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KATZ, J., concurring. I agree with the majority's well reasoned and thorough opinion concluding that the judgment of conviction of the defendant, Michael Skakel, for the 1975 murder of Martha Moxley must be affirmed. With respect to the threshold issue, however, of whether the defendant's prosecution was time barred, although I agree with the majority that it was not, I reach that conclusion by a different route. I would dispose of that issue on the basis of the statute of limitations in effect at the time of the 1975 murder, as did the trial court, consistent with our long-standing jurisprudential approach to construction of criminal statutes, and in response to the state's principal argument to this court, and, therefore, I would not reach the issue of whether the 1976 amendment to the statute of limitations had a retroactive effect. In my view, the crime of murder was not subject to the statute of limitations in effect in 1975, and, indeed, there never has been a limitations period on the prosecution of murder. Accordingly, I join in all but part II of the majority opinion.

As with any issue of statutory construction, I begin with the pertinent language of the statute itself. The statute of limitations in effect at the time of the murder, General Statutes (Rev. to 1975) § 54-193, provided in relevant part: "No person shall be prosecuted for . . . any crime or misdemeanor of which the punishment is or may be imprisonment . . . except within five years next after the offense has been committed . . . ." The defendant was charged and convicted of the crime of murder under General Statutes (Rev. to 1975) § 53a-54a (c), which provided: "Murder is punishable as a class A felony unless it is a capital felony and the death penalty is imposed as provided by section 53a-46a."[1]

The defendant was not charged under the capital felony statute, General Statutes (Rev. to 1975) § 53a-54b, and, therefore, could have been sentenced only to a term of imprisonment and not sentenced to death. In accordance with that fact, the defendant makes the following arguments in support of his claim that the prosecution is time barred: (1) the plain language of the statute of limitations precludes his prosecution because the defendant was indicted for a class A felony, punishable by imprisonment, and not a capital felony; (2) in *State* v. *Paradise*, 189 Conn. 346, 353, 456 A.2d 305 (1983), this court implicitly recognized, under facts indistinguishable from this case, that the same statute of limitations barred the prosecution of the defendants in that case; (3) when the legislature amended the Penal Code in 1973 to reinstate the death penalty, it intended that only the most heinous murders—those designated as capital felonies—would not be subject to the statute

of limitations; and (4) the legislature's intent to exclude only capital felony murders from the statute of limitations is consistent with the legislative history of the murder statutes because noncapital murders that formerly were labeled ''second degree'' murders were subject to a statute of limitations for 125 years—from 1846 to 1971.

As an initial matter, I reject out of hand the defendant's reliance on *State* v. *Paradise*, supra, 189 Conn. 346, and welcome the opportunity to correct a misimpression of the law that it suggests. In *Paradise*, the ''sole issue'' before the court was whether the 1976 amendment to § 54-193, which expressly permitted unlimited prosecution of any class A felony, not just a capital felony, was by its own terms retroactive so as to apply to a 1974 murder. Id., 347. The state had failed to assert that the pre-1976 version of § 54-193 did not apply to a class A felony murder, and, consequently, the *Paradise* court undoubtedly proceeded from the premise that the defendants' prosecution in that case was time barred under § 54-193 when addressing the state's claim that the 1976 amendment to that statute applied retroactively. As such, the *Paradise* court never considered the question at issue here, relying on the superficial reading of the statute of limitations conceded by the parties in that case.

