SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 20734

STATE OF CONNECTICUT
v.
RICHARD LANGSTON

REPLY BRIEF OF DEFENDANT/APPELLANT

TO BE ARGUED BY:

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OR

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INTRODUCTION

The sentencing court in the present case second-guessed the jury's acquittal of the defendant on a charge of assault in the first degree and found, contrary to that verdict, that the defendant shot the victim in both legs. In arriving at the defendant's sentence, the court then proceeded to rely at length on what it found were the long-term effects of the shooting on the victim. Accordingly, the court sentenced the defendant on robbery and firearms charges to twenty-five years of imprisonment, in part because it found that he committed acts of which the jury had acquitted him, thus violating his rights to due process and trial by jury.

The state asserts in its brief that the authorities concluding that reliance on acquitted conduct in sentencing is unconstitutional have little relevance under Connecticut's sentencing system. Those authorities, however, are premised on universally applicable principles—the presumption of innocence, fundamental fairness, and public confidence in the criminal justice system—that apply equally regardless of the system used for sentencing. Additionally, the state has overstated the differences between Connecticut's sentencing system and jurisdictions with sentencing guidelines systems by overlooking the effect of landmark United States Supreme Court precedents that have rendered sentencing guidelines advisory rather than mandatory.

The state also maintains that *State v. Pena*, 301 Conn. 669, 22 A.3d 611 (2011), was correctly decided on stare decisis grounds, and that it correctly concluded that the state constitutional protections with regard to sentencing are coextensive with their federal counterparts. Because the case law relied on as binding by the *Pena* Court did not have any factual connection with the use of acquitted conduct in sentencing, the state's position flies in the face of the black-letter principle that stare decisis extends only to subsequent cases where the facts are substantially the same. Furthermore, because the *Pena* Court did not

engage in the mandatory *Geisler* analysis for determining the scope of state constitutional rights, it could not have correctly reached any conclusion with regard to those rights.

Each of these issues will be examined in turn.

REPLY ARGUMENT

I. A Sentencing Court's Consideration Of Acquitted Conduct Violates A Defendant's Due Process And Jury Trial Rights In Any Sentencing System.

The state argues that the opinions that have concluded that consideration of acquitted conduct violates a defendant's rights to due process and trial by jury have come from jurisdictions (either the federal system or various states) that have sentencing guidelines setting forth specific factors for courts to consider in sentencing, and that the concerns arising in such systems have little or no relevance in a system like Connecticut's, in which a judge has broad discretion to sentence within defined sentencing ranges. See SB, 47-52, 59-61. The state asserts that in guidelines jurisdictions, "consideration of a single fact will more significantly inform a trial court's exercise of sentencing discretion and the reasonable scope of that discretion." Id., 49. The state further asserts that in the Michigan Supreme Court case of *People v. Beck*, 504 Mich. 605, 939 N.W.2d 213 (2019), for example, the "outcome appears to have been compelled by the dramatic change that the consideration of the acquitted conduct wrought to the guidelines range, rather than an underlying theory that the consideration of acquitted conduct is never permissible." Id., 51.

The state's attempt to draw a sharp line between guidelines jurisdictions and indeterminate sentencing jurisdictions such as Connecticut, and to suggest that concerns about use of acquitted conduct are implicated in the former but not the latter, is unconvincing. First, the contrast between the two systems is not as pronounced as the state suggests following a series of landmark United States Supreme Court opinions. First, in *Apprendi v.*

New Jersey, 530 U.S. 466, 481, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), the Court concluded that the due process clause and sixth amendment require that, other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be found by a jury beyond a reasonable doubt. See *State v. Evans*, 329 Conn. 770, 780-81, 189 A.3d 1184 (2018), cert. denied, 139 S. Ct. 1304, 203 L. Ed, 2d 425 (2019). In *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), the Court extended that holding to rule that state (*Blakely)* and federal (*Booker*) sentencing guidelines schemes that required judges making certain designated findings to increase sentences beyond the maximum otherwise authorized by the jury's verdict were likewise unconstitutional. In *Booker*, the Court went on to remedy this constitutional defect in the federal sentencing guidelines system by excising the federal statute's provisions that made the guidelines mandatory, thus transforming them into advisory guidelines. *United States v. Booker*, supra, 245. Other jurisdictions, including the Michigan Supreme Court and New Jersey Supreme Court, subsequently followed suit and eliminated from their sentencing schemes those elements that ran afoul of the constitutional principles of *Blakely* and *Booker*, thus giving judicial discretion a larger role. See *People v. Lockridge*, 498 Mich. 358, 391, 870 N.W.2d 502 (2015); *State v. Natale*, 184 N.J. 458, 487-88, 878 A.2d 724 (2005).

