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STATE OF CONNECTICUT *v.* DANIEL HENDERSON
(SC 18930)
(SC 18931)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille, Js.

Argued September 19—officially released November 20, 2012

Katharine S. Goodbody, assigned counsel, for the appellant (defendant).

Bruce R. Lockwood, senior assistant state's attorney, with whom, on the brief, were *Michael Dearington*, state's attorney, and *Seth R. Garbarsky*, senior assistant state's attorney, for the appellee (state).

Opinion

NORCOTT, J. The defendant, Daniel Henderson, appeals[1] from the judgment of the trial court denying his motion pursuant to Practice Book § 43-22[2] to correct an illegal sentence on the ground that the sentence was imposed without the assistance of counsel in violation of his rights under the sixth amendment to the United States constitution and article first, § 8, of the Connecticut constitution.[3] On appeal, the defendant contends that the trial court improperly concluded, in connection with accepting his nolo contendere pleas to numerous offenses and sentencing him to fifty-four months of imprisonment, that he: (1) had waived his right to counsel; and (2) was not indigent and therefore did not qualify for the services of a public defender. We disagree and, accordingly, affirm the judgment of the trial court.

The record reveals the undisputed background facts and procedural history. The defendant was arrested and charged with numerous offenses on three separate occasions in 2009 and 2010, which resulted in the state bringing criminal proceedings against him in multiple files in the geographical area number seven courthouse in Meriden, along with the transfer of a violation of probation case from the judicial district of New Britain. On May 24, 2010, the defendant, acting as a self-represented party after being deemed ineligible for public defender services, resolved the various matters with a plea agreement, brokered with the assistance of the trial court, wherein he pleaded nolo contendere to several of the original charges in exchange for a total effective sentence of fifty-four months, or four and one-half years, of imprisonment.[4] At the final plea hearing, the defendant was not represented by counsel but, rather, elected to continue to proceed as a self-represented party, with the assistance of a local public defender as standby counsel, after confirmation of his apparent ineligibility for representation by a public defender. After canvassing the defendant pursuant to Practice Book § 44-3,[5] the trial court accepted the defendant's plea and sentenced the defendant in accordance with the plea agreement.

On June 17, 2010, the defendant, continuing to act as a self-represented party, filed a motion to correct an illegal sentence. Although the trial court denied the defendant's motion the next day, it also granted his application for, inter alia, an appointment of a special public defender to serve as appellate counsel and a waiver of fees for appeal.[6] Subsequently, the special public defender reported to the trial court that a good faith basis for the motion to correct existed; see *State* v. *Casiano*, 282 Conn. 614, 627–28, 922 A.2d 1065 (2007); and the court vacated its earlier order denying the motion to correct an illegal sentence, restored the motion to the docket and appointed the special public defender to represent the defendant in connection with

the motion and any direct appeal therefrom.

Thereafter, the defendant, represented by appointed counsel, renewed his motion to correct an illegal sentence, contending that his sentence obtained pursuant to the plea agreement was the product of the deprivation of his constitutional right to counsel at sentencing. The court held a hearing on the motion and determined that there was no violation of the defendant's right to counsel at the time of the plea. Specifically, the trial court found that, at that time, the defendant had not been eligible for the services of appointed counsel and had knowingly, intelligently and voluntarily waived his right to proceed with standby counsel. Accordingly, the court denied the defendant's motion to correct an illegal sentence. This appeal followed.[7]

On appeal, the defendant contends that the trial court improperly determined that he had not been deprived of his sixth amendment right to counsel before being subject to a sentence of imprisonment; see, e.g., *Argersinger* v. *Hamlin*, 407 U.S. 25, 37, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972); and thus denied his motion to correct an illegal sentence because, contrary to the findings of the trial court: (1) he was indigent at the time of his sentencing and was entitled to the appointment of counsel under the sixth amendment and General Statutes (Rev. to 2011) § 51-296;[8] and (2) he did not waive that right to counsel prior to electing to proceed as a self-represented party. In response, the state argues that the defendant waived his challenges to the public defender's determination of his indigency under General Statutes (Rev. to 2011) § 51-297,[9] and that the court's finding that the defendant was not indigent at the time of the plea is not clearly erroneous, given his failure at that time to proffer evidence explaining the large bonds posted on his behalf and thus countering the public defender's representations to the court. The state further contends that the record reveals that the trial court properly exercised its discretion in concluding that the defendant's waiver of his right to proceed with private counsel was knowing and voluntary following a thorough canvass pursuant to § 44-3. We agree with the state and conclude that the record reveals that: (1) the defendant did not sustain his burden of proving his indigency; and (2) the defendant's waiver of his right to private counsel and the decision to proceed with the plea agreement were knowing, intelligent and voluntary.[10]

