****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

****

STATE OF CONNECTICUT *v.* MARTIN G.*
(AC 45812)

Alvord, Prescott and Bishop, Js.

Syllabus

The defendant, who had been convicted of the crimes of sexual assault in the first degree and risk of injury to a child and sentenced to a total effective term of forty-four years of imprisonment, execution suspended after thirty-four years, appealed to this court from the trial court's denial of his motion for sentence modification. The defendant filed the motion for modification after serving seventeen years of his sentence. At the hearing on his motion for modification, he produced evidence that, while incarcerated, he had completed multiple rehabilitative and educational programs, had been free from disciplinary actions, and had received positive evaluations from his prison employment. He also expressed remorse for his actions and argued that, because he had received and rejected plea bargain offers, including one offer in which execution of his sentence would have been suspended after seven years, his sentence was unreasonable. The victim's mother, who opposed reducing the defendant's sentence, testified that the victim, who was impregnated by the defendant when she was twelve years old and gave birth to the baby, would never be the same, and neither would the rest of the family. *Held* that the trial court did not abuse its discretion in denying the defendant's motion for sentence modification: the court held a hearing pursuant to statute (§ 53a-39) to determine whether the defendant had established good cause to warrant a modification, during which it conducted an appropriate review of the information before it and determined that the gravity of the defendant's conduct and its continuing effect on the victim and her family outweighed the rehabilitative efforts he had undertaken since his incarceration; moreover, although the court improperly stated that it lacked subject matter jurisdiction to consider the defendant's rejected plea offers when reviewing the motion for modification, as the legislature has provided that a court may exercise its powers pursuant to § 53a-39 to modify a sentence for "good cause" shown and has not otherwise limited the scope of review, given the significance of the other factors properly discussed and relied on by the court in its good cause determination, and the strong policy considerations that counsel against consideration of the defendant's arguments regarding the disparity of the sentences he was offered during plea bargaining and the sentence that he received following trial, including that a sentence issued following a trial may be effected by the information learned at trial, which would be absent from plea bargain discussions, the outcome of the court's decision was unlikely to have been altered by its consideration of the plea terms that the defendant rejected.

Argued September 13—officially released November 14, 2023

Procedural History

Substitute information charging the defendant with the crimes of sexual assault in the first degree and risk of injury to a child, brought to the Superior Court in the judicial district of New Haven and tried to the jury before *Licari*, *J.*; verdict and judgment of guilty; thereafter, the court, *Harmon*, *J.*, denied the defendant's motion for sentence modification, and the defendant appealed to this court. *Affirmed*.

Naomi T. Fetterman, assigned counsel, for the appellant (defendant).

Melissa L. Streeto, senior assistant state's attorney, with whom, on the brief, were *John P. Doyle*, state's

attorney, *Michele C. Lukban*, senior assistant state's attorney, and *Stacey Miranda*, supervisory assistant state's attorney, for the appellee (state).

Opinion

ALVORD, J. The defendant, Martin G., appeals from the judgment of the trial court denying his motion for modification of his sentence pursuant to General Statutes § 53a-39 (a). On appeal, the defendant claims that the trial court abused its discretion in finding that he had failed to establish good cause to modify his sentence. We disagree and, accordingly, affirm the judgment of the trial court.

The following facts underlying the defendant's conviction, as set forth by this court in his direct appeal, are relevant to our resolution of this appeal. "The defendant became a member of the victim's household when she was six years old. Six years later, when the victim began to occupy a bedroom of her own, the defendant repeatedly engaged in sexual intercourse with her. His misconduct came to light when the victim became pregnant and had a baby. The state's DNA testing of the victim, the baby and the defendant showed a high statistical probability that the defendant was the baby's father." (Footnote omitted.) *State* v. *Gray*, 126 Conn. App. 512, 515, 12 A.3d 1008, cert. denied, 300 Conn. 928, 16 A.3d 703 (2011).