The *Booker* Court explained exactly why an advisory—as opposed to mandatory—guidelines system does not run afoul of the constitution: A judge in an advisory guidelines system retains the traditional authority of a judge to exercise broad discretion in imposing a sentence within a statutory range, just as judges in Connecticut do. Specifically, the Court observed: "If the [mandatory] Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular

sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range. See *Apprendi*, 530 U.S., at 481; *Williams v. New York*, 337 U.S. 241, 246 (1949). . . . For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant." *United States v. Booker*, supra, 543 U.S. 233. In short, making the guidelines advisory restored sentencing judges' "discretion to select a specific sentence within a defined range." Id. Accordingly, federal and state advisory guidelines systems much more closely resemble Connecticut's system, in which judges have discretion to select a specific sentence within a defined range; the difference is that judges under a guidelines system must first consider the effect of factors set forth in the guidelines before ultimately exercising that discretion.

That is the crux of the problem with the state's assertion that, in a guidelines system, "consideration of a single fact will more significantly inform a trial court's exercise of sentencing discretion and the reasonable scope of that discretion." Where judges in Connecticut and states with similar systems have discretion that is not directed by advisory guidelines, they remain free to give whatever weight to whatever factors they deem appropriate, subject to constitutional limitations. Accordingly, how much weight a judge gives any particular factor is entirely unpredictable. The generalization made by the state—i.e., that single facts will have a larger effect in a guidelines jurisdiction—is therefore entirely speculative and unwarranted. On the contrary, if consideration of acquitted conduct were permissible, a Connecticut court, acting in the absence of guidelines, could potentially make that conduct the predominant factor in determining a defendant's sentence. Indeed, it is important to remember that in the present case, the sentencing court's discussion of the harm

done by the defendant focused almost entirely on the effects of the victim having been shot, a fact that related entirely to the acquitted assault charge, rather than the robbery and firearms charges of which the defendant was convicted. See T. 6/30/99 at 8-10; A059-016.

Moreover, even if the state were correct that acquitted conduct is likely to have a greater effect under a guidelines system, it is difficult to see why consideration of acquitted conduct that adds, say, twenty years to a defendant's sentence would be repugnant to the constitution, while consideration of acquitted conduct that adds one or two years to a sentence would not. When any person, such as the defendant, sits confined in a prison cell for *any* extra period of time because of the very charge on which the jury reached an acquittal, that person's rights to due process and trial by jury have been violated.

Just as importantly, despite the state's assertions, the texts of the relevant opinions barring the use of acquitted conduct in sentencing do not suggest that unique aspects of guidelines sentencing systems provided the primary impetus for their holdings. In *People v. Beck*, for example, the Michigan Supreme Court's recent watershed decision on the use of acquitted conduct in sentencing, it was manifest that the constitutionality of considering acquitted conduct in sentencing was being considered as a general matter, and was not limited to guidelines systems or to cases in which sentences are increased by any particular amount as a result of acquitted conduct. This is apparent from the very beginning of the opinion, in which the question was framed as follows: "Once a jury acquits a defendant of a given crime, may the judge, notwithstanding that acquittal, take the same alleged crime into consideration when sentencing the defendant for another crime of which the defendant was convicted?" *People v. Beck*, supra, 504 Mich. 608-609.

In case the matter were still in doubt, the court continued: "The jury speaks, convicting on some charges and acquitting on others. At sentencing for the former, a judge might seek

to increase the defendant's sentence (under the facts of this case, severely increase, *though we consider the question in principle*) because the judge believes that the defendant really committed one or more of the crimes on which the jury acquitted." (Emphasis added.) Id., 609. Accordingly, the Michigan Supreme Court framed the issue broadly as whether a sentencing court may consider conduct of which a jury has already acquitted the defendant. The language italicized above explicitly clarified that the severity of the increase was not the focus of the court's inquiry, because the court was concerned about whether the consideration of acquitted conduct in sentencing was unconstitutional "in principle." Id. This directly contradicts the state's suggestion in its brief that the "dramatic change" in the defendant's sentence was the court's real concern in *Beck*.

