render a case moot will result in the loss of subject matter jurisdiction.” *Id.*; see also *Rowe v. Goulet*, 89 Conn. App. 836, 844, 875 A.2d 564 (2005) (failure by trial court to render judgment within 120 days pursuant to General Statutes § 51-183b can divest court of jurisdiction over parties). Moreover, those cases involving the general rule are distinguishable, as they do not involve a factual scenario in which the claims before the trial court have been altered so that the sole issue before the court is one that the court lacks jurisdiction to hear.

In light of the principle that challenges to the court’s subject matter jurisdiction may be raised by either party or by the court sua sponte at any time; see *In re Shawn S.*, 66 Conn. App. 305, 309, 784 A.2d 405 (2001), *aff’d*, 262 Conn. 155, 810 A.2d 799 (2002); I conclude, under the facts and circumstances of this case, that following the defendant’s abandonment of his claim that left only

the issue of the PSI report before the court, the court no longer possessed jurisdiction over his claim. Accordingly, dismissal of the defendant's motion is the proper course. For those reasons, I concur in the result reached by the majority.

¹ 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."

² See generally *Staples v. Palten*, 214 Conn. 195, 197 n.3, 571 A.2d 97 (1990); *State v. Nardini*, 187 Conn. 109, 118–19, 445 A.2d 304 (1982).

³ "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. . . . [In contrast], [s]entences 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).

⁴ "Construction of the effect of pleadings is a question of law and, as such, our review is plenary." *Ross v. Forzani*, 88 Conn. App. 365, 368, 869 A.2d 682 (2005).

⁵ Our Supreme Court has stated that "the jurisdiction of the sentencing court terminates once a defendant's sentence has begun, and, therefore, that court may no longer take any action *affecting a defendant's sentence* unless it expressly has been authorized to act." (Emphasis in original; internal quotation marks omitted.) *State v. Alexander*, 269 Conn. 107, 113, 847 A.2d 970 (2004); see also *State v. Tuszyński*, 23 Conn. App. 201, 206, 579 A.2d 1100 (1990). The correction of an illegal sentence or one imposed in an illegal manner, however, is an exception to this general rule. See *Cobham v. Commissioner of Correction*, 258 Conn. 30, 38, 779 A.2d 80 (2001).

⁶ Practice Book § 43-26 provides: "The defendant, at the time the application for review is filed, may request the clerk to forward to the review division *any documents in the possession of the clerk previously presented* to the judicial authority at the time of the imposition of sentence." (Emphasis added.)

⁷ At that hearing, the defendant's counsel indicated that the lack of an adequate PSI hampered her ability to argue successfully for a reduction of the original sentence. The prosecutor also stated that the purpose of the hearing was to determine whether a new PSI was warranted. Most importantly, the responses of defense counsel to the questions posed by the court reveal the remedy that she sought. When the court explicitly asked the defendant's counsel to specify the remedy sought, she responded, "*I am asking the court to order a [PSI] report . . .*" (Emphasis added.) Finally, after further argument, the defendant's counsel conceded that the motion merely called for a new PSI report to be ordered. She did not attempt to clarify or expand her response, or request additional relief, such as the correction of a sentence imposed in an illegal manner. "The court has a right, if not a duty, to rely on the representations of a defendant's counsel." *State v. Holmes*, 75 Conn. App. 721, 730, 817 A.2d 689, cert. denied, 264 Conn. 903, 823 A.2d 1222 (2003).