The following procedural history is also relevant to our resolution of this appeal. The state charged the defendant with sexual assault in the first degree in violation of General Statutes (Rev. to 2005) § 53a-70 (a) (2)[1] and risk of injury to a child in violation of General Statutes (Rev. to 2003) § 53-21 (a) (2).[2] The state extended a plea offer to the defendant, "which was if he entered a plea to the charge of sexual assault in the second degree, the court . . . would impose a sentence of fifteen years of incarceration, execution suspended after seven years, and twenty years of probation." *Gray* v. *Commissioner of Correction*, Superior Court, judicial district of Tolland, Docket No. CV-16-4007870-S (December 16, 2019). The defendant rejected the plea offer. The state extended a second plea offer of "twenty years of incarceration, execution suspended after ten years to serve, and twenty years of probation, which would have been imposed consecutive to an existing sentence." Id. The defendant also rejected the second plea offer and, instead, proceeded to trial on the theory "that he often drank alcohol to excess and took illegal drugs and that, as a result, he often would fall into a deep sleep that resembled a blackout. Because he could not recall anything that had occurred while he had been asleep, he hypothesized that his intercourse with the victim must have resulted from her actions and not his own." *State* v. *Gray*, supra, 126 Conn. App. 520. The jury returned a guilty verdict on both counts. Id., 515. After accepting the jury's verdict, the trial court imposed a total effective sentence of forty-five years of incarceration, execution suspended after thirty-five years, followed by fifteen years of pro-

bation. Id. This court affirmed the defendant's conviction. Id., 522.

The defendant then filed an application for sentence review with the sentence review division of the Superior Court. On August 5, 2011, the sentence review division affirmed the defendant's sentence. Next, the defendant filed a motion to correct an illegal sentence on the ground that his sentence with respect to his conviction of sexual assault in the first degree was illegal because it did not include a period of special parole.[3] The court granted the defendant's motion and resentenced him with respect to his conviction for sexual assault in the first degree.[4] It imposed a new, total effective sentence of forty-four years of incarceration, execution suspended after thirty-four years, with one year of special parole, and fifteen years of probation.

Thereafter, on January 31, 2022, the defendant, having served seventeen years of his sentence, filed a motion for sentence modification seeking "to reduce his period of incarceration from thirty-four years to nineteen years or any other reduction the court feels is appropriate." The trial court, *Harmon, J.*, held a hearing on the defendant's motion on June 17, 2022. During the hearing, the court heard a statement from the victim's mother, who opposed the sentence reduction. The victim's mother discussed how she recently explained to her youngest son "that he has a brother/nephew that we had to put up for adoption from his father touching his sister, because his father felt that he wanted to start trying to reach out to [him] now." She further recalled having to explain to the victim's school "that [the victim is] twelve years old and she's pregnant, and she would still be continuing in school . . . ." Additionally, the victim's mother detailed the difficulties she encountered trying to put the victim's child up for adoption, stating, "[I]t was a long process finding a good family for the child. I mean, we had families that [were] supposed to adopt him, but . . . when they found out how he was conceived . . . they literally signed the paperwork and then didn't do it . . . ." Significantly, the victim's mother recognized that, "even to this day, [the victim is] still not the same and she's never gonna be the same and neither are we." On the basis of the victim's position, as expressed through her mother, the state objected to the defendant's motion for sentence modification.

Next, the court heard argument from the defendant's counsel, who represented that "we are not asking for release today . . . . What we are asking for is an opportunity for [the defendant] to seek parole." He argued that, since being incarcerated, the defendant has become "remorseful, a changed man," who "has held jobs while [incarcerated] and he's had glowing evaluations that are all excellent. . . . With regard to education, [the defendant] has availed himself of what-

ever certificates he . . . could find. . . . [H]e also engaged in domestic violence counseling with all goods or excellents . . . on his evaluation. He completed most of his [Offender Accountability Plan], including Voices, addiction services, and People Empowering People." The defendant's counsel stated that the defendant had made numerous attempts to enroll in sex offender treatment, however, he has been unsuccessful due the program prioritizing inmates with earlier release dates. He then reiterated that the defendant was requesting the court to reduce his sentence because he has completed all available rehabilitative programs except sex offender treatment and, ultimately, the opportunity to complete sex offender treatment would improve his possibility of receiving parole. Finally, the defendant's counsel stated "that [the defendant] was offered seven years of incarceration prior to going to trial . . . and received what I believe was thirty-seven years . . . . I did just want to highlight that . . . because although I will concede that after trial you are no longer able to avail yourself of the presumption of innocence, and while I understand that there can and perhaps should be an increase in the . . . time that [a defendant] actually [is] sentenced to . . . I don't think anyone believes that an extra thirty years . . . for that is reasonable."

The defendant then addressed the court and apologized for his actions. He admitted that he had failed to take responsibility for his actions in 2005, and he "should've thought more of the victim and the pain that [he] put her through and [he] should've took responsibility." Additionally, the defendant stated: "I'm not [the] type of person I was in 2007. I'm nowhere near that. I've grown from this . . . I know I'm a better person. The things that I've done inside the [Department of Correction] to try to better myself taught me how to stay clean, stay out of trouble, do the right things in life. . . . I've been discipline free for seventeen years."

