326 Conn. 512
Supreme Court of Connecticut.

STATE of Connecticut
v.
Justin SKIPWITH

(SC 19608)
|
Argued April 5, 2017
|
Officially released August 15, 2017

Synopsis
Background: Manslaughter victim's mother moved to vacate defendant's sentence and petitioned for writ of error coram nobis. Following hearing, the Superior Court, Judicial District of Waterbury, Cremins, and Fasano, JJ., dismissed motion and petition. Mother filed writ of error in the Supreme Court. On transfer, the Appellate Court, Alvord, J., 123 A.3d 104, dismissed writ. Mother filed petition for certification to appeal.

Holdings: The Supreme Court, Rogers, C.J., held that:

[1] Supreme Court had jurisdiction over manslaughter victim's mother's writ of error;

[2] although mother had standing to file the writ of error, she sought a form of relief that was barred by the prohibition on appellate relief contained in the victim's rights amendment; and

[3] mother had standing to file a writ of error, seeking order requiring the trial court to vacate the defendant's sentence.

Affirmed.

McDonald, J., concurred in judgment and filed opinion.

West Headnotes (17)

[1] **Courts**
Connecticut

Supreme Court had jurisdiction over manslaughter victim's mother's writ of error, seeking order requiring the trial court to vacate the defendant's sentence because she had been deprived of her state constitutional rights to object to plea agreement and to make a statement at sentencing hearing, and consequently, Supreme Court also had the authority to transfer it to the Appellate Court; lack of any express constitutional or statutory authorization for victim's mother to file writ of error from ruling of the trial court implicating her rights under the victim's rights amendment to State Constitution did not affect mother's right to file writ of error or Supreme Court's jurisdiction to entertain it. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[2] **Appeal and Error**
Review Dependent on Whether Questions Are of Law or of Fact

Appellate court's review of question of law is plenary.

Cases that cite this headnote

[3] **Appeal and Error**
Writ of error; restricted appeal

Writ of error is a common-law remedy, and the lack of any express constitutional or statutory authorization for a victim to file a writ of error from a ruling of the trial court implicating his or her rights under the victim's rights amendment set forth in the State Constitution does not affect the victim's right to file a writ of error or

Supreme Court's jurisdiction to entertain it. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[4] **Courts**
Connecticut

In the absence of any constitutional provision or statute depriving Supreme Court of its common-law jurisdiction over writs of error, Supreme Court has jurisdiction if a victim falls within the class of persons who are entitled to file a writ of error.

Cases that cite this headnote

[5] **Courts**
Connecticut

Nothing in State Constitution deprives Supreme Court of its jurisdiction over writs of error seeking relief for a violation of the victim's rights amendment to State Constitution. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[6] **Criminal Law**
Civil liabilities to persons injured; reparation

Victim's rights amendment to State Constitution authorizes the legislature to enforce through legislation the rights created by the constitutional provision, and it does not abrogate the basic constitutional obligation of courts to interpret and implement constitutional provisions. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[7] **Courts**
Connecticut
Criminal Law
Civil liabilities to persons injured; reparation

By enacting victim's rights amendment to State Constitution, legislature expressly contemplated that victims would be able to seek relief both in the trial court and in the appellate courts. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[8] **Courts**
Connecticut

Phrase "appellate relief" connotes relief granted on appeal from a judgment disposing of the case, not relief provided to a nonparty in connection with a collateral issue that will not directly affect the substantive issues or the ultimate disposition of the case, as that phrase is used in victim's rights amendment to State Constitution, providing that amendment shall not be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[9] **Courts**
Connecticut

Under victim's rights amendment to State Constitution, providing that amendment shall not be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case, purpose of the provision barring "appellate relief" is to ensure that any relief provided will not deprive defendants of their

existing substantive rights; its purpose is not to deprive victims of any appellate redress for a violation of their rights, even when providing relief would not affect the judgment or the rights of the defendant. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[10] **Courts**
Connecticut

The bar on appellate relief in victim's rights amendment to State Constitution, providing that amendment shall not be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case, is intended to be the constitutional equivalent to statute, which provides that the failure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes shall not constitute grounds for vacating an otherwise lawful conviction or voiding an otherwise lawful sentence or parole determination. Conn. Const. art. 1, § 8; Conn. Gen. Stat. Ann. § 54-223.

Cases that cite this headnote

[11] **Criminal Law**
Civil liabilities to persons injured; reparation
Public Employment
Law enforcement personnel
States
Liabilities of officers for negligence or misconduct

Statute, providing that the state and its agents cannot be held liable for damages for the failure to afford a victim any rights protected by the general statutes, does not bar victims from seeking to enforce their rights. Conn. Gen. Stat. Ann. § 54-224.

Cases that cite this headnote

[12] **Courts**
Connecticut

The bar on appellate relief set forth in victim's rights amendment to State Constitution, providing that amendment shall not be construed as creating a basis for vacating conviction or ground for appellate relief in any criminal case, merely prohibits Supreme Court from granting any relief that would directly affect the judgment in a criminal case or otherwise abridge the substantive rights of a defendant, and accordingly, this provision does not deprive Court of its jurisdiction over writs of error arising from the victim's rights amendment. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[13] **Courts**
Connecticut

Focus of the bar on appellate relief set forth in victim's rights amendment to State Constitution, providing that amendment shall not be construed as creating basis for vacating conviction or ground for appellate relief in any criminal case, is on substance of relief, not on identity of party seeking relief, and accordingly, prohibition is intended to apply to any person seeking a prohibited form of relief, including victims. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[14] **Courts**
Connecticut

Because the bar on appellate relief set forth in victim's rights amendment to State Constitution,

providing that amendment shall not be construed as creating a basis for vacating conviction or ground for appellate relief in any criminal case, goes to substance of relief sought, and not to vehicle by which relief is sought, to the extent that there is any doubt as to whether writ of error is technically a form of appellate relief in this context, the constitutional prohibition imposes same limitations on writs of error that it would impose on appeals by victims, if they were statutorily authorized. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[15] **Courts**
Connecticut

Although the victim's rights amendment to State Constitution does not deprive victims of their right to file a writ of error to enforce their constitutional rights, it also does not expand their rights to seek a form of appellate relief that previously had been barred by statute. Conn. Const. art. 1, § 8.

Cases that cite this headnote

[16] **Courts**
Connecticut

Although manslaughter victim's mother had standing to file the writ of error, she sought a form of relief—an order requiring the trial court to vacate the defendant's sentence because she had been deprived of her state constitutional rights to object to plea agreement—that was barred by the prohibition on appellate relief contained in the victim's rights amendment to State Constitution, and thus, mother's writ of error would be dismissed; victims were barred by statute from seeking to vacate a criminal sentence for the violation of their rights when the victim's rights amendment was adopted. Conn. Const. art. 1, § 8; Conn. Gen. Stat. Ann. § 54-223.

