JOURDAN E. HUERTAS *v.* COMMISSIONER OF CORRECTION
(SC 18818)

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

Argued May 17, 2012—officially released May 14, 2013

Richard K. Greenalch, Jr., special deputy assistant state's attorney, with whom, on the brief, were *David I. Cohen*, state's attorney, and *Maureen Ornousky*, assistant state's attorney, for the appellant (respondent).

Rebecca Bodner, deputy assistant public defender, with whom were *Temmy Ann Pieszak*, chief of habeas services, and, on the brief, *Christian De Ocejo*, certified legal intern, for the appellee (petitioner).

Opinion

EVELEIGH, J. The respondent, the commissioner of correction, appeals[1] from the judgment of the habeas court granting the petition for a writ of habeas corpus filed by the petitioner, Jourdan E. Huertas, and awarding him seventeen days of presentence confinement credit. In light of our conclusion in the companion case that we decide today, *Gonzalez* v. *Commissioner of Correction*, 308 Conn. 463, A.3d (2013), concerning the right to effective assistance of counsel at the arraignment stage and during related proceedings pertaining to the setting of bond and credit for presentence confinement, as well as the fact that, in the present case, the petitioner's trial counsel had been ineffective in his failure to request an increase in bond on two prior charges so that the petitioner could be credited for presentence confinement credit on those charges, we conclude that the habeas court properly granted the petition. Accordingly, we affirm the judgment of the habeas court.

The following undisputed facts and procedural history are relevant to the respondent's claim on appeal. On September 27, 2010, the parties appeared for the petitioner's habeas trial and entered into a stipulation in which they agreed that if the petitioner's counsel had requested an increase in bond on April 28, 2006, the petitioner would have received an additional seventeen days of presentence confinement credit and, further, that there was no strategic reason for his counsel not to have made such a request.[2]

Finding that the facts of this case were indistinguishable from those set forth by the Appellate Court majority in the companion case *Gonzalez* v. *Commissioner of Correction*, 122 Conn. App. 705, 1 A.3d 170 (2010), the habeas court granted the petitioner's petition for a writ of habeas corpus. This appeal followed. On appeal, the respondent asserts that the habeas court improperly granted the petitioner's petition for a writ of habeas corpus when that court improperly concluded that the petitioner had a sixth amendment right to the effective assistance of counsel for a matter pertaining to presentence confinement because, the respondent argues, the calculation of presentence confinement credit is not a critical stage of the proceedings. The respondent further claims that the habeas court improperly concluded that the petitioner had met his burden of demonstrating that the performance of his counsel was deficient and that he was prejudiced by that deficient performance.

We agree with the habeas court that the facts of this case are indistinguishable from those in *Gonzalez*. The only minor difference is that the parties in the present case stipulated that there was no strategic reason for the petitioner's counsel not to have requested a bond increase in the first arrest.[3] Accordingly, on the basis

of our conclusion in *Gonzalez* v. *Commissioner of Correction*, supra, 308 Conn. 484, "that the petitioner had a sixth amendment right to effective assistance of counsel at the arraignment stage in which proceedings pertaining to the setting of bond and credit for presentence confinement occurred because it is clear that potential substantial prejudice to the petitioner's right to liberty inhered to the arraignment proceedings and the petitioner's counsel had the ability to help avoid that prejudice by requesting that the bond on [previous arrests] be raised at the arraignment on [a subsequent] arrest," we conclude that the habeas court properly determined that the petitioner in the present case was entitled to the effective assistance of counsel at the plea hearing and sentencing. We further conclude, on the basis of our reasoning in *Gonzalez* v. *Commissioner of Correction*, supra, 484–85, that the failure of the petitioner's counsel to request an increase in the bond on his first arrest constituted deficient performance and that such performance prejudiced the petitioner by exposing him to an additional seventeen days in jail for which he received no credit.

The judgment is affirmed.

In this opinion ROGERS, C. J., and NORCOTT and VERTEFEUILLE, Js., concurred.

[1] On the granting of certification, the respondent appealed from the judgment of the habeas court to the Appellate Court, and we thereafter transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. We heard oral argument in the present case the same day that we heard oral argument in the companion case, *Gonzalez* v. *Commissioner of Correction*, 308 Conn. 463, A.3d (2013), which raises the same legal issue as in this case, and which decision we also release today.

[2] The stipulation provides as follows: "[The Petitioner's Counsel]: We have a stipulation which I'll read into the record—

"[The Habeas Court]: Okay.

"[The Petitioner's Counsel]:—which we feel would eliminate the need for evidence.

"[The Habeas Court]: All right.