In its memorandum of decision dated June 30, 2022, the court denied the defendant's motion for sentence modification. The court determined that, "[i]n analyzing whether 'a legally sufficient reason' exists to warrant a modification of the defendant's sentence, the court has considered whether the defendant has demonstrated substantial rehabilitation since the date the crime was committed. Factors that have been examined include, but are not limited to (1) the gravity of his crime; (2) correctional record and length of time incarcerated; (3) his age and circumstances at the time of the commission of the crime; (4) whether he has demonstrated remorse and increased maturity since the date of the offense; (5) whether he has contributed to the welfare of other persons through service while incarcerated; and (6) the degree [to] which he has fully availed himself of the opportunities for growth, rehabilitation, and contribution within the correctional system consid-

ering the nature and circumstances of the crime he committed. . . . [And] the court must consider the gravity of the offense itself." (Footnote omitted.)

With respect to the rehabilitative efforts the defendant has undertaken since incarceration, the court determined that "[t]he defendant submitted written materials documenting his employment while incarcerated and his training, and efforts at rehabilitation, during incarceration. [The defendant's counsel] spoke on [his] behalf and stressed the responsibility that [he] was taking regarding his past wrongdoings and his true remorse and desire to be a better individual. [The defendant] submitted an extensive package of recommendation letters, program certificates and work history for the past fourteen years. During his period of incarceration [the defendant] participated in a vocational education course where he repairs broken wheelchairs that are provided to the needy and those unable to afford wheelchairs. [The defendant] has also participated and completed Tier II, domestic violence, People Empowering People and Voices. In addition, [the defendant] has demonstrated a desire to attend sex offender classes; these classes are not available until a date closer to his release due to availability. In addition, [the defendant] has remained free of any disciplinary actions while he has been incarcerated. [The defendant] has the support of his family, who have promised him financial and mental support upon his release."

Moreover, "[t]he defendant personally addressed the court and apologized to the victim and her family and expressed his desire to be a better human being. [The defendant] expressed his remorse and indicated that he had learned his lesson and was ready to move forward in his life in a productive manner. [The defendant] also stressed his own rehabilitative efforts while incarcerated and the good he could perform for the community and his family if granted early release. The defendant's counsel also brought to the court's attention that his current sentence was over three times greater than the initial plea bargain offer in the matter." The court further stated that it "thoroughly reviewed the materials submitted by [the defendant's counsel] in support of the motion. In summary, [the defendant's] counsel emphasized [the defendant's] good behavior record while incarcerated, extensive program participation . . . and work history. [The defendant's] growth in maturity, understanding and mental growth from a thirty-three year old to a fifty year old was also addressed."

With respect to the gravity of the offense, the court determined that "the [defendant's] conviction stems from multiple acts of illegal sexual activity . . . with his thirteen year old stepdaughter who was approximately twelve years old at the time of the offenses. The defendant also impregnated the victim, and the victim later gave birth to the child." Accordingly, the court

determined that, "after a review and consideration of the information and material presented, and with contemplation of the proper standard, the court finds the defendant has not established 'good cause' . . . to modify the sentence when balanced against the facts and harm created by the serious crime he committed. The decision is not meant to lessen or nullify the positive steps the defendant has taken during his period of incarceration or his ability to succeed once he is released. However, the court felt that, although the defendant showed remorse, that the gravity of the crime and harm to the victim itself requires that the request for sentence modification be denied at this time."

We begin by setting forth the relevant legal principles and standard of review that govern our resolution of the defendant's appeal. Section § 53a-39 (a) provides: "Except as provided in subsection (b) of this section, at any time during an executed period of incarceration, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced."[5] "[I]n arriving at its sentencing determination, the sentencing court may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information [it] may consider or the source from which it may come. . . . [T]his broad discretion applies with equal force to a sentencing court's decision regarding a sentence modification . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *Dupas*, 291 Conn. 778, 783, 970 A.2d 102 (2009).[6] Accordingly, we review a court's judgment granting or denying a motion to modify a sentence for abuse of discretion. See id. An "abuse of discretion exists when a court could have chosen different alternatives but has decided the matter so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors." (Internal quotation marks omitted.) *State* v. *Rivera*, 200 Conn. App. 487, 493, 240 A.3d 728 (2020), aff'd, 343 Conn. 745, 275 A.3d 1195 (2022). As such, "[i]n determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Generally speaking, under this deferential standard, [w]here the trial court has properly considered all of the offenses proved and imposed a sentence within the applicable statutory limitations, there is no abuse of discretion." (Citation omitted; internal quotation marks omitted.) *State* v. *Dupas*, supra, 783.

