PALMER, J., concurring. I agree with and join the majority opinion, in which the majority concludes that the trial court lacked jurisdiction to consider the motion of the defendant, Mauricio Pedraza Ramos, to vacate his judgment of conviction and to withdraw his guilty plea because he had failed to file the motion within the three year period prescribed under General Statutes (Rev. to 1999) § 54-1j.[1] For the reasons that the majority articulates, application of the plain meaning rule codified in General Statutes § 1-2z[2] compels this result.[3] I write separately, however, to highlight an anomaly that arises in the present case: because the plain language of § 54-1j contains no suggestion of a grant of jurisdiction that would allow a trial court to entertain a motion filed beyond the three year period and to afford relief as a matter of discretion, § 1-2z precludes our consideration of legislative history clearly manifesting the legislature's view that § 54-1j allows a trial court to consider such a motion and to afford such relief. If this issue had come before this court prior to the adoption of § 1-2z, it seems very likely that we would have considered this legislative history and concluded that it was sufficiently clear and persuasive evidence of an intention that was not made plain in the statute, essentially, a latent ambiguity that must be given effect.[4] As a result, we would have reached a different conclusion in the present case and would have considered the merits of the defendant's claim that the trial court incorrectly determined that the facts of the present case did not favor the exercise of this discretion in his favor. In other words, this appears to be an unusual case in which the application of § 1-2z precludes us from effectuating the legislature's intent.

The pertinent legislative history relates to the 1997 amendment to General Statutes (Rev. to 1997) § 54-1j (c) in which the legislature eliminated language requiring a court to vacate a judgment of conviction and to permit a defendant who is not a United States citizen to withdraw a guilty plea if that defendant filed a motion "later at any time," in which he alleged and thereafter proved that the trial court had not informed the defendant of the potential immigration consequences of entering the plea. Public Acts 1997, No. 97-256, § 6 (P.A. 97-256). In lieu of this open-ended time frame, the legislature substituted the phrase "not later than three years after the acceptance of the plea . . . ."[5] P.A. 97-256, § 6.

In the debate in the House of Representatives on the proposed legislation that was subsequently enacted as P.A. 97-256, § 6, the following exchange ensued between the sponsor of the proposed legislation, Representative Michael P. Lawlor, and Representative Robert Farr:[6]

"[Representative] Farr: . . . I guess I just have some

concerns about the three year limit on the re-opening of these cases. Could you indicate for the record why you want to impose a three year limit . . . versus the open ended process we presently have? . . .

"[Representative] Lawlor: . . . This essentially would close a wide [loophole] available to convicted offenders in order to obtain a new trial. I think it's a reasonable time [that is] three years to discover [that] such a mistake was made and to return to court and ask for a new hearing or a new advisement.

"That's the only reason. . . .

"[Representative] Farr: . . . I guess . . . my understanding of what's going on out there now is that the Immigration and Naturalization Service is now going through records and finding people who have been convicted years ago and starting to deport them. I guess my concern with this language would be that somebody who might have pleaded guilty to a drug type of situation, in many cases not knowing the consequences, it might have been a simple possession of marijuana . . . [i]t might have been some other charge for which they did not understand the consequences, it might have been ten years ago . . . [i]f the [Immigration and Naturalization Service] now picks that up, and [the person] didn't understand the consequences, I am not sure why we want to say that [if the person was not] informed, that [he] only [has] the three years. . . .

"I am not sure why justice would suggest that we ought to be doing this. . . .

"[Representative] Lawlor: . . . [T]wo points on that. First of all, this language would not prohibit a court from re-opening a case and allowing a person to essentially re-negotiate [his] plea agreement. This simply modifies language which requires a court to do so.

"Secondly, apparently a practical problem that has cropped up is that in some courts it's been difficult to obtain the records of exactly what happened years and years ago, whether or not [the persons] were in fact advised and this would eliminate that problem. . . .

"In the event that there [was] a compelling case, nothing that we are doing here today would prohibit a court from reconsidering it. We are just eliminating—we are limiting the mandatory re-opening to a window of three years. . . .

"[Representative] Farr: . . . I'll take Representative Lawlor's representation that the court would still have the power to re-open these cases and [I'll] withdraw any objection." 40 H.R. Proc., Pt. 13, 1997 Sess., pp. 4699–4702.

