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McDONALD, J., concurring in part and dissenting in part. While I agree with the majority's well reasoned opinion as to part I, I respectfully dissent as to part II.

I agree with the majority that the defendant, Christopher Fanning, does not have the same rights as one accused of violating the conditions of postconviction probation, but I find it unnecessary to decide if the defendant's arrest without more is insufficient to terminate his participation in the accelerated pretrial rehabilitation program. See General Statutes § 54-56e. The majority cites *State v. Stevens*, 278 Conn. 1, 895 A.2d 771 (2006), as supporting this proposition. In *Stevens*, however, our Supreme Court noted in upholding an enhanced sentence that the trial court had found probable cause to support the defendant's arrest and that the defendant did not dispute the fact that she had been arrested, she did not dispute that there was probable cause for her arrest, nor did the record reflect that she had challenged the veracity of the state's allegations regarding her criminal behavior. *Id.*, 12.

In this case, while he was a participant in the accelerated rehabilitation program, the defendant was arrested in Windsor on November 12, 2003, and those charges were still pending as of June, 2005, not having been dismissed or nolle. The defendant also did not dispute his arrest, probable cause for that arrest or challenge the state's allegation regarding the offense.

When the defendant's accelerated rehabilitation status was terminated, defense counsel only took exception and did not request a hearing. Justice Norcott, in his concurrence in *Stevens*, after concluding that the rule of the United States Court of Appeals for the Second Circuit in *Torres v. Barbary*, 340 F.3d 63 (2d Cir. 2003) (requiring state to establish conditions for enhancing plea bargained sentence by preponderance of evidence), was not met, noted that the *Stevens* defendant, as in this case, did not contest the factual basis for the arrest. *State v. Stevens*, *supra*, 278 Conn. 28 (Norcott, J., concurring).<sup>1</sup>

I would conclude that requiring this defendant to face trial for promoting prostitution because of his subsequent arrest on the same charge while on pretrial probation, in the circumstances, was proper.

<sup>1</sup> In footnote 1 of the majority opinion and in the majority opinion itself, the majority, on the issue of notice, states that no action was taken until July, 2005, to terminate the defendant's accelerated rehabilitation status. The record in this case reveals that while he was on accelerated rehabilitation, the defendant entered a plea of not guilty on September 22, 2004, and the prosecutor in this case indicated, without dispute, that a plea bargain was offered on December 17, 2004, and rejected and withdrawn on January 21, 2005. The case was then placed on the firm jury trial list. The record also reflects that on June 27, 2005, the defendant filed a motion to dismiss the charge under the accelerated pretrial rehabilitation program. Under these circumstances, I would conclude, to the contrary, that the defendant had

prior notice that the state would move to terminate accelerated rehabilitation.

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