The defendant claims that the trial court abused its discretion in finding that he did not establish good cause to warrant a sentence modification. As discussed, a trial court has broad discretion in determining whether to modify a defendant's sentence. See id. Here, the court

held a hearing to determine whether the defendant established good cause to warrant a sentence modification. During the hearing, the defendant stated that good cause existed to modify his sentence because, while incarcerated, he engaged in several rehabilitative programs, held numerous jobs, participated in vocational education, and did not receive any disciplinary tickets. The victim's mother, however, expressed to the court that the defendant's crimes have continued to negatively impact both the victim and her family. Significantly, the victim's mother stated, "[E]ven to this day, [the victim is] still not the same, and she's never gonna be the same and neither are we."

In its memorandum of decision, the court considered several factors in determining whether the defendant had established good cause. These factors included, but were not limited to: "(1) the gravity of his crime; (2) correctional record and length of time incarcerated; (3) his age and circumstances at the time of the commission of the crime; (4) whether he has demonstrated remorse and increased maturity since the date of the offense; (5) whether he has contributed to the welfare of other persons through service while incarcerated; and (6) the degree [to] which he has fully availed himself of opportunities for growth, rehabilitation, and contribution within the correctional system considering the nature and circumstances of the crime he committed." In denying the defendant's motion, the court found that "[t]he circumstances presented by the defendant do not establish 'good cause' . . . to modify the sentence when balanced against the facts and harm created by the serious crime he committed. The decision is not meant to lessen or nullify the positive steps the defendant has taken during his period of incarceration or his ability to succeed once he is released. However, the court felt that, although the defendant showed remorse that the gravity of the crime and harm to the victim itself requires that the request for sentence modification be denied at this time." Accordingly, the court conducted an appropriate review of the information before it and determined that the gravity of the defendant's conduct, and its continuing effect on the victim and her family, outweighed the rehabilitative efforts he has undertaken since his incarceration. Such a weighing is consistent with the broad discretion courts are afforded in ruling on motions for sentence modification, and, therefore, the court did not abuse its discretion in determining that the defendant failed to establish good cause to warrant a sentence modification.

We next address the defendant's argument that the court abused its discretion by stating that it lacked jurisdiction to consider the defendant's rejected plea offers when reviewing his motion for sentence modification. We agree with the defendant that the court improperly stated that it lacked subject matter jurisdiction to consider his arguments regarding the difference

between the sentences he was offered during plea bargaining and the sentence he later received after being convicted following a trial. Nevertheless, we are unconvinced that this misstatement warrants a reversal of the court's decision under the circumstances presented.

Typically, a court loses subject matter jurisdiction over a criminal prosecution following the imposition of a sentence or other final disposition of the case, unless the legislature has provided otherwise. See *State* v. *Butler*, 348 Conn. 51, 67, 70, 300 A.3d 1145 (2023).[7] Relevant to the present appeal, the legislature has granted criminal courts continuing statutory authority to make changes to a duly imposed sentence in two ways.[8] First, the legislature has authorized the courts to conduct sentence review pursuant to General Statutes § 51-196.[9] Second, a criminal defendant may seek sentence modification of or discharge from his sentence pursuant to § 53a-39.

In providing for sentence review and sentence modification, the legislature chose not to limit expressly the parameters of the court's review or the arguments that a defendant may raise in such proceedings. Our rules of practice do contain a provision setting forth the scope of review to be employed by the sentence review division. See Practice Book § 43-28. That rule, however, does not affect the jurisdiction of the sentence review division because our rules of practice cannot limit or modify the court's subject matter jurisdiction. See General Statutes § 51-14 (a) ("rules [of court] shall not abridge, enlarge or modify any substantive right or the jurisdiction of any of the courts"); *State* v. *Lawrence*, 281 Conn. 147, 155, 913 A.2d 428 (2007) ("judiciary cannot confer jurisdiction on itself through its own rule-making power").

The legislature has provided that a court exercising its powers pursuant to § 53a-39 may modify a sentence for "good cause" shown. See also Practice Book § 43-21. The legislature has not chosen to otherwise limit the scope of review or indicate that a trial court entertaining a sentence modification cannot consider certain types of claims regarding the underlying sentence. Because the legislature has not circumscribed the court's authority when considering sentence modification, we conclude that the court improperly stated that the defendant's "claim that his sentence is over three times the prior plea offer in this matter would be the subject matter of sentence review and is outside the jurisdiction of the current sentence modification."