Looking beyond a superficial reading of § 54-193, I disagree that the ''plain language'' of the statute of limitations compels the result suggested by the defendant. As the discussion that follows amply demonstrates, the ''crime'' to which the statute of limitations refers is the general crime of murder—a crime punishable *either* as a class A felony or as a capital felony. Accordingly, the crime of murder implicitly is excluded from the statute of limitations. See *State* v. *Ellis*, 197 Conn. 436, 441, 497 A.2d 974 (1985) (concluding that crimes that must or *may* be punished by death are excluded by necessary implication from statute of limitations), on appeal after remand sub nom. *State* v. *Paradise*, 213 Conn. 388, 567 A.2d 1221 (1990). My conclusion, however, rests not only on the language of the statute, but also on the well settled principle of statutory construction that the court does not construe a statute in a manner that runs counter to reason. See General Statutes § 1-2z (permitting resort to legislative history when plain meaning of statute yields absurd or unworkable result); *State* v. *Sandoval*, 263 Conn. 524, 553, 821 A.2d 247 (2003). The defendant's ''plain language'' construction would yield such a result because, contrary to the defendant's view, it would disturb a long-standing and consistent practice in this state of excluding murder from the statute of limitations. I begin, therefore, with the history of the statute of limitations and the murder statutory scheme evidencing this long-standing practice and then turn to the amendments to this scheme immediately preceding and following 1975 to ascertain whether the legislature

intended to depart radically from that practice by subjecting the prosecution of most murders to a five year statute of limitations.

It is undisputed that the crime of murder was excluded, by implication, from Connecticut's earliest statutes of limitations, beginning in 1672 until 1846.[2] See *State* v. *Ellis*, supra, 197 Conn. 441–44. Throughout this period, murder was a capital offense. Id., 448–49. Although, in 1846, our legislature divided murder into first degree (capital) and second degree (noncapital) offenses; Public Acts 1846, c. 16; thereby permitting certain less heinous murders to be punished by imprisonment, our early case law indicates that the legislature did not intend by this change to alter the bedrock rule that murder is not subject to a statute of limitations.[3] See *State* v. *Dowd*, 19 Conn. 388, 392 (1849) ("It is apparent from [the 1846 public act], that it was not the design of the legislature to create any new offen[s]e; or [to] change the law applicable to murder, except so far as the punishment was concerned. The crime still remains, as it was at common law; and in the more aggravated cases, the person convicted is liable to the original punishment, while others, whose crimes are less aggravated, are punished with less severity."); *State* v. *Cross*, 72 Conn. 722, 729, 46 A. 148 (1900) ("The meaning of our statute defining murder in the first degree, as enacted in 1846, has not been changed by subsequent legislation. It does not define a new crime, nor in any way affect the definition of the crime of murder as it before existed; it simply sets forth the circumstances attending the crime which must determine the punishment of murder, whether it be death or imprisonment for life."); *State* v. *Rossi*, 132 Conn. 39, 43–44, 42 A.2d 354 (1945) ("[t]he [1846 public act] was not designed to create any new offense or change the law applicable to murder except as to the punishment"), overruled in part on other grounds, *State* v. *Tomassi*, 137 Conn. 113, 123, 75 A.2d 67 (1950); see also *State* v. *Jacowitz*, 128 Conn. 40, 44, 20 A.2d 470 (1941) ("Murder, at common law, is the unlawful killing of one human being by another with malice aforethought. . . . The Connecticut statute, Cum. Sup. 1935, § 1685c, has not changed this definition but provides a more severe penalty where certain features such as premeditation are present."). Indeed, for twenty-four years after the 1846 amendment, until 1870, the state was not even required to specify the degree of the murder in the indictment; the jury made such a distinction after determining whether the defendant was guilty of the general common-law crime of murder. See General Statutes (1849 Rev.) tit. 6, c. 2, § 3 ("the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty, ascertain in their verdict, whether it be murder in the first degree or second degree"); *State* v. *Hamlin*, 47 Conn. 95, 117 (1879) (noting that legislature changed law in 1870; Acts

of 1870, c. 73; requiring that indictment specify degree of offense). Even then, the impetus for doing so apparently was to give notice to the defendant of whether the state alleged that the crime was premeditated. See *State* v. *Hamlin*, supra, 117.