"[The Petitioner's Counsel]: Okay. One, on March 29, 2005, [the] petitioner was admitted into custody in lieu of bond for docket number CR-05-107971 [the first arrest]. Two, on September 30, 2005, [the] petitioner posted bond and was released. Three, on November 28, 2005, he was admitted into the custody—into custody in lieu of bond for docket number CR-05-110662. Four, on February 17, 2006, bond was imposed for docket number CR-06-111404. Five, on September 8, 2006, [the] petitioner was sentenced on docket numbers CR-05-107971 and CR-06-111404. Six, the sentence imposed was ten years to serve on each of the above docket numbers and to run concurrent with each other. Seven, his sentence was imposed in docket number CR-05-110662. Eight, [the] petitioner received 185 days of credit on docket number CR-05-107971, representing time spent in pretrial confinement in lieu of bond from March 29, 2005 to September 30, 2005.

"[The Respondent's Counsel]: . . . [T]hat . . . should have been 186 days of credit.

"[The Habeas Court]: All right.

"[The Petitioner's Counsel]: Nine, [the] petitioner received 203 days of jail credit on docket [number] CR-06-111404, representing the time spent in pretrial confinement from February 17, 2006 to September 8, 2006. Ten, Attorney Matthew Maddox entered his appearance on docket [number] CR-05-107971 on May 5, 2005. Eleven . . . Maddox was not present at [the] petitioner's arraignment in docket [number] CR-05-110662 on November 28, 2005. Twelve . . . Maddox was present and representing the petitioner at his plea in docket [number] CR-05-107971 and CR-06-111404 on April 28, 2006. And thirteen . . . Maddox did not address the issue of bond on [docket number] CR-05-107971 on either April 28, 2006, or at sentencing on September 8, 2006. . . .

"[The Habeas Court]: All right. So the plea on both dockets. And then—

so there was then a gap of five months between the plea and sentencing.

"[The Petitioner's Counsel]: That's correct.

"[The Habeas Court]: And on April 28, 2006, did . . . Maddox ask for a bond increase in docket [number CR-05-107971]?

"[The Petitioner's Counsel]: No, he did not.

"[The Habeas Court]: All right. And was there—is there a stipulation as to whether there was any strategic reason not to do so?

"[The Respondent's Counsel]: Yes, Your Honor. There was no strategic reason on that.

"[The Habeas Court]: All right. Okay. And had . . . Maddox asked for an increase in bond on April 28, 2006, assuming it had been granted at that time, would the petitioner have received the additional seventeen days of credit that are at issue in this matter?

"[The Petitioner's Counsel]: Yes.

"[The Respondent's Counsel]: Yes, Your Honor.

"[The Habeas Court]: All right. And, [respondent's counsel], is the stipulation as recited by [the petitioner's counsel] correct as to what you've stipulated to? . . .

"[The Respondent's Counsel]: Yes, Your Honor.

"[The Habeas Court]: Okay. All right. [Respondent's counsel], in light of the state of the law, assuming [the companion case *Gonzalez* v. *Commissioner of Correction*, 122 Conn. App. 705, 1 A.3d 170 (2010)] is binding on me and the stipulation of facts, is there any argument you have as to why I should not grant the petition?

"[The Respondent's Counsel]: Your Honor, we just respectfully feel that—as you pointed out, you're bound by [*Gonzalez* v. *Commissioner of Correction*, supra, 122 Conn. App. 705]. We feel *Gonzalez* was incorrectly decided by a divided panel, and we're appealing that decision. Through our—as I briefed and saw our position on it, so we don't concede that; but our only argument at this point would be a legal interpretation.

"[The Habeas Court]: All right. [Petitioner's counsel], anything further?

"[The Petitioner's Counsel]: No, Your Honor.

"[The Habeas Court]: All right. Well, given the stipulation of facts, the [habeas] court finds that this case is factually indistinguishable from *Gonzalez* . . . . So in light of that and in light of the findings in [*Gonzalez*], I do find that the failure to request an increase in bond was ineffective assistance of counsel; that the petitioner was entitled under the majority opinion in *Gonzalez*; and that he was prejudiced because he lost seventeen days of credit which he would have otherwise received. So following the ruling in [*Gonzalez*], the petition is granted, and the petitioner is awarded the seventeen days of credit; and the state can take the appeal and move to consolidate this case with *Gonzalez* and get it all sorted out at the same time."

[3] We further note that this case also differs from *Gonzalez* in that, in the present case, counsel's failure to increase the bond occurred at a plea hearing on April 28, 2006, and a sentencing on September 8, 2006, and not at the petitioner's arraignment. We do not conclude, however, that this difference is critical since the United States Supreme Court has already decided that the entry of a guilty plea is a critical stage in the proceedings. *Argersinger* v. *Hamlin*, 407 U.S. 25, 34, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972). Further, in *Glover* v. *United States*, 531 U.S. 198, 203–204, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001), the United States Supreme Court held that there is a right to counsel in a sentencing hearing in both capital and noncapital cases, since ineffective assistance of counsel during a sentencing hearing can result in prejudice under *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), because "any amount of [additional] jail time has sixth amendment significance." See also *Mempa* v. *Rhay*, 389 U.S. 128, 121 S. Ct. 696, 19 L. Ed. 2d 336 (1967). Therefore, we conclude that the analysis we used in *Gonzalez* regarding arraignments applies with equal force and effect to both plea hearings and sentencing hearings.