Nevertheless, despite this misstatement, we are unpersuaded that a reversal of the court's decision is warranted under the circumstances presented. Although the court did not lack *jurisdiction* to consider the arguments of the defendant regarding a disparity between the sentences he was offered as a part of plea bargaining and the sentence that he later received following trial,

as a matter of policy, inquiries into such disparities generally are not appropriately part of a court's "good cause" determination in reviewing a request for sentence modification.

First, although not expressly inadmissible under our rules of evidence; see Conn. Code Evid. § 4-8A;[10] see also Practice Book § 39-25; subsequent consideration of prior settlement negotiations and plea discussions between parties generally has been disfavored in both civil and criminal proceedings, in large part because pretrial proceedings such as plea bargaining and other settlement negotiations quite often are not part of the record, and, therefore, sufficient context for proper consideration is likely missing. Second, in the context of sentence review, our Supreme Court has indicated that the sentence review division is not required to consider the disparity in sentences between similarly situated criminal defendants. *State* v. *Rupar*, 293 Conn. 489, 512–14, 978 A.2d 502 (2009) (no liberty interest in proportional sentences). Third, there may be a lengthy passage of time between when a plea discussion occurs and when sentence modification is ultimately made, making it difficult to ascertain why certain plea offers are made.

Finally, any disparity between a rejected plea offer and the sentence imposed following a conviction cannot be presumed to be the result of a so-called "trial tax," i.e., a penalty for a defendant's exercise of his right to a trial.[11] Unlike with a plea offer, which, as an inducement to plead guilty, often will include a proposed sentence that is less than what ordinarily would be warranted under the circumstances, a sentencing court imposes a sentence after "(1) hearing all the evidence; (2) observing the witnesses, the defendant, and the victim(s) during trial; (3) reading a presentence report; (4) hearing a victim's statement or reading victim impact statements; (5) listening to evidence in aggravation and mitigation; and (6) considering the defendant's statement in allocution." *People* v. *Walker*, 188 N.E.3d 1235, 1256 (Ill. App.), appeal denied, 183 N.E.3d 891 (Ill. 2021). "[D]uring a trial, a trial court will undoubtedly hear more about the facts of the case, details regarding the nature and circumstances of the offense, and testimony from witnesses and victims. [A] sentence greater than that offered before trial may be explained by the court's consideration of additional evidence regarding the circumstances of the crime admitted at trial. . . . The additional information learned at trial, as well as the appearance, demeanor, and reactions of witnesses and the defendant, are all missing from a dry recitation of a minimal factual basis provided at the time of [plea negotiations]." (Citation omitted; internal quotation marks omitted.) Id., 1256–57.[12]

Here, given the significance of the other factors properly discussed and relied on by the court in denying

the defendant's motion and the strong policy considerations that counsel against consideration of the type of claim the defendant makes here, we are unconvinced that the outcome of the court's decision would have been altered by its consideration of the terms of the plea offers that the defendant rejected.

In short, the court issued a detailed memorandum of decision that appropriately considered the rehabilitative efforts the defendant has undertaken since incarceration, the severity of the defendant's crime, and its effect on the victim and her family. Therefore, although the court was not prohibited jurisdictionally from considering the defendant's rejected plea offers, the defendant has not shown that the court's decision instead to consider and rely on the full panoply of the previously mentioned factors in its good cause determination constituted an abuse of its discretion.

The judgment is affirmed.

In this opinion the other judges concurred.

* In accordance with our policy of protecting the privacy interests of victims of sexual abuse and the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

[1] General Statutes (Rev. to 2005) § 53a-70 (a) provides in relevant part: "A person is guilty of sexual assault in the first degree when such person . . . (2) engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person . . . ."

[2] General Statutes (Rev. to 2003) § 53-21 (a) provides in relevant part: "Any person who . . . (2) has contact with the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the morals of such child . . . shall be guilty of . . . a class B felony for a violation of subdivision (2) of this subsection."

Additionally, in deciding the defendant's direct appeal, this court recognized "that the conduct that gave rise to the risk of injury charge was alleged to have occurred between November 1, 2004, and August 2, 2005. In 2007, § 53-21 was amended. See Public Acts 2007, No. 07-143, § 4. Because the relevant 2003 and 2005 revisions of § 53-21 are identical, for convenience, we refer to the 2003 revision." *State* v. *Gray*, supra, 126 Conn. App. 515 n.2.

