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STEVEN KEITH STANLEY *v.* COMMISSIONER
OF CORRECTION
(AC 42876)

Prescott, Elgo and Moll, Js.

Syllabus

The petitioner sought a writ of habeas corpus, alleging, inter alia, that the prosecutor engaged in prosecutorial misconduct during the petitioner's criminal trial. Following a trial, the habeas court rendered judgment denying the habeas petition, and, thereafter, denied the petition for certification to appeal. On the petitioner's appeal to this court, *held* that the petitioner was not entitled to appellate review of his claim that the habeas court improperly denied his amended petition, as he failed to brief the threshold issue of whether the habeas court abused its discretion in denying his petition for certification to appeal.

Argued February 7—officially released February 28, 2023

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Newson, J.*; judgment denying the petition; thereafter, the court denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Steven K. Stanley, self-represented, the appellant (petitioner).

Sarah Hanna, senior assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, *Angela R. Macchiarulo*, supervisory assistant state's attorney, and *Michael Proto*, senior assistant state's attorney, for the appellee (respondent).

Opinion

PER CURIAM. The self-represented petitioner, Steven Keith Stanley, appeals, following the denial of his petition for certification to appeal, from the judgment of the habeas court denying his petition for a writ of habeas corpus. Although the petitioner challenges the merits of the habeas court's denial of his petition, he has failed to brief the threshold issue of whether the habeas court abused its discretion in denying his petition for certification to appeal. Accordingly, we dismiss the petitioner's appeal.

The following facts and procedural history are relevant to our resolution of this appeal. On March 28, 2018, the self-represented petitioner, a sentenced prisoner, filed a petition for a writ of habeas corpus in which he asserted two claims, distilled by the habeas court as follows: (1) the prosecutor engaged in prosecutorial misconduct during the petitioner's criminal trial and his underlying arrest was based on a warrant that relied on illegally obtained evidence; and (2) a state's attorney had engaged in prosecutorial misconduct during a prior habeas trial. On February 26, 2019, following a trial and having given the parties the opportunity to submit posttrial briefs on whether the petitioner's claims should be dismissed on res judicata grounds, the habeas court denied the petition. Specifically, the court dismissed the petitioner's first claim on res judicata grounds and rejected the petitioner's second claim on the merits, stating, inter alia, that the petitioner "has failed to present a single witness, or the slightest crumb of any other evidence, that any [of the alleged] conduct occurred at [a prior] habeas trial or any other trial." On March 7, 2019, the petitioner filed a petition for certification to appeal. The court denied his petition, and this appeal followed.¹

"Faced with a habeas court's denial of a petition for certification to appeal, a petitioner can obtain appellate review of the dismissal of his petition for habeas corpus only by satisfying the two-pronged test enunciated by our Supreme Court in *Simms v. Warden*, 229 Conn. 178, 640 A.2d 601 (1994), and adopted in *Simms v. Warden*, 230 Conn. 608, 612, 646 A.2d 126 (1994). First, he must demonstrate that the denial of his petition for certification constituted an abuse of discretion. . . . Second, if the petitioner can show an abuse of discretion, he must then prove that the decision of the habeas court should be reversed on its merits. . . .

"To prove an abuse of discretion, the petitioner must demonstrate that the [resolution of the underlying claim involves issues that] are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further. . . . If this burden is not satisfied, then the claim that the judgment

of the habeas court should be reversed does not qualify for consideration by this court.” (Citation omitted; internal quotation marks omitted.) *Logan v. Commissioner of Correction*, 125 Conn. App. 744, 750–51, 9 A.3d 776 (2010), cert. denied, 300 Conn. 918, 14 A.3d 333 (2011).

In his briefing to this court, the petitioner has failed to “expressly allege and explain in his brief how the habeas court abused its discretion in denying certification.” *Goguen v. Commissioner of Correction*, 341 Conn. 508, 512–13, 267 A.3d 831 (2021). Under these circumstances, this court repeatedly has concluded, and our Supreme Court has agreed, that a petitioner who has failed to brief this threshold issue is not entitled to appellate review. See *Goguen v. Commissioner of Correction*, 195 Conn. App. 502, 505, 225 A.3d 977 (2020), aff’d, 341 Conn. 508, 267 A.3d 831 (2021); see also, e.g., *Simonoff v. Commissioner of Correction*, 216 Conn. App. 824, 826–27, 286 A.3d 500 (2022); *Cordero v. Commissioner of Correction*, 193 Conn. App. 902, 902–903, 215 A.3d 1282, cert. denied, 333 Conn. 944, 219 A.3d 374 (2019); *Thorpe v. Commissioner of Correction*, 165 Conn. App. 731, 733, 140 A.3d 319, cert. denied, 323 Conn. 903, 150 A.3d 681 (2016); *Mitchell v. Commissioner of Correction*, 68 Conn. App. 1, 8, 790 A.2d 463, cert. denied, 260 Conn. 903, 793 A.2d 1089 (2002); *Reddick v. Commissioner of Correction*, 51 Conn. App. 474, 477, 722 A.2d 286 (1999). Although we acknowledge that self-represented litigants like the petitioner are afforded some latitude with respect to the construction of their pleadings, such accommodation is not permitted where a fundamental issue is neither raised nor briefed, as is the case here. See *Oliphant v. Commissioner of Correction*, 274 Conn. 563, 570, 877 A.2d 761 (2005) (“[a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law” (internal quotation marks omitted)). As stated by our Supreme Court, “there is no exception to the requirement that a habeas petitioner must expressly allege that the habeas court abused its discretion in denying the petition for certification to appeal when the petitioner is self-represented.” *Goguen v. Commissioner of Correction*, supra, 341 Conn. 524.

Because the petitioner has failed to meet the first prong of *Simms v. Warden*, supra, 230 Conn. 612, by demonstrating that the denial of his petition for certification to appeal constituted an abuse of discretion, we decline to review his claims on appeal.

The appeal is dismissed.

¹ On October 10, 2019, the habeas court issued a corrected memorandum of decision to correct the spelling of the petitioner’s first name in the caption.