Cases that cite this headnote

[17] **Courts**
Connecticut

Manslaughter victim's mother had standing to file a writ of error, seeking order requiring the trial court to vacate the defendant's sentence because she had been deprived of her rights to object to plea agreement under victim's rights amendment to State Constitution; mother raised a pure question of law from a final judgment of the trial court that was binding on her and by which she was aggrieved, namely, the ruling of the trial court dismissing her motion to vacate the defendant's sentence, she had no right to appeal from that decision, and she did not consent to have the issue finally decided by the trial court. Conn. Const. art. 1, § 8; Conn. Practice Book § 72-1(a).

Cases that cite this headnote

Attorneys and Law Firms

****1213** Jeffrey D. Brownstein, Meridan, for the appellant (plaintiff in error Tabatha Cornell).

Denise B. Smoker, senior assistant state's attorney, Rocky Hill, with whom, on the brief, were Maureen Platt, state's attorney, and Jason Germain, senior assistant state's attorney, for the appellee (defendant in error state's attorney for the judicial district of Waterbury).
Rogers, C.J., and Palmer, Eveleigh, McDonald, Espinosa, Robinson and D'Auria, Js.*

Opinion

****1214** ROGERS, C.J.

***514** The question that we must answer in this certified appeal is whether a crime victim who has been deprived of her state constitutional rights to object to a plea agreement between the state and the defendant and to make a statement at the sentencing hearing is entitled to have the defendant's sentence vacated so that she may attend a new sentencing hearing and give a statement. The defendant, Justin Skipwith, was charged with, inter alia, manslaughter in the second degree with a motor vehicle after the vehicle that he was driving struck and killed Brianna Washington, the daughter of the plaintiff in error, Tabatha Cornell. Although the plaintiff in error notified the defendant in error, the state's attorney for the judicial district of Waterbury (state), that she was invoking her rights as a victim of the crime pursuant to article first, § 8, of the Connecticut constitution, as amended by articles seventeen and ***515** twenty-nine of the amendments,[1] she was not afforded an opportunity to object to the plea agreement between the defendant and the state or to make a statement at the defendant's sentencing hearing. Thereafter, the plaintiff in error filed a motion to vacate the sentence, which the trial court dismissed for lack of subject matter jurisdiction.[2] The plaintiff in error then filed a writ of error claiming that the trial court improperly dismissed her motion to vacate the defendant's sentence, naming the state as the defendant in error.[3] See ***516** *State* v. *Skipwith*, 159 Conn.App. 502, 503, 123 A.3d 104 (2015). The Appellate Court determined that the trial court had properly concluded that it lacked jurisdiction to entertain the motion to vacate and dismissed the writ of error. Id., at 512, 123 A.3d 104. We then granted the plaintiff in error's petition for certification ****1215** to appeal.[4] We affirm the judgment of the Appellate Court on the alternative ground that the writ of error must be dismissed on the merits[5] because it seeks a form of relief that is barred by the victim's rights amendment. Accordingly, we need not reach the question of whether the Appellate Court properly found that the trial court lacked jurisdiction to entertain the plaintiff in error's motion to vacate the defendant's sentence.

*****3** The undisputed facts of this case are set forth in the opinion of the Appellate Court; see id., at 503–506, 123 A.3d 104; and ***517** need not be repeated here, as the state concedes that the plaintiff in error was denied her right under article first, § 8, as amended, to object to the plea and to give a statement at the defendant's sentencing. Conn. Const., amend. XXIX (b) (7) and (8). After learning that the defendant had been sentenced, the plaintiff in error filed a motion to vacate the sentence based on violations of the victim's rights amendment. The trial court conducted a hearing on the motion, at which the plaintiff in error and a family friend gave statements, and ultimately dismissed the motion for lack of jurisdiction on the ground that the sentence was not illegal. Id., at 505–506, 123 A.3d 104.

The plaintiff in error then filed this writ of error challenging the decision of the trial court. The Appellate Court concluded that the trial court properly had dismissed the motion to vacate the defendant's sentence, and then dismissed the writ of error on the merits. Id., at 512, 123 A.3d 104. The Appellate Court reasoned that Practice Book § 43–22[6] authorizes the trial court to "correct a sentence imposed in an illegal manner," and the plaintiff in error had provided "no authority supporting the proposition that a defendant's sentence is imposed in an illegal manner ... when the sentencing proceeding was conducted in violation of the *victim's* constitutional right to be present." (Citation omitted; emphasis in original; internal quotation marks omitted.) Id., at 510–12, 123 A.3d 104. In ****1216** addition, the Appellate Court observed that victims have no statutory authority to seek to vacate a defendant's conviction. Id., at 512, 123 A.3d 104. This certified appeal followed.

[1]The plaintiff in error contends that, contrary to the Appellate Court's determination, because the defendant's sentence was imposed without affording her the ***518** right under article first, § 8, as amended, to give a statement at the defendant's sentencing, the sentence was "imposed in an illegal manner" for purposes of Practice Book § 43–22, and, therefore, she was entitled to have the sentence vacated. The state contends that the Appellate Court correctly determined that the trial court had properly dismissed the plaintiff in error's motion to vacate the defendant's sentence and further claims, essentially as an alternative ground for affirmance, that, in the absence of any express constitutional or statutory provision, both the Appellate Court and this court lack jurisdiction to entertain a writ of error seeking to enforce the provisions of the victim's rights amendment. We conclude that this court had jurisdiction over the writ of error and, consequently, we had the authority to transfer it to the Appellate Court.[7] We also conclude, however, that the writ of error must be dismissed on the merits because it seeks a form of relief that is barred by the victim's rights amendment.[8]

[2]Because it implicates this court's appellate jurisdiction, we first address the state's claim that this court lacks authority to entertain a writ of error seeking to enforce the victim's rights amendment because neither the state

constitution nor any statute expressly confers such authority. This is a question of law over which our review is plenary. See *Pritchard* v. *Pritchard*, 281 Conn. 262, 274–75, 914 A.2d 1025 (2007) (whether party "properly invoked the jurisdiction of the Appellate Court is a question of law subject to plenary review").

*****4** In support of its contention that this court lacks jurisdiction over a writ of error seeking to enforce the victim's ***519** rights amendment, the state relies primarily on this court's decision in *State* v. *Gault*, 304 Conn. 330, 39 A.3d 1105 (2012). In that case, the victim[9] appealed from an order of the trial court requiring that an affidavit supporting the arrest warrant for the defendant, which had been redacted to remove information that could identify the victim, be unsealed. Id., at 335–36, 39 A.3d 1105. She contended, among other things, that this order violated her right under article first, § 8, as amended, to be treated with fairness and respect throughout the criminal justice process. Id., at 336, 39 A.3d 1105; see also Conn. Const., amend. XXIX (b) (1). The state claimed on appeal that, because the victim was not a party to the criminal proceeding, she had no standing to appeal. *State* v. *Gault*, supra, at 333, 337–38, 39 A.3d 1105. This court agreed with the state. Id., at 338, 39 A.3d 1105. We observed in *Gault* that "except insofar as the constitution bestows upon this court jurisdiction to hear certain cases ... the subject matter jurisdiction of ... this court is governed by statute." (Internal quotation marks omitted.) Id., at 339, 39 A.3d 1105. We then noted that the victim's ****1217** rights amendment did not contain a right to appeal from a ruling by the trial court implicating the rights created by that amendment. Id. We further noted that the statute authorizing appeals, General Statutes § 52–263, provided that the remedy of appeal was available only to parties to the case. Id., at 342, 39 A.3d 1105. Finally, we observed that, although Public Acts 1998, No. 98–231, § 2, as amended by Public Acts 2001, No. 01–211, § 12, codified at General Statutes § 46a–13c (5), authorized the Office of the Victim Advocate to "[f]ile a limited special appearance in any court proceeding for the purpose of advocating for any right guaranteed [by the victim's rights amendment or] the general statutes," the legislature did not intend that victims would have full party status or the right to appeal from rulings of the trial court. See ***520** *State* v. *Gault*, supra, at 347, 39 A.3d 1105. Accordingly, we concluded that victims were not parties with standing to appeal from an order in a criminal case, and we dismissed the victim's appeal. Id., at 348, 39 A.3d 1105.

