ROGERS, C. J., with whom PALMER, J., joins, dissenting. After months of rocky relations with his appointed counsel and multiple unsuccessful requests to have her removed, the defendant, Michael D. Pires, Sr., informed his counsel, off the record, that he wanted to represent himself. Counsel promptly relayed that request to the trial court, and further indicated that she had provided certain advice to the defendant regarding the factors that properly would justify the court in denying the defendant's request. That advice clearly was contrary to well established law governing the right to self-representation. Instead of correcting counsel's misleading advice and conducting further inquiry of the defendant pursuant to Practice Book § 44-3, the trial court ignored the defendant's request to represent himself. Because I believe that the defendant clearly and unequivocally asserted his right to self-representation and was dissuaded from pursuing that right further by his counsel's erroneous advice and the trial court's apparent agreement with that advice, I respectfully dissent from the majority's conclusion that no constitutional violation has occurred.[1]

As the majority acknowledges, there is no standard formula for a clear and unequivocal request for self-representation. "[A] defendant does not need to recite some talismanic formula hoping to open the eyes and ears of the court to [that] request. Insofar as the desire to proceed pro se is concerned, [a defendant] must do no more than state his request, either orally or in writing, unambiguously to the court so that no reasonable person can say that the request was not made. . . . Moreover, it is generally incumbent upon the courts to elicit that elevated degree of clarity through a detailed inquiry. That is, the triggering statement in a defendant's attempt to waive his right to counsel need not be punctilious; rather, the dialogue between the court and the defendant must *result* in a clear and unequivocal statement." (Emphasis in original; internal quotation marks omitted.) *State* v. *Jordan*, 305 Conn. 1, 14–15, 44 A.3d 794 (2012).

We previously have explained that "the context of [a] reference to self-representation is important in determining whether the reference itself was a clear invocation of the right to self-representation. . . . The inquiry is fact intensive and should be based on the totality of the circumstances surrounding the request . . . ." (Citations omitted; internal quotation marks omitted.) Id., 15. A court may consider, for example, whether a request appears to be based on reasoning and after deliberation, or rather, whether it is spontaneous and "the result of an emotional outburst . . . ." (Internal quotation marks omitted.) Id. Finally, it has

been recognized that a defendant's clear and unequivocal request to represent himself may be communicated indirectly by being conveyed to the court through his counsel. See, e.g., *People* v. *Cherry*, 104 App. Div. 3d 468, 469, 961 N.Y.S.2d 380 (2013); *State* v. *Hessmer*, Docket No. M2012-01079-CCA-R9-CD (Tenn. Crim. App. March 28, 2013); *Johnson* v. *State*, Docket No. 12-02-00165-CR (Tex. App. May 30, 2003).

The following background provides the requisite context for the defendant's claim. On May 25, 2005, subsequent to the trial court's determination that there was probable cause to try the defendant on a murder charge, the defendant filed a motion to dismiss his counsel and appoint new counsel. In that motion, the defendant claimed that he and counsel, Linda Sullivan, a special public defender, had a conflict of interest and that counsel would not do what he requested, namely, file certain motions and request discovery from the state. At a hearing on the defendant's motion, the defendant expressed his belief that Sullivan was not acting in his best interests, and he complained that counsel was not providing him with information he had requested or discussing the evidence in the case with him in a timely fashion. Sullivan, in turn, expressed significant frustration at her inability to deal effectively with the defendant.[2] At the conclusion of the hearing, the trial court denied the defendant's motion, but encouraged the defendant and Sullivan to work on improving their relationship.

In the months that followed, Sullivan and the defendant continued to have difficulties communicating, and their relationship instead deteriorated. At an August 10, 2005 hearing, Sullivan moved to have the defendant's competency evaluated,[3] and the defendant, after complaining that counsel was misrepresenting his viewpoints, indicated that he had filed a grievance against Sullivan. On October 12, 2005, the defendant attempted to file a discovery motion himself and he complained again that Sullivan was not providing him with requested documents. At a November 15, 2005 hearing, after the court communicated a plea offer to the defendant and informed him that he had until December 20, 2005, to accept or reject it, the defendant stated that he would "like to fire [his] lawyer." After the court replied that there was "no reason for this court to replace her and so this court refuses to do so," the defendant stated, "I still want her off my case." The court responded, "[t]hat's not going to happen . . . I'll see you on December 20," and immediately adjourned the hearing.

On December 20, 2005, at the outset of the scheduled plea hearing, the prosecutor informed the court that it was necessary for the defendant to sign a stipulation that would allow the car the victim was driving on the night of his murder to be returned to the victim's wife. When the court inquired about the stipulation with Sulli-

van, the following colloquy ensued:

"[Defense Counsel]: [The defendant] has cut short our discussions before I was able to discuss that with him. And obviously I didn't have the opportunity to discuss that with him.

"The Court: Why did he cut short your discussions?

"[Defense Counsel]: Apparently he does not want to talk with me, Your Honor.

"The Court: Mr. Pires, we've been through this before.

"The Defendant: Yes. My constitutional—rights. I'm firing my lawyer.