What implicitly had been understood under well established practice—that there was no statute of limitations on the common-law crime of murder, irrespective of whether the defendant had been convicted of first or second degree murder—became manifest as a result of the legislature's enactment of the Penal Code in 1969. See Public Acts 1969, No. 828, §§ 54, 55. Under the 1969 Penal Code, which was made effective in 1971, the legislature abolished the distinction between the two degrees of murder, providing a single, simplified definition of murder and conferring discretion on the jury or the court to decide in each case whether to impose the death penalty depending on the circumstances of the crime.[4] See General Statutes (Rev. to 1972) § 53a-46 (b) (permitting jury or court to consider either death or imprisonment); General Statutes (Rev. to 1972) § 53a-54 (c) ("[m]urder is punishable as a class A felony unless the death penalty is imposed as provided by section 53a-46"). Thus, under the 1969 Penal Code, there clearly was no statute of limitations on murder. In other words, because *any* murder potentially could be punished by death, there was no statute of limitations on the prosecution of *all* murders under the 1969 Penal Code.

In 1973, however, the legislature repealed that scheme and enacted § 53a-54a,[5] pursuant to which the defendant in the present case was convicted, providing for punishment of murder *either* as a class A felony or, under specific circumstances, as a capital felony. See Public Acts 1973, No. 73-137, § 2 (P.A. 73-137); General Statutes (Rev. to 1975) § 53a-54a. Thus, the critical question is whether the legislature intended, when making these changes, to disturb the existing, long-standing statutory scheme under which murder was not subject to a statute of limitations. The context in which these changes took place and the legislative history of P.A. 73-137 strongly indicate that the legislature did not intend to distinguish between class A felony murder and capital felony murder for statute of limitations purposes.

The legislature's actions in 1973 to repeal and replace the existing murder scheme was necessitated by the 1972 decision of the United States Supreme Court in *Furman* v. *Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972), in which that court struck down as unconstitutional the broad, discretionary type of capital murder scheme that was in effect under our 1969 Penal Code. See *State* v. *Aillon*, 164 Conn. 661, 661–62, 295 A.2d 666 (1972). House Bill No. 8297 proposed to repeal that discretionary scheme and to adopt § 53a-54a, which

deemed murder a class A felony unless it was a capital felony, and General Statutes § 53a-54b, which defined five specific circumstances under which murder constituted a capital felony.[6] Although the bill was debated vigorously and extensively in the legislature, it is telling that, in 350 pages of transcribed floor debates and committee hearings, there is not a single reference to the statute of limitations. See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 1, 1973 Sess., pp. 125–33, 144–86, 192–200; Conn. Joint Standing Committee Hearings, Judiciary, Pt. 2, 1973 Sess., pp. 369–77, 407–10, 417–28, 470–80, 484, 488–500, 510–13, 533–50, 556–60, 569–70, 576–79, 593–96, 601–605; 16 H.R. Proc., Pt. 6, 1973 Sess., pp. 2932–3003; 16 S. Proc., Pt. 4, 1973 Sess., pp. 1861–1978. Instead, the predominant focus of the debate was on the contours of the capital felony provision and whether the proposed bill would pass constitutional muster.[7]

It simply runs counter to reason to conclude that the legislature intended to impose, *for the first time in the state's history*, a statute of limitations on all murders except those committed under the five limited circumstances constituting capital felonies—rendering all class A felony murders subject to a five year statute of limitations—without a discussion or any expression of opposition. See *Statewide Grievance Committee* v. *Rozbicki*, 211 Conn. 232, 244, 558 A.2d 986 (1989) (''[a] major change in legislative policy, we believe, would not have occurred without some sort of opposition or at least discussion in the legislature'' [internal quotation marks omitted]). Indeed, the absence of opposition is especially telling considering that the capital felony provision enacted in 1973 did not yet include the murder of a child; see Public Acts 1995, No. 95-16, § 4; or the murder of two or more persons or a murder committed in the course of a sexual assault. See Public Acts 1980, No. 80-335. We have recognized that, ''[i]n the interpretation of a statute, a radical departure from an established policy cannot be implied. It must be expressed in unequivocal language.'' (Internal quotation marks omitted.) *State* v. *Ellis*, supra, 197 Conn. 459. In accordance with these principles, this court previously has recognized that legislative changes to punishments under the Penal Code may not necessarily reflect a legislative intent to affect the limitations period. See *State* v. *Golino*, 201 Conn. 435, 442–47, 518 A.2d 57 (1986) (concluding that literal reading of statute of limitations did not apply to murder, even though defendant could be sentenced only to imprisonment after death penalty held unconstitutional); *State* v. *Ellis*, supra, 457 (''we fail to see how legislation specifically addressed to capital punishment, and only indirectly affecting the statute of limitations, is any better gauge of legislative intent'').