[3] [4]In the present case, the state contends that *Gault* stands for the proposition that, because the victim's rights amendment contains no self-executing remedial procedures; see id., at 340–41, 39 A.3d 1105; if the legislature has not expressly provided a remedy by which the rights protected by that constitutional provision may be vindicated, no such remedy exists.[10] Our decision in *Gault*, however, was premised on the principle that the right of *appeal* is created purely by statute. See id., at 339, 39 A.3d 1105. Because no statute provides victims with a right to appeal from rulings of the trial court, no such right exists. In contrast, a writ of error is a common-law ***521** remedy. See, e.g., *State* v. *McCahill*, 261 Conn. 492, 499–500, 811 A.2d 667 (2002) ("[t]he writ of error ... is a concept deeply rooted in our common law" and "the right to bring a writ of error ... exists independent of [any] statutory authorization" [citations omitted; footnote omitted; internal quotation marks omitted]); *State* v. *Assuntino*, 173 Conn. 104, 112, 376 A.2d 1091 (1977) ("The writ [of error] has long lain to this court ... in accordance with statutes which have been merely declaratory of the common law. It is therefore concluded that the writ, at common law, lies to this court ...."); ****1218** *State* v. *Caplan*, 85 Conn. 618, 622, 84 A. 280 (1912) ("[t]he writ of error is the common-law method ... of carrying up a cause from an inferior to a higher court for the revision of questions of law"). Thus, unlike in *Gault*, the lack of any express constitutional or statutory authorization for a victim to file a writ of error from a ruling of the trial court implicating his or her rights under the victim's rights amendment does not affect the victim's right to file a writ of error or this court's jurisdiction to entertain it. Rather, in the absence of any constitutional provision or statute *depriving* this court of its common-law jurisdiction over writs of error,[11] this court has jurisdiction if a victim falls within the class of persons who are entitled to file a writ of error.

*****5** [5] [6] [7] ***522** The state has not claimed that any statute deprives this court of its jurisdiction over writs of error seeking relief for a violation of the victim's rights amendment, and we conclude that nothing in the state constitution does so. Article first, § 8, as amended, provides in relevant part: "The general assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case." Conn. Const., amend. XXIX (b). With respect to the first quoted sentence, that provision merely authorizes the legislature to enforce through legislation the rights created by the constitutional provision. It does not abrogate the basic constitutional obligation of courts to interpret and implement constitutional provisions.[12] See

Marbury v. *Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803) ("[i]t is emphatically the province and duty of the judicial department to say what the law is"). Indeed, to the extent that there is any ambiguity as to whether the constitutional provision deprives courts of their authority to adjudicate claims arising from the victim's rights amendment, the legislative history reveals that the legislature expressly contemplated that victims would be able to seek relief both in the trial court and in the appellate courts.[13]

[8] [9] [10] [11] ***523 **1219** The second quoted sentence, providing that the victim's rights amendment shall not be "construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case"; Conn. Const., amend. XXIX (b); also does not deprive the appellate courts entirely of their authority to interpret and implement the constitutional provision. First, as we have indicated, the legislative history of the provision clearly indicates that the legislature contemplated that both the trial courts and the appellate courts would have a role in interpreting and implementing it. See footnote 13 of this opinion. Second, in ordinary usage, the phrase "appellate relief" connotes relief granted on appeal from a *judgment* disposing of the case, not relief provided to a nonparty in connection with a collateral issue that will not directly affect the substantive issues or the ultimate disposition of the case. See *State* v. *Moore*, 158 Conn. 461, 463, 262 A.2d 166 (1969) ("[a]n appeal lies only from a final judgment, and there can be no judgment in a criminal case until sentence is pronounced"). Indeed, the legislative history indicates that the purpose of the provision barring "appellate relief" was to ensure that any relief provided would not deprive defendants of their existing substantive rights; its purpose was not to deprive victims of any appellate redress for a violation of their rights, even when providing relief would not affect the judgment or the rights of the defendant.[14] Third, we can perceive no reason why, before ***524** the victim's rights amendment was adopted, a victim could not have obtained relief by filing a writ of error in this court to vindicate rights conferred by chapter 968 of the General Statutes governing victim services, including the right to present a statement to the prosecutor and the trial court prior to the acceptance of a plea and the right to submit a statement to the prosecutor before sentencing.[15] See General Statutes § 54–203 (b) (7) (B) and (C). There is no evidence, and it would be anomalous to conclude, that the victim's rights amendment was intended to *eliminate* preexisting mechanisms for obtaining such relief from this court. Rather, it is reasonable to conclude that the bar on appellate relief was intended to be the constitutional equivalent to General Statutes § 54–223, which provides that the "[f]ailure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes shall not constitute grounds for vacating an otherwise lawful conviction or voiding an otherwise lawful sentence or parole determination."[16]

*****6** [12] ****1220** We conclude, therefore, that the bar on appellate relief set forth in article first, § 8, as amended, merely ***525** prohibits this court from granting any relief that would directly affect the judgment in a criminal case or otherwise abridge the substantive rights of a defendant.[17] Accordingly, we conclude that this provision does not deprive this court of its jurisdiction over writs of error arising from the victim's rights amendment.

[13] [14] With this background in mind, we must address an issue that we left unresolved in our decision in *Gault*. Specifically, we stated in that case that it was unclear whether the prohibition on appellate relief contained in article first, § 8, as amended, "is intended to apply to victims or only to criminal defendants." *State* v. *Gault*, supra, 304 Conn. at 339–40 n.12, 39 A.3d 1105. Our conclusion here that the prohibition on appellate relief was intended to bar any form of relief that would directly affect the judgment or abridge the defendant's rights makes it clear, however, that the focus of the prohibition is on the *substance* of the relief, not on the identity of the party seeking the relief. Accordingly, we now conclude that the prohibition was intended to apply to any person seeking a prohibited form of relief, including victims. Similarly, because the prohibition goes to the substance ***526** of the relief sought, and not to the vehicle by which the relief is sought, we conclude that, to the extent that there is any doubt as to whether a writ of error is technically a form of appellate relief in this context, the constitutional prohibition imposes the same limitations on writs of error that it would impose on appeals by victims, if they were statutorily authorized. See *State* v. *Caplan*, supra, 85 Conn. at 622, 84 A. 280; see also *State* v. *Salmon*, 250 Conn. 147, 153–54, 735 A.2d 333 (1999) (writ of error is proper vehicle for appellate review when party is unable to appeal).