Our review of the record demonstrates that the defendant's claims on appeal lack merit and border on frivolous. With respect to the defendant's principal contention, namely, that the court improperly determined that he was not eligible for appointed counsel, we note that the "trial court's assessment of the defendant's offer of proof pertaining to whether he was indigent and was, therefore, eligible for state funded expert

assistance, is a factual determination subject to a clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . .

"It is the duty of the state to provide adequate means to assure that no indigent accused lacks full opportunity for his defense . . . . The right to legal and financial assistance at state expense is, however, not unlimited. Defendants seeking such assistance must satisfy the court as to their indigency . . . . This has largely been accomplished through [public defender services] . . . which has promulgated guidelines that are instructive as to the threshold indigency determination. . . .

"[Section] 51-297 (a) requires the public defender's office to investigate the financial status of an individual requesting representation on the basis of indigency, whereby the individual must, under oath or affirmation, set forth his liabilities, assets, income and sources thereof. . . . [Section] 51-296 (a) requires that, [i]n any criminal action . . . the court before which the matter is pending shall, if it determines after investigation by the public defender or his office that a defendant is indigent as defined under this chapter, designate a public defender . . . to represent such indigent defendant . . . . Upon a determination by the public defender that an individual is not eligible for its services, the individual may appeal the decision to the court before which his case is pending." (Citations omitted; internal quotation marks omitted.) *State* v. *Martinez*, 295 Conn. 758, 781–83, 991 A.2d 1086 (2010).

Even if we assume, without deciding, that the discussions regarding the defendant's ineligibility for public defender services at the hearing in which the trial court accepted the defendant's plea constituted this appeal from the adverse indigency determination by the public defender pursuant to § 51-296; see *State* v. *Flemming*, 116 Conn. App. 469, 482–83, 976 A.2d 37 (2009); we conclude that the trial court's determination at the time of plea that the defendant was not indigent, and therefore was ineligible for public defender services, was not clearly erroneous. In the absence of a proffer to the contrary by the defendant, the court reasonably relied on the representations of the local public defender that the defendant was not indigent because he had been able to post $380,000 in bonds to that point in the proceedings and voluntarily had elected not to post more in order to obtain credit for the incarceration that he knew he was facing. See, e.g., *State* v. *Michael J.*, 274 Conn. 321, 335, 875 A.2d 510 (2005) (noting that attorneys are "officers of the court, and when they address the judge solemnly upon a matter before the court, their declarations are virtually made under oath"

[internal quotation marks omitted]).

Specifically, the transcript of that hearing reveals that, rather than clarifying any misconceptions that the court may have harbored at that point about his indigency, the defendant—whom the record reveals to be articulate, and willing to and capable of expressing his position to the court on a variety of matters—remained silent when asked about the accuracy of the public defender's factual representations, and then simply agreed with the trial court's statement that he did not qualify for a public defender, and proceeded with his guilty plea.[11] We therefore find unavailing the defendant's reliance at the hearing on the motion to correct an illegal sentence, and in his brief in this appeal, on the fact that his mother, a surety bail bond agent, posted the bonds on his behalf, in order to explain that the posting of the bonds did not necessarily mean that he was not indigent. The defendant does not point to any portion of the record indicating that he made the court aware of that significant fact at any time prior to the motion hearing—such as at the time of the plea when the matter of his bonds was discussed at length—and our independent review of the record does not reveal any such prior discussion.[12] Further, after returning to the indigency issue following the plea canvass, the defendant corrected the court's statement that he had "waived" counsel as a general matter and, without saying more, clarified that he wanted a public defender, despite the fact that he acknowledged that he had been found ineligible for one.[13] Thus, we conclude that the trial court's conclusion that the defendant failed to carry his burden of proving his eligibility for public defender services was not clearly erroneous. See *State* v. *Flemming*, supra, 116 Conn. App. 482–83 (trial court properly relied on public defender's report "that, on the basis of the information provided by the defendant, including the fact that he had posted a significant amount of bonds in the past, the defendant was ineligible for appointed representation," and court had no duty to inquire further when "record contain[ed] no indication that the defendant ever challenged the public defender's determination as to his indigency or the court's acceptance of such determination").