The legislative history to § 53a-54a, therefore, indicates that the crime of ''murder,'' a crime punishable

either as a noncapital, class A felony or as a capital felony, was excluded from the statute of limitations. See *State* v. *Jones*, 234 Conn. 324, 364–65, 662 A.2d 1199 (1995) (*Borden, J.*, concurring in part and dissenting in part) (Agreeing with the majority "that capital felony is a form of the generic crime of murder, as is arson murder under General Statutes § 53a-54d, and indeed felony murder under General Statutes § 53a-54c. That conclusion is consistent with our pre-penal code legislation, under which the single crime of murder was divided into two degrees. . . . It also follows from the language and structure of our current homicide statutes, under which murder is defined by . . . § 53a-54a, and pursuant to which '[m]urder is punishable as a class A felony in accordance with subdivision [2] of section 53a-35a unless it is a capital felony or murder under section 53a-54d.' " [Citation omitted.]).

To the extent that any doubt lingered as to its intent in 1975 in that regard, the legislature made its intent manifest by clarifying the statute of limitations in a 1976 amendment, wherein for the first time it expressly, rather than implicitly, excluded class A and capital felonies from the statute's scope.[8] Public Acts 1976, No. 76-35, § 1, codified at General Statutes § 54-193 (a) ("[t]here shall be no limitation of time within which a person may be prosecuted for a capital felony, a class A felony or a violation of section 53a-54d or 53a-169"); see also *State* v. *Golino*, supra, 201 Conn. 445 (referring to amendment as clarifying); *State* v. *Ellis*, supra, 197 Conn. 459–60 (same). Accordingly, to construe § 53a-54a as the defendant would have us do in the present case would create the anomaly that for a three year period out of the state's history since colonial times—from 1973 until 1976—the legislature subjected all murders except those five circumstances designated as capital felony murder to a statute of limitations. It is clear that such an irrational construction cannot stand.[9] See *State* v. *Burns*, 236 Conn. 18, 27, 670 A.2d 851 (1996) (rejecting construction creating irrational and unintended result); *State* v. *Tucker*, 219 Conn. 752, 758, 595 A.2d 832 (1991) (same). Accordingly, because I conclude that the defendant's prosecution is not time barred under the statute of limitations in effect at the time of the murder, I respectfully concur in all but part II of the majority opinion.

[1] Unless expressly stated otherwise, all references in this concurring opinion to § 53a-54a and § 54-193 are to the 1975 revision.

[2] Section 54-193, the statute of limitations at issue in this appeal, is for all intents and purposes the same as the 1821 statute of limitations, from which § 54-193 traces its origin. The 1821 statute of limitations provided in relevant part: "No person shall be indicted, informed against, complained of, or in any way prosecuted, before any court . . . for any crime or misdemeanor, whereof the punishment is, or may be, imprisonment in new-gate prison, unless the indictment . . . be made and exhibited within three years, next after the offence shall have been committed . . . ." General Statutes (1821 Rev.) tit. 59, § 11. The following limited changes were made to the statute of limitations from 1821 until 1976: (1) in 1827, "new-gate prison" was changed to "Connecticut State prison"; Public Acts 1827, c. 27, § 9, p. 166; (2) in 1850, a tolling provision was added for those who had fled the

jurisdiction; Public Acts 1850, c. 56, p. 40; (3) in 1882, the three year statute of limitations for ''state prison'' offenses was changed to five years; Public Acts 1882, c.15, p. 126; and (4) in 1969, the term ''state prison'' was changed to ''Connecticut Correctional Institution, Somers.'' Public Acts 1969, No. 297.