Additionally, the principles on which the *Beck* Court based its decision apply equally to any sentencing system. Foremost was the Michigan court's concern with respecting the presumption of innocence, which, the court noted, continues in effect when a jury finds a defendant not guilty. Id., 626. Surely whether a sentencing court's consideration of acquitted conduct is "fundamentally inconsistent with the presumption of innocence itself"; id., 627; does not depend on whether the sentencing proceeds under a system of advisory guidelines like Michigan's or an indeterminate sentencing system like Connecticut's. Furthermore, the Michigan court was persuaded by "the volume and fervor of judges and commentators who have criticized the practice of using acquitted conduct as inconsistent with fundamental fairness and common sense." Id. The state has failed to explain how the consideration of acquitted conduct, which violates fundamental fairness and common sense under a system of advisory guidelines, may comport with due process under Connecticut's system. In either circumstance, a defendant has been acquitted on a charge, only to find that a judge who disagrees with the jury has increased his sentence based on the acquitted conduct.

Other major cases on which the defendant relies likewise are premised upon principles that apply to all types of sentencing systems. In *State v. Melvin*, 248 N.J. 321, 258 A.3d 1075 (2021), the New Jersey Supreme Court's foremost concern was fundamental fairness: "In order to protect the integrity of our Constitution's right to a criminal trial by jury, we simply cannot allow a jury's verdict to be ignored through judicial fact-finding at sentencing. Such a practice defies the principles of due process and fundamental fairness." Id., 349. Additionally, the New Jersey court was concerned that permitting a judge to ignore a jury's verdict of acquittal has the tendency to undermine public confidence in the rule of law: "The trial court, after presiding over a trial and hearing all the evidence, may well have a different view of the case than the jury. But once the jury has spoken through its verdict of acquittal, that verdict is final and unassailable. The public's confidence in the criminal justice system and the rule of law is premised on that understanding. Fundamental fairness simply cannot let stand the perverse result of allowing in through the back door at sentencing conduct that the jury rejected at trial." Id., 352. Again, these principles are equally at stake in any jurisdiction, irrespective of the sentencing system the legislature has chosen to put in place. The state's attempt to rewrite the New Jersey Supreme Court's opinion to make it turn not on larger issue of fairness and public confidence in the courts and the rule of law, but narrowly on New Jersey's sentencing scheme, is unsupported by the text of the opinion.

In *State v. Cote*, 129 N.H. 358, 530 A.2d 775 (1987), as well, the New Hampshire Supreme Court's major concern was respect for the presumption of innocence. As the *Cote* court observed: "The concept [of acquittal] is intertwined with the notion, so central to our system of justice, that until guilt is proven beyond a reasonable doubt, a defendant is innocent . . . . It is true that a jury, in the private sanctity of its own deliberations, may acquit in a given case simply because the evidence falls just short of that required for conviction beyond a

reasonable doubt. Nevertheless, we do not invade the inner sanctum of the jury to determine what percentage of probability they may have assigned to the various proofs before it. Indeed, in one case a jury might assign no weight whatever to the State's proof, while in another it may find the State's proof more probably true than not, but of course still insufficient for a criminal conviction. The inescapable point is that our law requires proof beyond a reasonable doubt in criminal cases as the standard of proof commensurate with the presumption of innocence; a presumption not to be forgotten after the acquitting jury has left, and sentencing has begun." Id., 374.

In short, there is no merit to the state's assertion that the concerns underlying the opinions concluding that a sentencing court's consideration of acquitted conduct in disregard of a jury's verdict violates the rights to due process and trial by jury are largely inapplicable to Connecticut's sentencing system. The broad discretion given to a sentencing judge in Connecticut may result in acquitted conduct having a very significant effect on a defendant's sentence. Additionally, the presumption of innocence, common sense, the due process concern with fundamental fairness, and the importance of preserving public confidence in the courts are as important in Connecticut as anywhere else. Accordingly, Connecticut's courts should follow the lead of those opinions and conclude that any reliance on acquitted conduct in sentencing violates a defendant's rights to due process and trial by jury.

II. Our Supreme Court's Decision In *State v. Pena* Was Erroneously Decided On Stare Decisis Grounds And Without A Proper *Geisler* Analysis.