[15] [16] [17] Thus, what our analysis also makes clear is that, although the plaintiff in error has standing to file the writ of error,[18] she seeks a form of relief—an order ****1221** requiring the trial court to vacate the defendant's sentence—that is barred by the prohibition on appellate relief contained in the victim's rights amendment. Although the victim's rights amendment does not deprive victims of their right to file a writ of error ***527** to enforce

their constitutional rights, it also does not expand their rights to seek a form of appellate relief that previously had been barred by statute. Because victims were barred by § 54–223 from seeking to vacate a criminal sentence for the violation of their rights when the victim's rights amendment was adopted; see footnote 16 of this opinion;[19] we conclude that this form of relief is barred, and, therefore, we affirm the judgment of the Appellate Court on this alternative ground.[20]

*****7** The judgment of the Appellate Court is affirmed.

In this opinion PALMER, EVELEIGH, ESPINOSA, ROBINSON and D'AURIA, Js., concurred.

****1222** McDONALD, J., concurring in the judgment.

***528** The victim's rights amendment to our state constitution was adopted to ensure that crime victims would no longer be relegated to the sidelines as largely silent, passive observers of a process in which their sole role was as witness and informant.[1] See Conn. Const., amend. XXIX (b). However, because the courts are barred from construing it to create a basis for any form of appellate relief and the legislature has not enacted any enforcement mechanisms in accordance with the constitutional directive, the promise of the amendment is largely illusory under the law as it currently stands. This state of affairs undermines the foundational principle, declared more than 200 years ago, that a government of laws "will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803). In light of the constitutional and statutory constraints on this court, I agree with the majority that this court lacks the authority to grant the form of relief sought by the plaintiff-in-error, Tabatha Cornell.[2] Nonetheless, ****1223** this court can shine a light on ***529** the circumstances that gave rise to the violation of her constitutional rights. We can also exercise our supervisory authority to adopt procedures to prevent a similar recurrence. I would do both.

I

Our state constitution conferred on the plaintiff-in-error "the right to object to ... any plea agreement ***530** entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused" and "the right to make a statement to the court at sentencing ...." Conn. Const., amend. XXIX (b) (7) and (8). In other words, the plaintiff-in-error had the right to state her opinion, orally or in writing, as to both the substance of the plea and the attendant penalty, before the court accepted the plea and sentenced the defendant, Justin Skipwith. Statutes elaborate on the obligations of both the prosecution and the court to ensure that crime victims have notice and an opportunity to take advantage of these rights. The Office of Victim Services is charged with providing a training program for judges and prosecutors, among others, to ensure that they are familiar with these obligations. See General Statutes § 54–203 (b) (16).

Central to the present case is General Statutes § 54–91c.[3] That statute prescribes the prosecutor's obligations ***531** and then ****1224** requires the trial court to "inquire on the record whether any victim is present for the purpose of making an oral statement or has submitted a written statement. *If no victim is present and no such written statement has been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim* [*of the date, time and place of the judicial proceeding concerning the acceptance of a plea pursuant to a plea agreement, provided the* ***532** *victim has informed the assistant state's attorney that the victim wishes to make or submit a statement*] .... After consideration of any such statements, the court may refuse to accept, where appropriate, a negotiated plea or sentence, and the court shall give the defendant an opportunity to enter a new plea and to elect trial by jury or by the court. ..." (Emphasis added.) General Statutes § 51–91c (b). This court has recognized that "acceptance of a guilty plea must be contingent upon hearing from the victim in order to provide the victim with a meaningful right to participate in the plea bargaining process." *State* v. *Thomas*, 296 Conn. 375, 390–91, 995 A.2d 65 (2010).

The record in the present case reveals the following undisputed facts relevant to compliance with these requirements. In connection with his actions causing the death of the plaintiff-in-error's daughter, Briana Washington, the defendant was charged with manslaughter in the first degree, manslaughter in the second degree with a motor vehicle, misconduct with a motor vehicle, and operation of a motor vehicle while

under the influence of liquor. In October, 2012, Attorney Jeffrey D. Brownstein notified the assistant state's attorney of record in the case, in writing, that he represented the plaintiff-in-error. Brownstein asked to be contacted prior to any offer and disposition on the case, stating that he and the plaintiff-in-error planned to be present at disposition and "want the opportunity to be a part of the plea negotiations and to address the court at sentencing." Brownstein further indicated that the plaintiff-in-error was opposed to any suspended sentence and to any plea that would permit the defendant to avoid an admission of guilt (*Alford* or nolo contendere plea).[4] Before trial commenced, ****1225** the case was transferred ***533** to another assistant state's attorney, Jason Germain. Brownstein did not receive a response to his letter from anyone in the office of the defendant-in-error, the state's attorney for the judicial district of Waterbury.

Prior to the commencement of jury selection on March 4, 2013, a victim's advocate for the state, Barbara Jean Quinn, initiated several communications to Brownstein, including an acknowledgement of his letter and an offer to discuss the case, but Brownstein was unavailable to do so at that time. Quinn also provided Brownstein with information about case status and various pretrial dates, including jury selection. Neither the plaintiff-in-error nor Brownstein were available on March 4, but the plaintiff-in-error's son and a close friend of Washington, who identified herself as Washington's "sister," attended jury selection that day. Quinn and Germain spoke with the two of them at that time. Either at that time or in a telephone call between Quinn and Brownstein that same day, Quinn or Germain explained that there may be serious problems with the charge of manslaughter in the first degree, that one of the state's witnesses may have given false information to the police, and that the defendant may not receive a lengthy sentence.

Approximately one month later, on April 2, 2013, Germain, defense counsel, and the defendant appeared before the trial court, at which time they presented the court with a proposed plea agreement. Pursuant to that agreement, the defendant would plead nolo contendere to the charge of manslaughter in the second degree with a motor vehicle, as well as to the charge of operation of a motor vehicle while under the influence of liquor. ***534** The agreed upon total effective sentence was ten years imprisonment, execution suspended after two years, and three years probation.

After the court conducted a plea canvass with the defendant and accepted the plea, but before the defendant was sentenced, the court directed the following inquiry to Germain:

"The Court: You're in contact with the family?

"[Germain]: I did contact them. I talked to them before this case started. It's the sister that's still involved. I did have [Quinn], our victim advocate from part A, contact her and advise her. We talked about the problems with the case being [the defendant] was stabbed, the situation, how it unfolded, and the problems we did have with the case. She understood it would be a tough case. I don't think there's going to be any problem. I think they'll be happy with the disposition."

The trial court then confirmed the parties' waiver of the presentence investigation report and imposed sentence on the defendant. Later that day, Brownstein received word from Quinn that the defendant had been sentenced in accordance with the plea agreement.

