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STATE OF CONNECTICUT *v.* WILLIAM GEMMELL
(AC 36059)

Lavine, Prescott and Schaller, Js.

Argued February 3—officially released March 10, 2015

(Appeal from Superior Court, judicial district of
Stamford-Norwalk, geographical area number twenty,
Dennis, J. [judgment; motion to correct].)

Deborah G. Stevenson, assigned counsel, for the
appellant (defendant).

Lisa Herskowitz, senior assistant state's attorney,
with whom, on the brief, were *David I. Cohen*, state's
attorney, and *Justina Moore*, assistant state's attorney,
for the appellee (state).

Opinion

PER CURIAM. The sole issue raised in this appeal is whether the court properly denied the motion to correct an illegal sentence filed by the defendant, William Gemmell. We conclude that only the form of the judgment is improper, and reverse the judgment and remand the case with direction to render judgment dismissing the defendant's motion to correct an illegal sentence.

Following a jury trial, the defendant was convicted of burglary in the first degree in violation of General Statutes § 53a-101 (a) (2), home invasion in violation of General Statutes § 53a-100aa (a) (1), brandishing a facsimile firearm in a threatening manner in violation of General Statutes § 53-206c (c), criminal violation of a protective order in violation of General Statutes § 53a-223, unlawful restraint in the second degree in violation of General Statutes § 53a-96, and interfering with an emergency call in violation of General Statutes § 53a-183b. The defendant received a total effective sentence of fifteen years of incarceration followed by ten years of special parole. The defendant's conviction was affirmed on direct appeal. See *State v. Gemmell*, 151 Conn. App. 590, 592–93, 94 A.3d 1253, cert. denied, 314 Conn. 915, 100 A.3d 405 (2014). While that appeal was pending, the defendant filed a motion to correct an illegal sentence. Following a hearing on July 11, 2013, the court, *Dennis, J.*, denied the motion. This appeal followed.

On the basis of our review of the record and careful consideration of the briefs and oral argument of the parties, we conclude that the trial court lacked jurisdiction over the defendant's motion to correct an illegal sentence because the motion seeks to attack the validity of the underlying conviction and, properly construed, does not claim that an illegal sentence was imposed or that the sentence was imposed in an illegal manner. See *State v. Saunders*, 132 Conn. App. 268, 271, 50 A.3d 321 (2011), cert. denied, 303 Conn. 924, 34 A.3d 394 (2012). Because the court lacked jurisdiction, it should have dismissed the motion rather than denied it. See *State v. Tabone*, 301 Conn. 708, 715, 23 A.3d 689 (2011).

The form of the judgment is improper, the judgment is reversed and the case is remanded with direction to render judgment dismissing the defendant's motion to correct an illegal sentence.