Similarly meritless is the defendant's second claim, namely, that the trial court improperly found that he had made a knowing and voluntary waiver of his right to counsel. "We review the trial court's determination with respect to whether the defendant knowingly and voluntarily elected to proceed pro se for abuse of discretion." (Internal quotation marks omitted.) *State* v. *Collins*, 299 Conn. 567, 610, 10 A.3d 1005, cert. denied, U.S. , 132 S. Ct. 314, 181 L. Ed. 2d 193 (2011). "The right to counsel and the right to self-representation present mutually exclusive alternatives. A criminal defendant has a constitutionally protected interest in each, but since the two rights cannot be exercised

simultaneously, a defendant must choose between them. When the right to have competent counsel ceases as the result of a sufficient waiver, the right of self-representation begins. . . . Put another way, a defendant properly exercises his right to self-representation by knowingly and intelligently waiving his right to representation by counsel. . . .

"Practice Book § [44-3] was adopted in order to implement the right of a defendant in a criminal case to act as his own attorney . . . . Before a trial court may accept a defendant's waiver of counsel, it must conduct an inquiry in accordance with § [44-3], in order to satisfy itself that the defendant's decision to waive counsel is knowingly and intelligently made. . . . Because the § [44-3] inquiry simultaneously triggers the constitutional right of a defendant to represent himself and enables the waiver of the constitutional right of a defendant to counsel, the provisions of § [44-3] cannot be construed to require anything more than is constitutionally mandated. . . .

"[A] defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation . . . . Rather, a record that affirmatively shows that [he] was literate, competent, and understanding, and that he was voluntarily exercising his informed free will sufficiently supports a waiver. . . . The nature of the inquiry that must be conducted to substantiate an effective waiver has been explicitly articulated in decisions by various federal courts of appeals." (Internal quotation marks omitted.) Id., 611.

"The multifactor analysis of [Practice Book § 44-3], therefore, is designed to assist the court in answering two fundamental questions: first, whether a criminal defendant is minimally competent to make the decision to waive counsel, and second, whether the defendant actually made that decision in a knowing, voluntary and intelligent fashion. . . . As the United States Supreme Court recently recognized, these two questions are separate, with the former logically antecedent to the latter. . . . Inasmuch as the defendant's competence is uncontested, we proceed to whether the trial court abused its discretion in concluding that the defendant made the waiver decision in a knowing, voluntary, and intelligent fashion." (Internal quotation marks omitted.) Id., 612.

Having reviewed the record, we conclude that the trial court's canvass was in full compliance with § 44-3, as it established that the defendant's decision to proceed without the benefit of counsel was competently made, and knowing, intelligent and voluntary. Specifically, that court found that the defendant, although not a high school graduate, had ample experience both in business and with the criminal justice system. Indeed, in this proceeding, the defendant was able to negotiate a relatively modest fifty-four month sentence while facing

charges carrying exposure to more than twenty-five years of imprisonment—including making the decision to press for and elect a flat sentence rather than a split sentence that exposed him to a long period of probation, albeit with a shorter period of incarceration—and steadfastly obtained the unconditional discharge of a charge of permitting prostitution that he did not want on his record. The court also offered the defendant ample opportunities to engage the services of an attorney—several times continuing the matter prior to accepting the plea in order to allow the defendant to do so[14]—and appointed the public defender to serve as standby counsel should the defendant have any questions during the plea canvass, despite the defendant's ineligibility for the appointment of counsel. The court also repeatedly admonished the defendant concerning the disadvantages and dangers of self-representation, including the lack of objectivity in case assessment and negotiation. Finally, the court defined the nature and effect of the nolo contendere plea as opposed to a guilty plea, and explained in detail each of the many charges against the defendant that underlay the plea. Thus, we conclude that the trial court properly determined that the defendant's decision to waive counsel was knowing, intelligent and voluntarily.

The judgment is affirmed.

In this opinion the other justices concurred.

[1] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] 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."

[3] The sixth amendment to the United States constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense."