The foregoing facts reflect a clear abrogation of the plaintiff-in-error's constitutional and statutory rights, which she unambiguously invoked through her counsel's letter to the assistant state's attorney of record. The trial court may have intended its open-ended question to ascertain whether the members of Washington's immediate ****1226** family had been notified of, and intended to exercise, their rights, but it plainly did not elicit such information. It is unclear whether Germain's oblique response was intentionally or inadvertently misleading. Germain's representation to the court that the "sister" ***535** was the only family member involved[5] was directly contradicted by Quinn's communications with Brownstein up until the final notice that the defendant had been sentenced, and Brownstein's letter, which presumably was in Germain's case file. Even assuming that Germain misunderstood that Washington's "sister" was the only family member intending to be involved, there is no indication that the fact or substance of the proposed plea agreement had been discussed with her, that she had been informed that family members had a right to make a statement to the court before they decided whether to accept the plea, or that she had been given notice of the plea hearing date in order to avail herself of that right. The preface to Germain's final remarks—"I don't think" and "I think"—strongly suggests that no such conversation occurred, as it reflects speculation rather than an informed basis upon which he could make a representation to the court that the plea agreement would meet the expectations of Washington's family. There was, of course, reason to believe it would not. Even if

Washington's family members had resigned themselves to the possibility that the defendant would not serve a lengthy sentence because of information communicated to them about the difficulties in prosecuting the case, it was a paramount concern to them that he not be offered a plea agreement under which he could avoid acknowledging responsibility for causing Washington's death. That concern, however, was never brought to the court's attention.

As the trial court later acknowledged at the hearing on the plaintiff-in-error's motion to correct an illegal sentence, the blame for this outcome did not rest solely with the state. Germain's vague reply to the court's open-ended inquiry should have prompted the court to ***536** press him further to ascertain whether he had fulfilled his statutory obligations as a prosecutor. See footnote 3 of this concurring opinion. Had the court done so, it presumably would have ascertained facts that would have caused it to withdraw and defer acceptance of the plea until such time as the plaintiff-in-error was afforded her constitutional right to review and respond to the plea agreement.

To their credit, once these defects were subsequently brought to their attention, the defendant-in-error and the trial court made commendable efforts to acknowledge the failures and to make amends. Germain and the trial court both repeatedly apologized to the plaintiff-in-error. Maureen Platt, the state's attorney for the judicial district of Waterbury, demonstrated laudable leadership by appearing at the hearing on the plaintiff-in-error's motion to personally accept responsibility for the actions of Germain, her subordinate, and to apologize for unnecessarily adding to the plaintiff-in-error's grief. In addition to these measures, the trial court gave the plaintiff-in-error every leeway to address the court and to voice her views on the record in the presence of the defendant. By providing that opportunity and then explaining why it would have accepted the plea agreement even if it had known her position in advance, the trial court arguably cured, or at least ameliorated, the constitutional violation ****1227** in the present case. Cf. *State* v. *Casey*, 44 P.3d 756, 758, 766 (Utah 2002) (concluding trial court remedied prosecutor's failure to convey victim's opposition to plea when it reopened plea at sentencing, afforded victim opportunity to state objection to reduced charge, and reaffirmed prior plea agreement). The plaintiff-in-error's writ to this court makes clear, however, that a post hoc hearing was not an adequate remedy in her view.

***537** II

Hopefully, the present case will prompt our legislature and the Rules Committee of the Superior Court to take steps to prevent a similar recurrence. In the meantime, because no form of appellate relief is available, it is all the more important that our trial courts be vigilant and proactive in protecting victims' rights. Several states have prescribed in greater detail the procedure whereby the trial court should elicit information from the state regarding steps undertaken to protect the victim's rights before accepting a plea or imposing sentence.[6] It has been recognized that "[c]ourt certification of compliance efforts provides a system of checks and balances that can help preserve victims' consultation rights without placing an undue burden on the criminal justice process." United States Department of Justice, Office for Victims of Crimes, Office of Justice Programs, Legal Series # 7 Bulletin, "Victim Input Into Plea Agreements," (November 2002), p. 3 (available at https://www.ncjrs.gov/ovc archives/bulletins/legalseries/bulletin7/ncj189188.pdf (last visited July 28, 2017). Drawing on these sources, I would exercise our supervisory authority to prescribe such a procedure to fill the current gap in our scheme.

"It is well settled that [a]ppellate courts possess an inherent supervisory authority over the administration of justice. ... Supervisory powers are exercised to direct trial courts to adopt judicial procedures that will address matters that are of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole." ***538** Internal quotation marks omitted.) *Kervick* v. *Silver Hill Hospital*, 309 Conn. 688, 710, 72 A.3d 1044 (2013). We have previously exercised this authority to direct our trial court to conduct a canvass or a particular inquiry to protect important rights. See, e.g., *In re Yasiel R.*, 317 Conn. 773, 788–96, 120 A.3d 1188 (2015) (requiring canvass of parent prior to termination of parental rights); *State* v. *Gore*, 288 Conn. 770, 787, 955 A.2d 1 (2008) (requiring canvass of defendant to establish validity of jury trial waiver); *Duperry* v. *Solnit*, 261 Conn. 309, 329, 803 A.2d 287 (2002) (requiring canvass of defendant entering plea of not guilty by reason of mental disease or defect to ensure that plea is knowing and voluntary when state substantially agrees with claim of mental disease or defect); *State* v. *Brown*, 235 Conn. 502, 526, 668 A.2d 1288 (1995) (requiring preliminary inquiry, on record, when court is presented with allegation of jury misconduct in criminal case).

In accordance with this authority, I would direct our trial courts to undertake the following measures at the outset of a sentencing hearing or any judicial proceeding concerning the acceptance of a plea pursuant to a plea agreement:

****1228** (a) If the victim is not present or has not submitted a written statement, the trial court shall ascertain from the state's attorney:

(1) Whether the victim was informed of his or her right to make a statement to the court, orally or in writing, regarding the plea or sentence, and, if not, whether reasonable measures were undertaken to do so;

(2) If the victim elected to provide such a statement, whether the victim (or the victim's counsel) was notified of the date, place and time of the proceeding;

(3) If the state has proposed a plea agreement, whether the victim has been informed of his or her ***539** right to be provided with the terms of the proposed agreement in writing;

(b) If the state's attorney has not established that a reasonable attempt has been made to notify the victim of the foregoing rights, the court shall, unless doing so would violate a jurisdictional requirement or the defendant's substantive rights:

(1) reschedule the hearing; or

(2) proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and

(3) order the state's attorney to notify the victim of the rescheduled hearing.

(c) If the victim is present, the court shall inquire whether he or she has been informed of the foregoing rights and shall recess the hearing or undertake appropriate measures if necessary to afford the victim a reasonable opportunity to exercise those rights.

By enumerating these procedures, I do not intend to limit the trial court's authority to undertake any other measures that would advance the purposes of the victim's rights amendment.