[3] In *State* v. *Ellis*, supra, 197 Conn. 455, this court reached a contrary conclusion, reasoning that, when the legislature divided murder into two degrees, it must have intended for second degree murder to become subject to the statute of limitations because that offense was punishable only by imprisonment. The entirety of the *Ellis* court's reasoning for the distinction was as follows: ''The purpose of the 1846 [public] act is stated clearly in its preamble. According to that preamble, murder was divided into degrees because 'the several offenses which are included under the general denomination of murder differ so greatly from each other in the degree of their atrociousness that it is unjust to involve them in the same punishment . . . .' Public Acts 1846, c. 16. We believe that the 1846 legislature effectively divided murder into separate crimes for purposes of the statute of limitations.'' *State* v. *Ellis*, supra, 456.

This summary conclusion, which was merely dicta, must be rejected as unsound in the absence of any support beyond the legislature's general statement of purpose explaining its rationale for imposing a two tier punishment scheme. The *Ellis* court did not consider any of our early case law cited in our previous discussion in the text of this opinion, which strongly indicates a contrary conclusion. Indeed, other jurisdictions have concluded, when analyzing statutory schemes structured similarly to our two degree murder scheme, that this division was intended to affect merely the punishment imposed and not the limitations period for prosecuting the common-law crime of murder generally. See *People* v. *Haun*, 44 Cal. 96, 97–98 (1872) (making distinction between first and second degree murder as to seriousness of offense, but not as to statute of limitations); *State* v. *Brown*, 22 N.J. 405, 412, 126 A.2d 161 (1956) (''All this [common law or statutory history] reveals the essential quality of murder as a single offense, divided by the statute . . . into degrees, first and second, for the purpose of punishment alone, according to the gravity and heinousness of the felonious act, the moral obliquity that determines the difference between express and implied malice. . . . These statutes have not altered the nature of murder at common law; they are concerned only with the character of the punishment; the degrees do not constitute separate and distinct crimes, but merely grades of the same offense. Murder in either of the statutory degrees is murder at common law.'' [Citations omitted.]); *State* v. *Short*, 131 N.J. 47, 56–57, 618 A.2d 316 (1993) (affirming reasoning of *Brown* and distinguishing between degrees of murder and manslaughter under statute of limitations); *State* v. *Vance*, 328 N.C. 613, 622–23, 403 S.E.2d 495 (1991) (The court noted that a 1893 act dividing murder into first and second degree offenses was made only for ''purposes of assigning punishment; it does not define or redefine the crime of murder. . . . [T]he definition of that crime remains the same as it was at common law . . . .'' [Citations omitted.]).

[4] Under the 1969 Penal Code, murder was defined simply as an intentional killing, thereby eliminating the distinction of premeditation and deliberation that previously had been required to differentiate first degree murder from second degree murder; however, the legislature added an affirmative defense of extreme emotional disturbance that could reduce the offense of murder to first degree manslaughter. See Public Acts 1969, No. 828, §§ 54, 55; Commission to Revise the Criminal Statutes, Penal Code Comments, Conn. Gen. Stat. Ann. (West 1985) § 53a-54a, pp. 32–33. Notably, there is nothing in the extensive legislative history to the enactment of the 1969 Penal Code reflecting that the code would effectuate any change to the statute of limitations.

[5] Section 53a-54a was essentially identical to its predecessor, § 53a-54, except for the addition of the following italicized words: ''Murder is punishable as a class A felony unless *it is a capital felony and* the death penalty is imposed as provided by section 53a-46a.'' General Statutes (Rev. to 1975) § 53a-54a (c). Felony murder, however, which previously had been encompassed within § 53a-54, was separated into its own section under Public Acts 1973, No. 73-137, § 2. See General Statutes (Rev. to 1975) § 53a-54c (felony murder provision).

