
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.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

CORNELIUS HARGROVE v. COMMISSIONER OF
CORRECTION
(AC 25231)

Schaller, Dranginis and McLachlan, Js.

Submitted on briefs September 28—officially released November 15, 2005

(Appeal from Superior Court, judicial district of
Tolland, White, J.)

Matthew J. Collins, special public defender, filed a
brief for the appellant (petitioner).

Frederick W. Fawcett, supervisory senior assistant
state's attorney, filed a brief for the appellee
(respondent).

Opinion

PER CURIAM. The petitioner, Cornelius Hargrove,¹
appeals after the habeas court denied his petition for
certification to appeal from the judgment dismissing
his amended petition for a writ of habeas corpus in
which he alleged the ineffective assistance of trial and
appellate counsel and actual innocence.² We dismiss
the appeal.³

“Faced with the habeas court’s denial of certification
to appeal, a petitioner’s first burden is to demonstrate
that the habeas court’s ruling constituted an abuse of
discretion. . . . If the petitioner succeeds in sur-
mounting that hurdle, the petitioner must then demon-
strate that the judgment of the habeas court should be
reversed on its merits.” (Citations omitted.) *Simms v.*
Warden, 230 Conn. 608, 612, 646 A.2d 126 (1994).

We have reviewed the record of the habeas trial,
including the court’s oral decision, and conclude that
the petitioner has failed to carry his burden to demon-
strate that the court abused its discretion in denying
his petition for certification to appeal. He has not dem-
onstrated that the issues raised are debatable among
jurists of reason, that a court could resolve the issues in
a different manner or that the questions raised deserve
encouragement to proceed further. See *Lozada v.*
Deeds, 498 U.S. 430, 431–32, 111 S. Ct. 860, 112 L. Ed.
2d 956 (1991).

The appeal is dismissed.

¹ The petitioner was convicted by a jury of assault in the first degree in

violation of General Statutes § 53a-59 (a) (1), and one count of carrying a pistol without a permit in violation of General Statutes §§ 29-35 and 29-37 (b). This court affirmed the petitioner's conviction in *State v. Hargrove*, 33 Conn. App. 942, 638 A.2d 1098 (1994).

² In his petition for a writ of habeas corpus, the petitioner alleged primarily that his trial counsel inadequately investigated the crimes of which he was accused and that appellate counsel failed to raise certain claims on direct appeal. He also alleged that he was actually innocent of the crimes of which he had been convicted and that he had not bypassed a direct appeal of that claim because he needed to develop a factual record. The petitioner did not allege new evidence that, if proven, would demonstrate his actual innocence.

³ On appeal, the petitioner claims that the court abused its discretion by failing to issue a capias to secure the presence of a witness who was served with a subpoena duces tecum, but failed to appear at the hearing on the petition for a writ of habeas corpus. The petitioner sought certain records from the Bridgeport police department to determine what they contained. The court declined to issue the capias because the police records themselves had no bearing on the investigative efforts of trial counsel, and habeas counsel sought to use the subpoena duces tecum as a discovery tool, as he could not demonstrate what information the records contained and how the contents of the records would help the petitioner prove his claim of actual innocence.