"The Court: . . . [Y]our constitutional rights are as follows: You have the right to be represented by an attorney. If you can afford to hire an attorney yourself, then you are entitled to be represented by the attorney of your choice. If you are unable and financially incapable of hiring an attorney, then the court appoints an attorney to represent you. [Defense counsel] has been appointed to represent you, and for some reason you're not cooperating with that; and I don't understand why because it's clearly in your best interest to do so, sir, because she is the attorney who is going to be representing you.

"So I suggest very strongly that you sit down and speak with her and that I don't have you coming out of lockup every time you're here saying, I want a new attorney, because it's not going to happen . . . . This is the attorney who has been selected to represent you. She has a great deal of experience. She's been trying cases for years. She knows what she's doing. So instead of bucking her, I expect that you will cooperate with her.

"So I'm going to pass this case and I want you to talk with your client, [Attorney] Sullivan, thank you. Thank you, Mr. Pires. I'll see you shortly after you talk with [defense counsel].

"The Defendant: I still—

"The Court: Mr. Pires.

"The Defendant: Constitutional rights, I am firing my lawyer.

"The Court: You can't fire her; you didn't hire her . . . .

"The Defendant: I want that to be on the record, too.

"The Court: Mr. Pires. Bring him right back over here. Let me repeat this again, sir.

"The Defendant: I did what you said.

"The Court: The United States constitution and the constitution in the state of Connecticut, sir, you are entitled to be represented by an attorney.

"The Defendant: Yes.

"The Court: You, unfortunately, are not in a financial situation to hire who you would like. Therefore, the court is required to appoint someone to represent you. That has been done. That individual is Attorney Sullivan. With all due respect . . . you cannot fire her, you did not hire her. The only situation under which a new attorney would be appointed for you . . . is if for some reason [defense counsel] was deemed incompetent or incapable of representing you.

"The Defendant: There you go. There you go. I put in a motion for question—

"The Court: She is not incompetent and she is not incapable. You, sir, have refused to speak with her, to work with her, and to help her with your defense. And so I am passing this case and asking you to do so because the case is on for [acceptance or rejection of the plea offer] today, and we either need to go to trial or you need to plea[d]. So speak with your client. Please take [the defendant] downstairs and [defense counsel] will meet him there.

"[Defense Counsel]: Thank you, Your Honor."

Court was recessed and subsequently reconvened. The following colloquy then occurred:

"The Court: Mr. Pires, first, please.

"[Defense Counsel]: Thank you, Your Honor. . . .

"The Court: Yes, I had passed this case. You want to educate the court on what happened?

"[Defense Counsel]: Well, I did go downstairs and attempt to talk to [the defendant]. He did want to discuss strategy with me. *He indicated now that he wishes to represent himself in this matter. I informed him that I didn't think Your Honor was going to allow him to represent himself on a murder charge simply because that would be much too dangerous, and it would not be in his best interest.* And that's about where we stand, Your Honor.

"The Court: You've attempted to discuss with him the evidence and he refuses to discuss that with you?

"[Defense Counsel]: Yes, Your Honor.

"The Court: He has copies of the transcripts from the probable cause hearing?

"[Defense Counsel]: He does.

"The Court: I'm going to put this on the trial list, because at some point you need to communicate with [Attorney] Sullivan. You're on the firm trial list. You're on two hour notice.

"[Defense Counsel]: Thank you, Your Honor." (Emphasis added.)

The trial court then adjourned the hearing. At the

next hearing on the defendant's case, approximately two and one-half months later, different counsel appeared and asked to be substituted for Sullivan, who wanted to withdraw. The court permitted the substitution of Bruce Sturman and Kevins Barrs as defense counsel, which the defendant did not contest.

I disagree with the majority that defense counsel's statement near the conclusion of the December 20, 2005 hearing, that the defendant had "indicated now that he wishes to represent himself in this matter," was not, placed in context, a clear and unequivocal assertion of the right to self-representation that obligated the court to inquire further of the defendant. The request was predated by a substantial history of consistent disagreement and poor communication between the defendant and his counsel, Sullivan. Semantically, the assertion could not have been clearer, and it cannot reasonably be construed as a request for the appointment of new counsel. Indeed, the court's denial of the defendant's previous requests to dismiss counsel, and its explanation of the constitutional right to counsel, made it abundantly clear that that option was not forthcoming. Moreover, defense counsel's choice of words, that the defendant "now" wanted self-representation, is indicative of a change in tactic in response to the court's advice. Rather than ignoring the request and adjourning the hearing as it did, the court should have acknowledged the request and canvassed the defendant pursuant to Practice Book § 44-3.