[6] As originally enacted, the capital felony provision designated six offenses that were death penalty eligible, only one of which was not predicated on murder. See P.A. 73-137, § 3 (''[a] person is guilty of a capital felony who is convicted of any of the following: [1] Murder of a member of the state police department or of any local police department, a county detective, a

sheriff or deputy sheriff, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18 of the 1969 supplement to the general statutes, an official of the department of correction authorized by the commissioner of correction to make arrests in a correctional institution or facility, or of any fireman, as defined in subsection [10] of section 53a-3 of the 1971 noncumulative supplement to the general statutes, while such victim was acting within the scope of his duties; [2] murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; [3] murder committed by one who has previously been convicted of intentional murder or murder committed in the course of commission of a felony; [4] murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; [5] murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety; [6] the illegal sale, for gain, of cocaine, heroin or methadone to a person who dies as a direct result of the use by him of such cocaine, heroin or methadone, provided such seller was not, at the time of such sale, a drug-dependent person'').

[7] The following comments exemplify the focus of the discussion in this regard on House Bill No. 82-97. Representative James F. Bingham, the chairman of the judiciary committee in the House of Representatives, stated: ''This bill was drafted very carefully to comply with the death penalty decision . . . .'' 16 H.R. Proc., supra, p. 2928. Senator Joseph I. Lieberman, after discussing the *Furman* decision at length, stated: ''The Bill before us today has been devised I presume in the hope that changing the sentencing procedure by providing a mandatory death penalty for conviction of certain enumerated crimes and carefully defining the circumstances under which judges and juries must act before imposing death will result in legislation able to withstand the scrutiny of the United States Supreme Court.'' 16 S. Proc., supra, p. 1904. ''I do not believe that the proposed legislation could withstand the constitutional test.'' Id., p. 1908. Senator Romeo G. Petroni remarked in support of the bill: ''In my judgment, the fullest due process we can find within the guidelines of *Furman* is clearly set forth in this bill.'' Id., p. 1924. Senator George C. Guidera, the chairman of the judiciary committee in the Senate and a sponsor of the legislation, commented extensively about *Furman* and then remarked: ''The mitigating and aggravating circumstances which are outlined in this Bill . . . have received great thought not only by the Judiciary Committee in Connecticut but by the Judiciary Committee in Washington D.C. [and] I think will prove to make the Bill constitutional . . . . [It] will set a guideline for the jury so that there is no doubt as to how they should approach the subject of the sentence.'' Id., p. 1870.

[8] Although the legislative history to the 1976 amendment is sparse, the few comments made on the proposed amendment indicate that the legislature intended to clarify, rather than substantively change, the statute of limitations. Senator David H. Neiditz, the sponsor of the amendment, Senate Bill No. 203, explained: ''This bill clarifies the statute . . . of limitations for a capital or a class A felony, that there is no statute of limitations on these offenses and it clears up the language in the statute which, up until now, is referred to for a crime for which someone may be sent to a specific institution. It was made necessary by the abolition of capital punishment and the reinstatement of capital punishment . . . .'' 19 S. Proc., Pt. 1, 1976 Sess., p. 341. Senator George L. Gunther appeared before the judiciary committee to speak in favor of several pending bills, remarking: ''The last [bill] is [Senate Bill No. 203] which is concerning the statute of limitations and Mr. Chairman, I'm happy to see a clarification of this part of the statute.'' Conn. Joint Standing Committee Hearings, Judiciary, Pt. 1, 1976 Sess., p. 163.

[9] Notably, even under the defendant's construction of the statutory scheme, wherein he claims that second degree murder was subject to a statute of limitations, his position defies reason. It would require us to conclude that the legislature eliminated such a distinction in 1969, without comment, then four years later, in 1973, decided to subject almost all murders to a five year limitations period, even those that previously had been excluded from the statute of limitations as first degree murder, and then three years later, in 1976, amend the statute to exclude once again all murders from the statute of limitations.