In my view, Representative Lawlor's explanation makes clear that it was the legislature's intention for the statute to continue to allow the courts to exercise jurisdiction over motions filed *at any time* but to con-

strain the court's authority only in those cases in which the motion was filed within three years after acceptance of the plea. Within the three year period, the court still would be required to grant the motion; after that time, the court would have discretion to grant relief. Representative Farr's response unequivocally demonstrates that he voted in favor of the proposed legislation in reliance on Representative Lawlor's assurance that the court would have such discretion after the three year period. Indeed, the only thing that seems unclear about this exchange is why the legislature thought it unnecessary to manifest this intention expressly in the text of the statute.[7]

It is noteworthy that this court is aware of this legislative history, not only because the defendant brought it to the court's attention in the present case but also because this court previously had considered this very exchange in determining a different issue involving P.A. 97-256, § 6, namely, whether the legislature intended that it would apply retroactively. See *State* v. *Parra*, 251 Conn. 617, 627–31, 741 A.2d 902 (1999). In *Parra*, this court concluded that P.A. 97-256, § 6, was ambiguous with respect to that issue. Id., 628; see also id., 630 (noting that "the value of [the legislators'] statements in determining the intent of the legislature [was] heightened by the fact that this understanding . . . came both from a representative who expressed concerns over the bill and one of the bill's sponsors"). Nonetheless, we are directed by § 1-2z not to consider extratextual sources in determining the outcome of the present case because § 54-1j is not ambiguous on its face with respect to the issue presently before the court. Because our ultimate responsibility in construing a statute is to ascertain the legislature's apparent intention; e.g., *Grady* v. *Somers*, 294 Conn. 324, 333, 984 A.2d 684 (2009); I find this result troubling. Fortunately, the interests of justice that the legislators highlighted in the foregoing legislative debate are not likely offended in the present case, in light of the fact that the defendant likely would have faced an insurmountable challenge even if we had jurisdiction to consider his claim on the merits; indeed, the defendant would have to demonstrate that the trial court abused its discretion in declining to grant relief after he knowingly reentered the United States illegally.

Nevertheless, because § 1-2z prevents this court from considering the otherwise highly pertinent legislative history, I join the majority opinion.

[1] See footnote 1 of the majority opinion for the text of General Statutes (Rev. to 1999) § 54-1j. Hereinafter, all references to § 54-1j are to the 1999 revision, unless otherwise specified.

[2] See footnote 8 of the majority opinion for the text of § 1-2z.

[3] Because the question before us is whether § 54-1j provides an exception to a long-standing common-law rule, specifically, that the court loses jurisdiction after the defendant is committed to the custody of the department of correction; *State* v. *Luzietti*, 230 Conn. 427, 431–32, 646 A.2d 85 (1994); § 1-2z does not bar this court's consideration of case law expressing that rule in determining whether the statute has a plain meaning. Indeed, "the legisla-

ture is presumed to be aware of prior judicial decisions involving common-law rules." (Internal quotation marks omitted.) *Considine* v. *Waterbury*, 279 Conn. 830, 844, 905 A.2d 70 (2006); see also *Alvarez* v. *New Haven Register, Inc.*, 249 Conn. 709, 722, 735 A.2d 306 (1999) ("[t]he legislature is presumed to be aware of this court's decisions and, therefore, the common-law limitations . . . already in place"); *State* v. *Kyles*, 169 Conn. 438, 442, 363 A.2d 97 (1975) ("it must be presumed that the legislature was aware of prior judicial decisions following the common-law rule that it is lawful for a person to use force to resist an unlawful arrest"); 2B J. Sutherland, Statutes and Statutory Construction (6th Ed. Singer 2000) § 50:01, p. 140 ("legislature is presumed to know the common law before statute was enacted"); cf. *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 288–89, 21 A.3d 759 (2011) (setting forth well established principles governing statutory waivers of sovereign immunity before applying § 1-2z).