Article first, § 8, of the Connecticut constitution provides in relevant part: "In all criminal prosecutions, the accused shall have a right to be heard by himself and by counsel . . . ."

"Because [the defendant] has undertaken no independent analysis of his state constitutional claim . . . we address only his claim under the federal constitution." *Ham* v. *Commissioner of Correction*, 301 Conn. 697, 702 n.6, 23 A.3d 682 (2011).

[4] Specifically, the defendant initially pleaded nolo contendere to: (1) violation of probation in violation of General Statutes § 53a-32; (2) burglary in the third degree in violation of General Statutes § 53a-103; (3) conspiracy to commit burglary in violation of General Statutes §§ 53a-48 and 53a-103; (4) possession of narcotics in violation of General Statutes § 21a-279 (a); (5) larceny in the fourth degree in violation of General Statutes § 53a-125; (6) being a persistent larceny offender in violation of General Statutes § 53a-40 (e); (7) permitting prostitution in violation of General Statutes § 53a-89; and (8) criminal trespass in the first degree in violation of General Statutes § 53a-107. After some discussion as to the terms of the sentence and the factual bases for the pleas, the trial court terminated the defendant's probation, and also granted the defendant an unconditional discharge on the charges of permitting prostitution and criminal trespass. The convictions enumerated in the judgment file reflect these unconditional discharges and the termination of the defendant's probation.

[5] Practice Book § 44-3 provides: "A defendant shall be permitted to waive the right to counsel and shall be permitted to represent himself or herself at any stage of the proceedings, either prior to or following the appointment of counsel. A waiver will be accepted only after the judicial authority makes

a thorough inquiry and is satisfied that the defendant:

"(1) Has been clearly advised of the right to the assistance of counsel, including the right to the assignment of counsel when so entitled;

"(2) Possesses the intelligence and capacity to appreciate the consequences of the decision to represent oneself;

"(3) Comprehends the nature of the charges and proceedings, the range of permissible punishments, and any additional facts essential to a broad understanding of the case; and

"(4) Has been made aware of the dangers and disadvantages of self-representation."

[6] The office of the chief public defender later moved to vacate the trial court's order appointing appellate counsel. At a hearing held on that motion on July 29, 2010, the local public defender represented to the trial court that he now deemed the defendant to be indigent, on the basis of the defendant's incarceration, thereby rendering him financially eligible for appointed counsel in connection with these proceedings. The court appointed Attorney Katharine S. Goodbody, a special public defender who has continued to represent the defendant in this appeal, to conduct a merits review of the motion to correct an illegal sentence pursuant to *State* v. *Casiano*, 282 Conn. 614, 922 A.2d 1065 (2007). See id., 627–28 ("[A] defendant has a right to the appointment of counsel for the purpose of determining whether a defendant who wishes to file [a motion to correct an illegal sentence] has a sound basis for doing so. If appointed counsel determines that such a basis exists, the defendant also has the right to the assistance of such counsel for the purpose of preparing and filing such a motion and, thereafter, for the purpose of any direct appeal from the denial of that motion.").

[7] Acting as a self-represented party, the defendant originally appealed from his May, 2010 sentencing, and from the trial court's order in June, 2010, denying his first motion to correct an illegal sentence to the Appellate Court. After the trial court vacated that order denying the motion to correct, the Appellate Court, sua sponte, dismissed the appeal as moot and consolidated any remaining portions of that appeal challenging the original sentence with the present appeal from the trial court's second denial of the defendant's motion to correct, prior to its transfer to this court. See footnote 1 of this opinion.

[8] General Statutes (Rev. to 2011) § 51-296 provides in relevant part: "(a) In any criminal action, in any habeas corpus proceeding arising from a criminal matter, in any extradition proceeding, or in any delinquency matter, the court before which the matter is pending shall, if it determines after investigation by the public defender or his office that a defendant is indigent as defined under this chapter, designate a public defender, assistant public defender or deputy assistant public defender to represent such indigent defendant, unless, in a misdemeanor case, at the time of the application for appointment of counsel, the court decides to dispose of the pending charge without subjecting the defendant to a sentence involving immediate incarceration or a suspended sentence of incarceration with a period of probation or the court believes that the disposition of the pending case at a later date will not result in a sentence involving immediate incarceration or a suspended sentence of incarceration with a period of probation and makes a statement to that effect on the record. If it appears to the court at a later date that, if convicted, the sentence of an indigent defendant for whom counsel has not been appointed will involve immediate incarceration or a suspended sentence of incarceration with a period of probation, counsel shall be appointed prior to trial or the entry of a plea of guilty or nolo contendere. . . ."