The state maintains that our Supreme Court's decision in *State v. Pena*, 301 Conn. 669, 22 A.3d 611 (2011), was correctly decided on stare decisis grounds because the Court had previously stated in *State v. Huey*, 199 Conn. 121, 505 A.2d 1242 (1986), that a sentencing court may properly consider acquitted conduct. The state also posits that whether acquitted conduct may be considered by a sentencing court was within the scope of the

Court's declaration in *State v. Huey* that "[a]s long as the sentencing judge has a reasonable, persuasive basis for relying on the information which he uses to fashion his ultimate sentence, an appellate court should not interfere with his discretion" if the information relied upon "has some minimum indicium of reliability." *State v. Huey*, 199 Conn. 121, 127, 505 A.2d 1242 (1986); see SB at 34-35. The state relies on the Court's later description of this as a "sweeping standard." *State v. Bletsch*, 281 Conn. 5, 21, 912 A.2d 992 (2007); see SB at 35. The state is mistaken because the well-established law regarding the doctrine of stare decisis establishes that opinions are binding only to the extent that subsequent cases present facts that are substantially the same, and because comments on matters that are not necessary to deciding the matter before the Court are mere non-binding dicta. Where the courts have not previously been presented with a set of facts involving reliance on acquitted conduct in sentencing, it remains an open question, and comments on the issue in other opinions have the status of mere dicta.

It is black letter law that stare decisis—that is, the binding effect of appellate opinions—extends only to subsequent cases where the facts are substantially the same. As the United States Court of Appeals for the Second Circuit has explained, "[t]he principle of stare decisis is applicable only where the facts in the two actions are the same." (Internal quotation marks omitted.) *United States v. Nolan*, 136 F.3d 265, 269 (2d Cir.), cert. denied, 524 U.S. 920, 118 S. Ct. 2307, 141 L. Ed. 2d 165 (1998). Black's Law Dictionary is plain on this point as well when it describes stare decisis as the "[d]octrine that, when court has once laid down a principle of law as *applicable to a certain state of facts*, it will adhere to that principle, and apply it to all future cases, *where facts are substantially the same*; regardless of whether the parties and property are the same. Under doctrine a deliberate or solemn decision of court made after argument on question of law fairly arising in the case, and

necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases *where the very point is again in controversy*. . . . The doctrine is *limited to actual determinations in respect to litigated and necessarily decided questions, and is not applicable to dicta or obiter dicta*." (Emphasis added.) Black's Law Dictionary (Abridged 6th Ed. 1991). This is the sense in which courts generally understand the binding effect of precedents.

This understanding of stare decisis was shared by the Connecticut Supreme Court prior to its decision in *Pena*. As the Court reiterated in *State v. Salmon*, 250 Conn. 147, 735 A.2d 333 (1999), just a little over a decade before *Pena*, "[u]nder the accepted rule, the doctrine of stare decisis contemplates only such points as are actually involved and determined in a case, and not what is said by the court on points not necessarily involved therein." (Internal quotation marks omitted.) Id., 162. The *Salmon* Court, in turn, relied on the Court's decision in *Riley v. Board of Police Commissioners*, 145 Conn. 1, 5, 137 A.2d 759 (1958), likewise stating that the doctrine of stare decisis is so limited. Nevertheless, the Court, in *Pena*, determining that the decision in *Huey*, a plea bargain case, the facts of which in no way involved a jury trial, let alone a jury's verdict of acquittal, was binding on whether a sentencing court may consider acquitted conduct. It therefore represented a break from what our Supreme Court had previously repeatedly recognized as "the accepted rule" regarding stare decisis. See *State v. Salmon*, supra, 162; *Riley v. Board of Police Commissioners*, supra, 5. Furthermore, it made that break without any explicit discussion of the doctrine of stare decisis and its scope.

The state nevertheless insists that *Huey* was binding on a vast universe of factual scenarios beyond the facts involved in *Huey* itself because it set forth such a "sweeping standard." SB at 35; see also *State v. Bletsch*, supra, 281 Conn. 21. In essence, the state

argues that, because the *Huey* Court commented on many types of facts that a sentencing court may consider in addition to the type of facts specifically at issue in *Huey*, the decision became binding precedent with regard to all of those types of information, including acquitted conduct. The state's view is contradicted by Supreme Court precedent, first, with regard to the effect of such sweeping rules that go beyond the matter directly before the Court, and second, with regard to the precedential value (or, more precisely, the lack of precedential value) of obiter dicta.