[4] Prior to the enactment of § 1-2z, this court sometimes turned to the legislative history of a statutory provision that, although clear on its face, contained a latent ambiguity when the statute was applied to the facts of the case; see, e.g., *University of Connecticut* v. *Freedom of Information Commission*, 217 Conn. 322, 328, 585 A.2d 690 (1991) (observing that, if statutory language is plain and unambiguous, construction of statute was not necessary, but "[w]hen application of a statute to a particular situation reveals a latent ambiguity in seemingly unambiguous language . . . we turn for guidance to the purpose of the statute and its legislative history to resolve that ambiguity"); or when "the legislative history and public policy underlying the statute are considered." *Conway* v. *Wilton*, 238 Conn. 653, 665, 680 A.2d 242 (1996). For a brief discussion of the inconsistent approach that this court had taken before the enactment of § 1-2z, see footnote 7 of this opinion.

[5] Public Act 97-256, § 6, made the following changes to General Statutes (Rev. to 1997) § 54-1j (c), with the new language in capital letters and the deleted language in brackets: "If the court fails to advise a defendant as required in subsection (a) of this section and the defendant [later at any time] NOT LATER THAN THREE YEARS AFTER THE ACCEPTANCE OF THE PLEA shows that his plea and conviction may have one of the enumerated consequences, the court, on the defendant's motion, shall vacate the judgment, and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. [In the absence of a record that the court provided the advice required by this section, the defendant shall be presumed not to have received the required advice.]"

[6] I note that, at the time the proposed legislation was considered, Representative Lawlor was the cochairman of the judiciary committee and Representative Farr was a ranking member of that committee.

[7] A possible explanation is that the legislature may have been operating under the assumption that this court would consider the legislative history, irrespective of the apparent plain meaning of the text, to determine the legislature's intent. At the time this exchange took place, the legislature had not yet enacted § 1-2z, and this court had not been consistently adhering to the plain meaning rule, often resorting to all available sources to determine legislative intent. As this court noted in *State* v. *Courchesne*, 262 Conn. 537, 816 A.2d 562 (2003), which was abrogated in part by § 1-2z: "In 1994 . . . we noted a dichotomy in our case law regarding whether resort to extratextual sources was appropriate even in those instances [in which] the text's meaning appeared to be plain and unambiguous. In *Frillici* v. *Westport*, [231 Conn. 418, 430–31 n.15, 650 A.2d 557 (1994)], we stated: 'It is true that, in construing statutes, we have often relied [on] the canon of statutory construction that we need not, and indeed ought not, look beyond the statutory language to other interpretive aids unless the statute's language is not absolutely clear and unambiguous. . . . It is also true, however, that we have often eschewed such an analytical threshold . . . and have stated that, in interpreting statutes, we look at all the available evidence, such as the statutory language, the legislative history, the circumstances surrounding its enactment, the purpose and policy of the statute, and its relationship to existing legislation and common law principles. See, e.g., *Fleming* v. *Garnett*, 231 Conn. 77, 91–92, 646 A.2d 1308 (1994); *State* v. *Metz*, 230 Conn. 400, 409, 645 A.2d 965 (1994); *Glastonbury Volunteer Ambulance Assn., Inc.* v. *Freedom of Information Commission*, 227 Conn. 848, 852–57, 633 A.2d 305 (1993); *Ambroise* v. *William Raveis Real Estate, Inc.*, 226 Conn. 757, 764, 628 A.2d 1303 (1993); *Texaco Refining & Marketing Co.* v. *Commissioner of Revenue Services*, 202 Conn. 583, 589, 522 A.2d 771 (1987).' " (Citations omitted.) *State* v. *Courchesne*, supra, 560–61.

I disagree with the state that the exchange between Representatives Lawlor and Farr plausibly can be construed as referring to a common-law exception to the jurisdictional bar that the Appellate Court had recognized at the time of the 1997 amendment but that this court subsequently overruled. See *State* v. *Das*, 291 Conn. 356, 368, 968 A.2d 367 (2009) (overruling Appellate Court case law recognizing so-called constitutional violation exception to common-law rule that court loses jurisdiction to authorize defendant to withdraw plea once defendant's sentence has begun). The exchange clearly referred to the court's powers under General Statutes (Rev. to 1997) § 54-1j. There is no express or implied reference to the common law or constitutional violations, the basis for the since overruled Appellate Court case law.