[9] General Statutes (Rev. to 2011) § 51-297 provides in relevant part: "(a) A public defender, assistant public defender or deputy assistant public defender shall make such investigation of the financial status of each person he has been appointed to represent or who has requested representation based on indigency, as he deems necessary. He shall cause the person to complete a written statement under oath or affirmation setting forth his liabilities and assets, income and sources thereof, and such other information which the commission shall designate and require on forms furnished for such purpose.

* * *

"(f) As used in this chapter, 'indigent defendant' means (1) a person who is formally charged with the commission of a crime punishable by imprisonment and who does not have the financial ability at the time of his request for representation to secure competent legal representation and to

provide other necessary expenses of legal representation . . . .

"(g) If the Chief Public Defender or anyone serving under him determines that an individual is not eligible to receive the services of a public defender under this chapter, the individual may appeal the decision to the court before which the individual's case is pending."

[10] Thus, we need not reach the state's contention, predicated on *United States* v. *Crawford*, 487 F.3d 1101 (8th Cir.), cert. denied, 552 U.S. 1064, 128 S. Ct. 709, 169 L. Ed. 2d 557 (2007), that we should apply a harmless error analysis in this context and thus conclude that any deprivation of the right to counsel at sentencing was harmless beyond a reasonable doubt on the basis of the trial court's statement that fifty-four months of imprisonment was the best sentence that the defendant would receive given the array of charges pending against him, regardless of whether he was represented by counsel.

[11] The transcripts of the proceedings in this case contain several colloquies that demonstrate the defendant's ample opportunities to alert the trial court that, contrary to the public defender's determinations based on the posting of his bonds, he was indeed indigent and eligible for public defender services. The relevant portions of the transcript of the May 24, 2010 hearing, when the trial court took the defendant's plea, are most telling:

"The Court: You understand, I know you are somewhat familiar with the criminal justice system. You do have some things on your record. And I just kind of went over briefly the charges. I am going to go over them in more detail and ask you a lot more questions.

"[The Defendant]: Right.

"The Court: But, if you said to me right now, Judge, you know, look, I want to get an attorney. I have asked you this on other occasions. You have declined to do that. But, I am going to ask you once more before this plea is taken, whether you want me to give you time to get an attorney.

"[The Defendant]: They are saying I am not . . . I have applied and they said I am not eligible.

"The Court: You mean for a public defender?

"[The Defendant]: Correct.

"The Court: Well that is because of the amount of [the] bonds that were posted. They have a rule that if there is a certain amount of money posted on the bond, that you couldn't do it.

"[The Defendant]: Right, that's what they were saying.

"The Court: But, if that's the difference—you know, you are incarcerated. Do you want a public defender . . . ?

"[The Defendant]: Do I need one? I mean—you know, at the beginning I put in for one, and they said I wasn't eligible. *And you know, you have asked me a few times, the same thing, and here we are today.*

"The Court: Well, you know, you may not be eligible, but I will certainly appoint one to at least stand by . . . if you wouldn't meet their qualifications. . . .

"[The Defendant]: Yeah, I wouldn't mind that.

"The Court: I would ask them to represent you if you are asking me to get an attorney." (Emphasis added.)

After the matter was passed to give the defendant the opportunity to reapply for public defender services, the local public defender appeared with the defendant before the trial court:

"The Court: What are the current bonds on [the defendant's] files?

"[The Public Defender]: I know he posted—

"The Court: I understand that that is what originally took you out of this particular case, was the significant bond that was posted. But, if you could just get that information for me.

"[The Public Defender]: There is one with $500,000 on it, as I understand. And he posted $380,000. At some point the court may have put some nominal bonds just to give him the benefit of credit.

"The Court: Okay.

"[The Public Defender]: But, you know, I know the matter was passed. I would like to address the issue of his eligibility.

"[The Prosecutor]: $500,053.

"The Court: Okay, I'll hear from you.