This case provides a stark reminder that a constitutional right, unadorned by a remedy to enforce or vindicate that right, is a hollow one. Indeed, a victim of crime who is denied her constitutional rights by a prosecutor or the court is, in a very real sense, victimized all over again. Without understating the significance of the primary victimization, this second victimization may be in some ways more odious because it is inflicted upon her by the levers and gears of the judicial system itself, the very institutional mechanism she—and all people in civilized society—relies on to have her offender held to account. We as a state must do better than this.

I respectfully concur in the judgment.

All Citations

326 Conn. 512, 165 A.3d 1211, 2017 WL 3473874

Footnotes

* This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers, and Justices Palmer, Eveleigh, McDonald, Espinosa, Robinson and D'Auria. Although Justice Espinosa was not present when the case was argued before the court, she has read the briefs and appendices, and listened to a recording of oral argument prior to participating in this decision. The listing of justices reflects their seniority status on this court as of the date of oral argument.

1 Article first, § 8, of the constitution of Connecticut, as amended by articles seventeen and twenty-nine of the amendments, provides in relevant part: "In all criminal prosecutions, a victim, as the general assembly may define by law, shall have the following rights: (1) The right to be treated with fairness and respect throughout the criminal justice process; (2) the right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged; (3) the right to be reasonably protected from the accused throughout the criminal justice process; (4) the right to notification of court proceedings; (5) the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony; (6) the right to communicate with the prosecution; (7) the right

to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused; (8) the right to make a statement to the court at sentencing; (9) the right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law; and (10) the right to information about the arrest, conviction, sentence, imprisonment and release of the accused. The general assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case." Hereinafter, we refer to this provision as article first, § 8, as amended, or the victim's rights amendment.

2 In addition, the plaintiff in error filed a petition for a writ of error coram nobis, which the trial court also dismissed. The Appellate Court concluded that the trial court properly dismissed that petition; see *State* v. *Skipwith*, 159 Conn.App. 502, 512, 123 A.3d 104 (2015); and that ruling is not at issue in this certified appeal.

3 The plaintiff in error filed the writ of error in this court, and we transferred it to the Appellate Court pursuant to General Statutes § 51–199 (c) and Practice Book § 65–1.

4 We granted the petition for certification to appeal on the following issue: "Did the Appellate Court properly determine that the trial court properly dismissed the plaintiff in error's motion to vacate the defendant's sentence because it was not an illegal sentence?" *State* v. *Skipwith*, 320 Conn. 911, 128 A.3d 955 (2015). Upon review of the record and the claims raised before the Appellate Court, we now conclude that the certified question is not an adequate statement of the issue properly before this court. Accordingly, we reformulate the certified question as follows: "Could the Appellate Court grant the relief requested by the plaintiff in error? If so, did the Appellate Court properly determine that the trial court properly dismissed the plaintiff in error's motion to vacate the defendant's sentence because it was not an illegal sentence?" See *State* v. *Ouellette*, 295 Conn. 173, 183–84, 989 A.2d 1048 (2010) (court may reformulate certified question to conform to issue actually presented and to be decided on appeal).

5 For some time, this court and the Appellate Court have dismissed writs of error that lack merit. See, e.g., *Hardy* v. *Superior Court*, 305 Conn. 824, 827, 48 A.3d 50 (2012); *State* v. *Ross*, 272 Conn. 577, 613, 863 A.2d 654 (2005); *Ullmann* v. *State*, 230 Conn. 698, 724, 647 A.2d 324 (1994); *Sowell* v. *DiCara*, 161 Conn.App. 102, 122, 133, 127 A.3d 356, cert. denied, 320 Conn. 909, 128 A.3d 953 (2015); *State* v. *Peay*, 111 Conn.App. 427, 428, 959 A.2d 655 (2008), cert. denied, 291 Conn. 915, 970 A.2d 729 (2009); *Daniels* v. *Alander*, 75 Conn.App. 864, 883, 818 A.2d 106 (2003), aff'd, 268 Conn. 320, 844 A.2d 182 (2004). For purposes of clarity, in this opinion we use the phrase dismissed on the merits to distinguish that disposition from one where the writ of error is dismissed on a jurisdictional ground.

6 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."

7 See footnote 3 of this opinion.

8 We therefore need not resolve the question of whether the defendant's sentence otherwise was imposed in an illegal manner for purposes of Practice Book § 43–22. Even if we were to assume that it was, we conclude that the victim's rights amendment prohibits the form of relief that the plaintiff in error is seeking, namely, an order requiring the trial court to vacate the defendant's sentence.

9 The victim in *Gault* was not identified in order to protect her privacy. See *State* v. *Gault*, supra, 304 Conn. at 333, 39 A.3d 1105.

10 We emphasize that this court did not hold in *Gault* that the provisions of article first, § 8, as amended, expressly conferring rights on victims, are not self-executing in the sense that they are not effective until the legislature passes implementing legislation. See *State* v. *Gault*, supra, 304 Conn. at 340, 39 A.3d 1105 (constitutional provisions that are not self-executing are not effective until implementing legislation is passed). We held only that the victim's rights amendment contains no self-executing provision conferring on victims the right to appeal from rulings in a criminal case. Id., at 341, 347, 39 A.3d 1105. Indeed, the state in the present case does not dispute that prosecutors and trial courts have regularly afforded victims their rights under the victim's rights amendment, including those that have not been expressly implemented by statute. The state has also consistently and forthrightly conceded that the failure to afford the plaintiff in error her rights in the present case was a rare and unfortunate exception to that general practice

and *violated the plaintiff in error's state constitutional rights*, despite the fact that those rights are not the subject of any implementing legislation. The state claims only that the state constitution contains no self-executing provisions providing a *judicial remedy* for such violations. Thus, properly understood, the state's contention is not that the victim's rights amendment is not self-executing in its entirety; rather, its contention is that claims that the self-executing provisions of the amendment have been violated are nonjusticiable. See *Vieth* v. *Jubelirer*, 541 U.S. 267, 277, 124 S.Ct. 1769, 158 L.Ed. 2d 546 (2004) (claim of unlawfulness is nonjusticiable when it "involves no judicially enforceable rights"). We conclude that such claims are justiciable, but that the scope of the relief that the courts can provide is limited.

11 We express no opinion here as to whether such a statute would pass muster under the state constitution. See *Banks* v. *Thomas*, 241 Conn. 569, 585 n.16, 698 A.2d 268 (1997) (because court rejected claim that statute had limited court's jurisdiction over writs of error, court was not required to "determine whether such a bar would be a constitutionally impermissible encroachment upon this court's authority to entertain a writ of error"); *State* v. *Assuntino*, supra, 173 Conn. at 110, 376 A.2d 1091 (because legislature had not attempted to abrogate common-law writ of error by statute, it was "unnecessary for this court to consider whether the jurisdiction to hear such a writ is an essential attribute of the constitutional role of this court"); see also *Moore* v. *Ganim*, 233 Conn. 557, 573, 660 A.2d 742 (1995) ("article first, § 10, [of the Connecticut constitution] prohibits the legislature from abolishing or significantly limiting common law and certain statutory rights that were redressable in court as of 1818" [footnote omitted]).

12 In this regard, we note that § 5 of the fourteenth amendment to the United States constitution, providing that "[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article," has never been construed to deprive the courts of their authority to interpret and implement that amendment.