First, our Supreme Court has specifically addressed the application of sweeping or blanket-type rules set forth in its opinions, and has directed that they should not be read to extend beyond the circumstances of the cases in which they were announced. In *State v. Ouellette*, 190 Conn. 84, 459 A.2d 1005 (1983), the defendant was found guilty of risk of injury to a child following a jury trial. Id., 85. The trial court permitted the state to introduce statements by the minor complainant that the defendant had engaged in similar activity on several previous occasions going back as long as two years before the charged offense, despite repeated objections by the defendant that the prejudicial effect of the evidence far outweighed its probative value. Id., 86-90. Both the state and the trial court, in support of the admissibility of the evidence, relied on *State v. Greene*, 161 Conn. 291, 287 A.2d 386 (1971), in which the Court had determined there was "no error in the rulings of the [trial] court" in admitting that type of evidence. Id., 295-95; see *State v. Ouellette*, supra, 88-89. The state in *Ouellette* argued that *Greene* set forth "a blanket-type of rule by the Supreme Court" regarding the admissibility of that type of evidence of uncharged misconduct. (Internal quotation marks omitted.) *State v. Ouellette*, supra, 88, 93 n.9.

In reversing the judgment of conviction in *Ouellette*, the Supreme Court acknowledged that the *Greene* "opinion place[d] no apparent limitation either on the testimony of the victim

concerning the prior sexual assault, or on the testimony of [another witness] regarding the victim's statements to her relating the prior incidents." Id., 91. The Court concluded, however, that it "cannot agree . . . that the broad language in *Greene* justifie[d] the introduction of the evidence at issue in [*Ouellette*]." Id. The Court stated: "It is the general rule that a case resolves only those issues explicitly decided in the case. See *Connecticut Light & Power Co. v. Costle*, 179 Conn. 415, 416 n.1, 426 A.2d 1324 (1980); *State v. DellaCamera*, 166 Conn. 557, 561, 353 A.2d 750 (1974); *State v. Darwin*, 161 Conn. 413, 421–22, 288 A.2d 422 (1971). Furthermore, it is well to note that traditional doctrine is that the precedential value of a decision should be limited to the four corners of the decision's factual setting. *Armour & Co. v. Wantock*, 323 U.S. 126, 132–33, 65 S. Ct. 165, 168, 89 L. Ed. 118 (1944), reh. denied, 323 U.S. 818, 65 S. Ct. 427, 89 L. Ed. 649 (1945); *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399–400, 5 L. Ed. 257 (1821); *Satty v. Nashville Gas Co.*, 522 F.2d 850, 853 (6th Cir. 1975). One court has providently observed that '[t]he statement of a rule of law in a given case must be tempered by the facts which give rise to its pronouncement.' *Ours v. Lackey*, 213 Kan. 72, 79, 515 P.2d 1071 (1973)." *State v. Ouellette*, supra, 190 Conn. 91-92. The Court then proceeded to read the rule set forth by *Greene* as limited to cases tried to the court (rather than a jury), and concluded that it "should not be interpreted as providing a 'blanket-type rule' applicable in all cases. Id., 92. Accordingly, our Supreme Court has specifically determined that even a seemingly sweeping rule set forth by the Court does not become binding precedent except in factual scenarios substantially the same as those in the case in which the rule is pronounced.

Second, and closely related, is the law with regard to the effect of obiter dicta within an opinion. This is important in the present case because the *Huey* Court briefly mentioned acquitted conduct as among the many types of information a sentencing court may consider.

See *State v. Huey*, supra, 199 Conn. 126. It is long-established Connecticut law, however, that such a reference to a hypothetical situation not directly involved in resolution of the issue before the Court is a mere dictum, not binding as precedent. This is well illustrated in *Carlin v. Haas*, a negligence case arising from a simple auto collision. *Carlin v. Haas*, 124 Conn. 259, 261-62, 199 A. 430 (1938) (*Carlin I*). On the issue of contributory negligence,[1] our Supreme Court held that, as a matter of law, the plaintiff, in making a left turn, was negligent in failing to yield the right of way to the defendant's oncoming vehicle. Id., 265-66. The Court remanded for a new trial, however, stating: "Since negligence upon the part of a plaintiff cannot be contributory so as to bar the right of recovery unless it is found to be a substantial factor in bringing about the plaintiff's harm . . . *had the trial court found that although the plaintiff was negligent her negligence was not a substantial factor in bringing about her injury, it would not have barred a recovery*." (Emphasis added.) Id., 266.