"[The Public Defender]: *Your Honor, we've interviewed* [*the defendant*] *several times over the course of the months regarding his eligibility. And our position has always been, as it is today, that he does not qualify for* [*the*] *appointment of public defender services.*

"I don't believe he is indigent. He posted considerable bonds early on as he started to accumulate cases, $350,000. . . . And [the defendant] is anxious to conclude this matter today. He is satisfied to go forward without an attorney. He indicated when I spoke to him moments ago, that he wishes to proceed with the plea today. He is prepared to do so without counsel. He understands that is an agreement. And he has led me to understand that

the reason he is without counsel is his own choosing; that he did not post that last bond, not because he couldn't post it, but because he knew at that time he was facing incarceration and he wanted to resolve these matters.

"*So, I think, he, in essence, has waived counsel by choosing not to retain counsel.*

"The Court: All right. And did you have a chance to talk to [*the defendant*], counsel? You did talk to him during the break today?

"[The Public Defender]: I did, Judge.

"The Court: And what you just relayed is as a result of your conversation you had today?

"[The Public Defender]: It is, Judge.

"The Court: All right. Well, what I am going to ask you to do is there [are] a number of files that are being [pleaded] to. I am going to ask you to stand by in case [*the defendant*] has any questions he might want to ask you.

"Now, you know, Mr. Henderson, you know, one of the reasons I was a little hesitant the other day and today . . . I want to be sure that, you know, there is certainly nothing wrong with you saying, okay, there is a lot of things here. I have been talking to the prosecutor myself. We have worked through some things. The court's got involved. The court has lowered the offer a little bit from what the state had originally asked for. And also I think there was an ask for split time and there was an agreement now to just make it flat time. And—meaning you won't be on any probation. So, when you get done . . . you will be finished. You won't owe anybody anything. And you are going to start over again.

"*First, might I ask you, you heard* [*the public defender's*] *comments, did you not?*

"[The Defendant]: *Yes, I did.*

"The Court: *Are those comments, at least so far as they refer to your representation and desire to dispose of these cases, were those comments accurate? I am not going to ask you to say anything about the property* [*see footnote 12 of this opinion*] *or anything else, was accurate.*

"[The Defendant]: *I would like to go forward today to get this over with, no question about that, you know.*

"The Court: Okay . . . again, the reason I was hesitant was because you did represent yourself, and . . . four and [one-half] years is not an insignificant amount of time. But, if I added up all of the time on these files, the number of years that are possible might shock you. But, you understand . . . how that part of the system works. And you made what appears to be the best agreement that you could make based on everything that's here.

"[The Defendant]: Unless [the public defender] can make a better deal for me.

"The Court: Now, before I can even do this, I have to be sure that I comply with Practice Book § 44-3. And the first item that is listed here, waiver of your right to counsel, is that the defendant has been clearly advised of his right to the assistance of counsel, including your right to the assignment of counsel, when so entitled.

"*You understand that? I have advised you that you have a right to an attorney. And that you would also have a right to a public defender if you qualify, but you didn't qualify.*

"[The Defendant]: *All right, yeah, right. Yeah. I understand that.*" (Emphasis added.)

[12] Moreover, the defendant also contends that, in assessing his assets, the public defender and the trial court improperly relied on his entitlement to certain proceeds from a court-ordered sale of real property in Meriden that resulted from a nuisance action brought by the office of the chief state's attorney. The defendant emphasizes that he never had an ownership interest in this real property. The record reveals, however, that the trial court relied only on the posting of the bonds, and not any proceeds from the sale of the property, in assessing the defendant's assets. Further, in any event, as with the bonds posted on his behalf, the defendant never acted to alert the trial court as to any misconceptions with respect to his interest in the proceeds from that sale.

[13] Specifically, after the trial court found that the "plea has been made knowingly, intelligently and voluntarily" with "an adequate waiver of counsel," and offered the defendant a final chance to speak, the defendant stated: "You said I waived counsel. Yet, you said I am not eligible. I don't remember waiving counsel. If I am not eligible for it—then I am not eligible.

"The Court: You are not eligible for a public defender. You are eligible to hire your own attorney.

"[The Defendant]: Okay, based on that—okay, I gotcha.

"The Court: Right."

[14] Indeed, although the state, the defendant and the court arrived at much of the plea agreement the week before, the court nevertheless continued

the matter for one week in order to satisfy itself that the defendant had available every opportunity to consult with or engage private counsel.