13 See 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2833, remarks of Representative Ellen Scalettar (proposed constitutional amendment "really gives the courts the ability to be the primary interpreter of what the obligations of the state are, and in certain ways we are giving up our power to do that and giving it to the courts"); id., p. 2837, remarks of Representative Michael P. Lawlor (explaining that remedy for victim who was deprived of right created by proposed amendment "would be for an appellate court or a trial court to decide what the state's obligation is under the terms of the constitutional amendment"); id., p. 2872, remarks of Representative Dale W. Radcliffe ("[i]t is naturally left to a court to interpret sections of a constitution"); id., p. 2873, remarks of Representative Marie L. Kirkley–Bey ("we're passing a piece of paper onto a judicial system that can therefore incorporate and determine the law").

14 See 39 S. Proc., Pt. 6, 1996 Sess., p. 1991, remarks of Senator Martin M. Looney (rights created by proposed amendment "directly conflict with those of the defendant and fashioning a remedy for one without affecting the rights of the other would be extremely difficult"); 39 S. Proc., Pt. 10, 1996 Sess., p. 3247, remarks of Senator Thomas F. Upson (clarifying that purpose of provision prohibiting vacation of conviction and barring appellate relief was to ensure that no right of defendant was abridged); 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2817, remarks of Representative Michael P. Lawlor (proposed amendment "is not intended to deprive any person of any liberty right that they have under the federal or state constitution"); 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2840, remarks of Representative Michael P. Lawlor (proposed amendment "doesn't deprive any liberty or due process rights of any person who is a citizen of the state who might be accused of a crime").

15 General Statutes § 54–224 provides that the state and its agents cannot be held liable for damages for the failure to afford a victim any rights protected by the General Statutes. That statute does not bar victims, however, from seeking to enforce their rights.

16 Indeed, the legislative history of the victim's rights amendment indicates that the intent of the amendment was to give constitutional status to the statutory rights that victims already had. See 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2817, remarks of Representative Michael P. Lawlor ("[the amendment] only provides rights to victims of crime as they're defined in our statute[s]"); id., p. 2830, remarks of Representative Michael P. Lawlor ("everything in the amendment is something that's already law in the state of Connecticut"). Section 54–223 was enacted in 1986, ten years before the victim's rights amendment was adopted. See 1986 Public Acts, No. 86–401, §§ 3, 7.

17 We recognize that this conclusion severely limits the relief that is available to victims for violations of their constitutional rights. Because it is not clear, however, that the bar on appellate relief that would affect the judgment or abridge a defendant's rights effectively bars *all* appellate relief, we cannot conclude at this juncture that it deprives this court of jurisdiction over writs of error arising from the victim's rights amendment. Accordingly, we leave it for another day to

resolve the question of whether, if a trial court failed to comply with the provisions of article first, § 8, as amended, the victim could file an interlocutory writ of error before the plea was entered or the defendant was sentenced, seeking an order requiring the trial court to comply, provided that the victim could establish that the criteria for an appealable interlocutory order under *State* v. *Curcio* 191 Conn. 27, 31, 463 A.2d 566 (1983), were met and that granting relief would not abridge any of the defendant's existing rights, including the right to a speedy trial. See, e.g., *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, 305 Conn. 750, 755–56, 48 A.3d 16 (2012) (this court had jurisdiction over writ of error challenging interlocutory discovery order that satisfied criteria for appealable final judgment under *Curcio*).

18 The common-law requirements for standing to file a writ of error are now codified in Practice Book § 72–1 (a). See *State* v. *Rupar*, 293 Conn. 489, 501–502, 978 A.2d 502 (2009) (concluding that plaintiff in error who had satisfied requirements of § 72–1 had standing to file writ of error). Section 72–1 provides in relevant part: "(a) Writs of error for errors in matters of law only may be brought from a final judgment of the superior court to the supreme court in the following cases: (1) a decision binding on an aggrieved nonparty ... and (4) as otherwise necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law.

> "(b) No writ of error may be brought in any civil or criminal proceeding for the correction of any error where (1) the error might have been reviewed by process of appeal, or by way of certification, or (2) the parties, by failure timely to seek a transfer or otherwise, have consented to have the case determined by a court or tribunal from whose judgment there is no right of appeal or opportunity for certification."

The plaintiff in error in the present case meets these requirements because she has raised a pure question of law from a final judgment of the Superior Court that is binding on her and by which she is aggrieved, namely, the ruling of the trial court dismissing her motion to vacate the defendant's sentence. In addition, under *State* v. *Gault*, supra, 304 Conn. at 347, 39 A.3d 1105, she has no right to appeal from that decision, and she did not consent to have the issue finally decided by the trial court.

19 See also 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2819, remarks of Representative Michael P. Lawlor ("[i]t is certainly not the intent [of the proposed amendment] to provide a veto power to a victim of a crime").

20 But see *Kenna* v. *United States District Court*, 435 F.3d 1011, 1017 (9th Cir. 2006) (when trial court denied victim his right to give statement at defendant's sentencing hearing and victim filed writ of mandamus as authorized by federal law, reviewing court concluded that trial court "must avoid upsetting constitutionally protected rights, but it must also be cognizant that the only way to give effect to [the victim's] right to speak ... is to vacate the sentence and hold a new sentencing hearing"); *State* v. *Barrett*, 350 Or. 390, 406–407, 255 P.3d 472 (2011) (when victim was denied right to be heard at defendant's sentencing and appealed as authorized by statute from trial court's ruling that there was no remedy for violation, reviewing court concluded that vacating defendant's sentence and conducting new sentencing hearing at which defendant could receive harsher sentence did not violate defendant's double jeopardy rights); *State* v. *Casey*, 44 P.3d 756, 765–66 (Utah 2002) (when victim was denied right to make statement at plea hearing, trial court properly determined that remedy was to " 'informally' " reopen the plea hearing at sentencing and accept testimony from victim). These cases, however, are distinguishable from the present case. Neither *Kenna* nor *Barrett* involved constitutional provisions barring appellate relief that would affect the judgment. The constitutional provision at issue in *Casey* barred "relief from any criminal judgment"; see *State* v. *Casey*, supra, at 761 n.5; but relief was granted in that case before the defendant was sentenced. Because we conclude in the present case that an order vacating the defendant's sentence would affect the judgment in violation of the state constitutional prohibition on appellate relief, we need not determine whether doing so would violate the defendant's double jeopardy or other substantive rights.

1 See 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2808, remarks of Representative Michael P. Lawlor (amendment would provide victims with "true role in the process"); 39 S. Proc., Pt. 6, 1996 Sess., p. 1982, remarks of Senator Kevin Sullivan (amendment would give victims their voice and "a part in the process"); cf. *Kenna* v. *United States District Court*, 435 F.3d 1011, 1013 (9th Cir. 2006) ("The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children—seen but not heard. The [federal] Crime Victims' Rights Act sought to change this by making victims independent participants in the criminal justice process.").