At the new trial, the trial court found that the plaintiff's negligence was not a substantial factor in producing the plaintiff's injuries. *Carlin v. Haas*, 126 Conn. 8, 10, 8 A.2d 530 (1939) (*Carlin II*). In other words, the new trial resulted in precisely the finding that the Supreme Court had stated in *Carlin I* would permit the plaintiff to recover from the defendant. In the subsequent appeal, however, the Supreme Court held that the plaintiff's negligence was a substantial factor in causing the collision as a matter of law, and, accordingly, contributory negligence barred her recovery. Id., 13-14. In so concluding, the Court determined that the above-quoted language from its previous opinion was not binding: "The language of the dictum . . . in so far as it is open to the interpretation that on the same facts found the trial court would be warranted in concluding that negligence of the plaintiff was not a substantial

[1]At the time of the *Carlin* opinions, contributory negligence was still a complete bar to a plaintiff's recovery in Connecticut. See *Gomeau v. Forrest*, 176 Conn. 523, 525-26, 409 A.2d 1006 (1979).

factor in bringing about her injury, goes beyond the ratio decidendi[2] and is not authority for the plaintiff's claim." Id., 11. Even though the statement in *Carlin I* was closely related to the matter at issue and *Carlin II* was an opinion in the same case delivered just over one year later, our Supreme Court concluded that the statement was a nonbinding dictum because that issue was not directly before it in *Carlin I*. Certainly, then, the Court's statement about acquitted conduct in *Huey*, a case that had nothing to do with acquitted conduct, also had the status of nonbinding dictum.

In short, our Supreme Court's decision in *Pena* was a mistaken application of the doctrine of stare decisis. *Huey* involved sentencing following a plea deal, and thus had nothing to do with jury verdicts. See *State v. Huey*, supra, 199 Conn. 123-25. Accordingly, the question of whether a sentencing court may consider acquitted conduct was in no way necessarily decided by the *Huey* Court. On the contrary, the passing reference to acquitted conduct was mere dictum. Nor did the sweeping standard stated by *Huey*, which the state now considers as governing the issue of acquitted conduct (as did the *Pena* Court) have binding effect as to factual scenarios entirely different from those before the *Huey* Court. Accordingly, the state is mistaken, and the *Pena* Court was mistaken, in treating *Huey* as controlling precedent with regard to acquitted conduct.

Additionally, the *Pena* Court erroneously resolved an issue of first impression regarding state constitutional law without performing the requisite analysis under *State v. Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992). In this regard, the state concedes that "the *Pena* court did not engage in analysis within its opinion under the factors prescribed in *State v. Geisler* . . . for determining whether the state constitution provides greater protections than

[2]Ratio decidendi is defined as: "The ground or reason of decision. The point in a case which determines the judgment." Black's Law Dictionary (Abridged 6th Ed. 1991).

the federal constitution . . . .” See SB at 40 n.14. The state further recognizes that the Court nevertheless proceeded to decide the state constitutional claim on the basis of *Huey*’s application of federal precedent, and observes that “it necessarily follows that our Supreme Court found that the state constitutional protections are coextensive with their federal counterparts.” Id. That, however, is precisely one of the very troubling aspects of the *Pena* opinion: The Court apparently decided the state constitutional issue without applying the well-established *Geisler* framework,[3] an analysis that is so essential to the determination of rights afforded by our state constitution that both our appellate courts routinely refuse to consider state constitutional claims in the absence of a *Geisler* analysis. *Pena*, accordingly, resolved an important state constitutional claim of first impression without applying the well-established test for such questions and, moreover, as a Supreme Court opinion, failed to meet even the threshold requirements for *briefing* such a claim.

In short, the *Pena* opinion is fundamentally flawed in its resolution of the state constitutional question of whether acquitted conduct may be considered by a sentencing court because it failed to apply the important test that is absolutely required for such questions. Additionally, the *Pena* Court erroneously decided that issue and the federal constitutional question (to the extent it even considered the latter) when it viewed dicta in the *Huey* opinion as binding and completely misapplied the doctrine of stare decisis.

CONCLUSION

For all of the reasons set forth here and in the defendant’s main brief, this Court should reverse the trial court’s denial of the defendant’s motion to correct his illegal sentence and remand this case for a new sentencing.

[3]The text of *Pena* gives no indication that the Court even considered the *Geisler* factors.

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CERTIFICATION

Pursuant to Practice Book § 67-2, I hereby certify the following:

1. This brief and appendix comply with all provisions of this rule;

2. This brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law;

3. This brief and appendix are true copies of the brief and appendix that were submitted electronically pursuant to subsection (g) of this section;

4. A true electronic copy of this brief and appendix were delivered via e-mail to the counsel of record listed below on May 23, 2022, and said electronic copies redacted any personal identifying information where necessary to comply with the provisions of this rule;

5. In accord with Practice Book § 62-7, a copy of this brief and appendix was sent to each counsel of record, those trial judges who rendered a decision that is the subject of this appeal, and my client, on May 23, 2022, as further detailed below.

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