More troubling, when defense counsel informed the court that the defendant wished to represent himself, she further indicated that she had responded to the defendant's assertion of the right with legal advice that the trial court should have recognized as erroneous, namely, that self-representation likely would be disallowed because the defendant was charged with murder, and because self-representation would be "too dangerous" and contrary to his best interests. The trial court, in response to this account of erroneous advice, did nothing to correct it. The factors cited by defense counsel, however, are not legally cognizable reasons for disallowing a defendant from representing himself. See *McKaskle* v. *Wiggins*, 465 U.S. 168, 177 n.8, 104 S. Ct. 944, 79 L. Ed. 2d 122 (observing, in case finding violation of right to self-representation in death penalty case, that right "when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant"), reh. denied, 465 U.S. 1112, 104 S. Ct. 1620, 80 L. Ed. 2d 148 (1984); *Faretta* v. *California*, 422 U.S. 806, 834, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) (acknowledging that "in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts," and that self-represented party "may conduct his own defense ultimately to his own detriment"); *Faretta* v. *California*, supra, 836 (defendant's "technical legal knowledge, as such, was not relevant

to an assessment of his knowing exercise of the right to defend himself"); *People* v. *Dent*, 30 Cal. 4th 213, 218–19, 65 P.3d 1286, 132 Cal. Rptr. 2d 527 (2003) (seriousness of charges defendant faces is improper consideration when deciding whether to permit self-representation).

When defense counsel repeated to the trial court her erroneous legal reasoning and her prediction, on the basis of that reasoning, that the court would deny the defendant's request for self-representation, the court's subsequent failure to respond likely left the defendant with the impression that the court was in agreement. For this reason, I disagree with the majority that the defendant's subsequent failure to reassert the right to self-representation, and his apparent acquiescence in the appointment of new counsel approximately two months later when his existing counsel withdrew, constitute a waiver or abandonment of his earlier assertion of the right. Instead, I believe that the defendant reasonably construed the court's silence as tacit agreement with defense counsel and denial of his request for the reasons cited, reasonably leading him to conclude that further assertion of the right would be futile.[4] See *State* v. *Jordan*, supra, 305 Conn. 20 (failure to reassert right to self-representation, once denied, does not demonstrate that request was equivocal or abandoned; "denial likely convinced [the] defendant [that] the self-representation option was simply unavailable, and [that] making the request again would be futile" [internal quotation marks omitted]); see also *People* v. *Dent*, supra, 30 Cal. 4th 219 (trial court's legally erroneous response, that defendant could not proceed pro se in death penalty trial, "foreclosed any realistic possibility [that the] defendant would perceive self-representation as an available option," effectively preventing him from pressing it further as futile endeavor).

I acknowledge that "a trial court properly may deny a request for self-representation when it is merely a tactic for delay . . . or an impulsive response . . . or is made in passing anger or frustration . . . or to frustrate the orderly administration of justice . . . or is an insincere ploy to disrupt the proceedings . . . ." (Internal quotation marks omitted.) *State* v. *Jordan*, supra, 305 Conn. 22. The record here, however, does not suggest that the defendant, by invoking the right to self-representation, was acting disingenuously or with the intent to delay or disrupt. Additionally, and notwithstanding the majority's speculation as to what might have occurred off the record, there is no actual evidence that the defendant's assertion of the right was a spontaneous emotional outburst borne of frustration. To the contrary, there is abundant evidence that the defendant did not trust Attorney Sullivan and that he disagreed with her strategy and was dissatisfied with her performance.

"[O]nce there has been an unequivocal request for self-representation, a court must undertake an inquiry [pursuant to Practice Book § 44-3], on the record, to inform the defendant of the risks of self-representation and to permit him to make a knowing and intelligent waiver of his right to counsel." (Internal quotation marks omitted.) Id., 14. Because the defendant made a clear and unequivocal request and the trial court failed to undertake this inquiry, I would reverse the judgment of the Appellate Court.

[1] The defendant does not, as the majority opinion suggests, raise a separate and distinct claim that the trial court improperly failed to advise him of his right to self-representation when advising him about his right to counsel. Accordingly, I express no opinion on that issue. As explained hereinafter, I agree with the majority that there is no merit to the defendant's contention that his right to self-representation was denied again at the sentencing phase of his trial, albeit for a different reason than that cited by the majority. See footnote 4 of this opinion.

[2] For example, Sullivan attributed the defendant's requests for discovery, in light of the state's open file policy, to advice from "some idiot jailhouse lawyer," complained that she was "sick of having to defend [her]self against these stupid allegations," and, in response to the court's observation that the foregoing comments were unlikely to bring her closer to the defendant, stated, "I don't care, I've just had it."

[3] Following an examination, the defendant was deemed competent to understand the charges against him and to assist in his defense.

[4] As explained in the majority opinion, subsequent to the December 20, 2005 hearing, the defendant never again asserted the right to self-representation, although he did request dismissal of his new counsel on multiple occasions. The majority assumes, without deciding, that the defendant's request to dismiss counsel during the sentencing phase of his trial constituted a clear and unequivocal request to represent himself, because the trial court's response suggests that it recognized this possibility. The majority then applies the balancing test we adopted in *State* v. *Flanagan*, 293 Conn. 406, 433, 978 A.2d 64 (2009), and concludes that denial of the right, at that stage of the proceedings, was not an abuse of discretion. I would hold, instead, that there was no assertion of the right during the sentencing phase because at that time, the defendant himself never requested anything except dismissal of his counsel.