2 The majority's logic that the victim's rights amendment of the Connecticut constitution does not preclude the exercise of our jurisdiction over a writ of error alleging a violation thereunder, but does preclude affording relief on a legitimate claim brought by way of the writ seems counterintuitive. Indeed, the most natural construction of the language in this provision barring us from construing it to create a ground for "appellate relief" would seem to apply only to parties to the underlying criminal prosecution entitled to appeal, which does not include the crime victim. Nonetheless, I am

persuaded that the majority's ultimate conclusion that we cannot vacate the sentence as requested in the present writ is correct because: (1) vacating a sentence is a form of appellate relief; (2) the amendment directs the legislature to provide for the enforcement of the victim's rights amendment and it has not authorized this court to provide any such relief; (3) the legislative debates on the proposed victim's rights amendment clearly indicate an intent simply to elevate existing statutory rights to constitutional status; and (4) the existing statutory scheme, which was not altered concurrently with this amendment, unambiguously precluded the courts from vacating a plea solely on the ground that a right conferred on victims had been violated. See General Statutes § 54–223 ("[f]ailure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes shall not constitute grounds for vacating an *otherwise* lawful conviction or voiding an *otherwise* lawful sentence or parole determination" [emphasis added]).

I note that several other jurisdictions have provided, by way of constitutional amendment or statute, remedies for constitutional violations of victims' rights. See, e.g., 18 U.S.C. § 3771 (d) (3) and (5) (permitting victim to file writ of mandamus to remedy violation of victim's rights and authorizing court to reopen plea or sentence under certain conditions); *Kenna* v. *United States District Court*, 435 F.3d 1011, 1017–18 (9th Cir. 2006) (granting writ of mandamus under 18 U.S.C. § 3771 [d] [3] and ordering trial court to conduct new sentencing hearing allowing victims to speak if other statutory requirements met); Ariz. Rev. Stat. Ann. §§ 8–416 A and 13–4437 A (West Supp. 2016) ("[t]he victim has standing to seek an order, to bring a special action or to file a notice of appearance in any appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims"); *State* v. *Barrett*, 350 Or. 390, 255 P.3d 472 (2011) (construing constitutional and statutory provisions to authorize court to vacate sentence and conduct resentencing hearing to remedy violation of constitutional right to be present at sentencing after court accepted plea agreement without notice to victim); see generally D. Beloof, "The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review," 2005 B.Y.U. L. Rev. 255, 300–31 (2005) (overviewing remedy and review concerns and approaches in various jurisdictions). Illinois' constitutional provision on crime victims' rights, which also barred the provision of such rights to be construed as a basis for appellate relief, was in large part the model for our state's victim's rights amendment. See 39 H.R. Proc., Pt. 9, 1996 Sess., pp. 2822, 2825, 2851, 2853; 39 S. Proc., Pt. 10, 1996 Sess., pp. 3246–47. Illinois amended its constitution in 2014, to change the appellate relief bar to provide: "Nothing in this [s]ection or any law enacted under this [s]ection shall be construed as creating (1) a basis for vacating a conviction or (2) *a ground for any relief requested by the defendant*." (Emphasis added.) Ill. Const., art. I, § 8.1 (e).

3 General Statutes § 54–91c provides in relevant part: "(a) For the purposes of this section, 'victim' means a person who is a victim of a crime, the legal representative of such person, a member of a deceased victim's immediate family or a person designated by a deceased victim in accordance with [General Statutes §] 1–56r.

"(b) Prior to the imposition of sentence upon any defendant who has been found guilty of any crime or has pleaded guilty or nolo contendere to any crime, and prior to the acceptance by the court of a plea of guilty or nolo contendere made pursuant to a plea agreement with the state wherein the defendant pleads to a lesser offense than the offense with which such defendant was originally charged, the court shall permit any victim of the crime to appear before the court for the purpose of making a statement for the record, which statement may include the victim's opinion of any plea agreement. In lieu of such appearance, the victim may submit a written statement or, if the victim of the crime is deceased, the legal representative or a member of the immediate family of such deceased victim may submit a statement of such deceased victim to the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case. Such state's attorney, assistant state's attorney or deputy assistant state's attorney shall file the statement with the sentencing court and the statement shall be made a part of the record at the sentencing hearing. Any such statement, whether oral or written, shall relate to the facts of the case, the appropriateness of any penalty and the extent of any injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced. The court shall inquire on the record whether any victim is present for the purpose of making an oral statement or has submitted a written statement. If no victim is present and no such written statement has been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim as provided in subdivision (1) of subsection (c) of this section .... After consideration of any such statements, the court may refuse to accept, where appropriate, a negotiated plea or sentence, and the court shall give the defendant an opportunity to enter a new plea and to elect trial by jury or by the court.

"(c) (1) Except as provided in subdivision (2) of this subsection, prior to the imposition of sentence upon such defendant and prior to the acceptance of a plea pursuant to a plea agreement, the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case shall notify the victim of such crime of the date, time and place of the original sentencing hearing or any judicial proceeding concerning the acceptance of a plea pursuant to a plea agreement, provided the victim has informed such state's attorney, assistant state's attorney or deputy assistant state's attorney that such victim wishes to make or submit a statement as provided in subsection (b) of this section and has complied with a request from such state's attorney, assistant state's attorney or deputy assistant state's attorney to submit a stamped, self-addressed postcard for the purpose of such notification. ...

"(3) If the state's attorney, assistant state's attorney or deputy assistant state's attorney is unable to notify the victim, such state's attorney, assistant state's attorney or deputy state's attorney shall sign a statement as to such notification. "(d) Upon the request of a victim, prior to the acceptance by the court of a plea of a defendant pursuant to a proposed plea agreement, the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case shall provide such victim with the terms of such proposed plea agreement in writing. ..."

4 Under an *Alford* plea; see *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); a criminal defendant is not required to admit his guilt, but acknowledges that the state's evidence against him is sufficient to establish his guilt beyond a reasonable doubt. See *State* v. *Faraday*, 268 Conn. 174, 204–205, 842 A.2d 567 (2004). Under a nolo contendere plea, a defendant simply elects not to contest his guilt, and therefore, unlike an *Alford* plea, a plea of nolo contendere may not be used against a defendant as an admission in a subsequent criminal or civil case. See id., at 205 n.17, 842 A.2d 567.

5 At the hearing before the trial court, Brownstein conceded that Germain could not be faulted for assuming that Washington's friend was her sister, because she had identified herself as such.

6 See, e.g., Ala. Code § 15–23–71 (West 2010); Ariz. Rev. Stat. Ann. § 13–4423 (West 2010); 725 Ill. Comp. Stat. Ann. 120/4.5 (West 2008); Ind. Code Ann. § 35–35–3–5 (LexisNexis 2012); Me. Rev. Stat. Ann. tit. 17–A, § 1173 (West Supp. 2016); Md. Code Ann., Crim. Proc. § 11–403 (LexisNexis Supp. 2016); N.M. Stat. Ann. § 31–26–10.1 (2010); Ariz. Rules of Crim. Proc. 39 (f); Md. Rules of Crim. Proc. 4–243; N.M. Rules of Crim. Proc. 6–113.