[3] The defendant was convicted of sexual assault in the first degree pursuant to General Statutes (Rev. to 2005) § 53a-70 (a) (2). General Statutes (Rev. to 2005) § 53a-70 (b) (3) provides that "[a]ny person found guilty under this section shall be sentenced to a term of imprisonment and a period of special parole pursuant to subsection (b) of section 53a-28 which together constitute a sentence of at least ten years."

[4] The court left undisturbed the previous sentence the defendant received for risk of injury to a child.

[5] We note that § 53a-39 has subsequently been amended by No. 23-47, § 1, of the 2023 Public Acts, which made changes to the statute that are not relevant to this appeal. Accordingly, we refer to the current revision of the statute.

[6] We recognize that *Dupas* involved § 53a-39 (b). Both subsections (a) and (b) of § 53a-39 require the sentencing court to conduct a hearing for good cause prior to determining whether to modify a defendant's sentence. Accordingly, the standard of review set forth in *Dupas* is applicable in the present case.

[7] Trial courts also retain jurisdiction after sentencing under the common law, which recognized an exception allowing courts to correct an invalid or illegally imposed sentence. See *State* v. *Parker*, 295 Conn. 825, 835–36, 992 A.2d 1103 (2010); see also Practice Book § 43-22 (setting forth procedural mechanism for correcting illegal sentences or sentences imposed in illegal manner).

[8] As our Supreme Court noted in *Butler*, the legislature also has authorized the court to modify the terms of probation after a sentence is imposed. See General Statutes §§ 53a-29 (c), 53a-30 (c) and 53a-32 (d); *State* v. *Butler*, supra, 348 Conn. 69.

[9] General Statutes § 51-194 provides in relevant part: "The Chief Justice shall appoint three judges of the Superior Court to act as a review division of the court . . . ."

General Statutes § 51-196 (a) provides: "The review division shall, in each case in which an application for review is filed in accordance with section 51-195, review the judgment so far as it relates to the sentence or commitment imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time, and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review, or may decide that the sentence or commitment under review should stand."

[10] Section 4-8A of the Connecticut Code of Evidence does not make evidence related to plea bargaining per se inadmissible. Rather, the rule provides in relevant part that evidence pertaining to guilty pleas that are later withdrawn and plea discussions "shall not be admissible in a civil or criminal case *against* a [criminal defendant] . . . ." Conn. Code Evid. § 4-8A (a); see *State* v. *Tony M.*, 332 Conn. 810, 833 n.14, 213 A.3d 1128 (2019) (noting that application of rule is "limited to situations in which evidence of the plea is offered against the defendant").

[11] A defendant of course properly may raise on direct appeal a claim that the sentencing court improperly imposed a "penalty" on the basis of the defendant's choice to go to trial, although a defendant is unlikely to prevail on such a claim in the absence of some explicit remarks from the sentencing judge. See *State* v. *Elson*, 311 Conn. 726, 777, 784, 91 A.3d 862 (2014) (exercising court's supervisory authority to hold that "a trial judge should not comment negatively on the defendant's decision to elect a trial during sentencing, given the appearance of impropriety of that consideration" and ordering new sentencing hearing); *State* v. *Kelly*, 256 Conn. 23, 81, 82, 770 A.2d 908 (2001) (emphasizing that "[a]ugmentation of [a] sentence based on a defendant's decision to stand on [his or her] right to put the [g]overnment to its proof rather than plead guilty is clearly improper" but also acknowledging that, to successfully raise issue as claim of error, defendant ordinarily must point to "remarks by a trial judge to threaten explicitly a defendant with a lengthier sentence should the defendant opt for a trial, or indicate that a defendant's sentence was based on that choice" (internal quotation marks omitted)).

[12] We also note that not considering plea negotiations is consistent with the rule that the court that sentences the defendant neither be involved in nor aware of such negotiations. See *Safford* v. *Warden*, 223 Conn. 180, 194 n.16, 612 A.2d 1161 (1992). The rationale behind that rule is to ensure that a defendant does not feel pressured to accept a plea offer because of a fear that the sentencing judge, if aware of the offer the defendant rejected, will use the rejected offer as a floor for any sentence it might impose following trial. See id. Although that precise concern does not exist in connection with a motion to modify, there is a similar concern that cautions against consideration of plea negotiations. The knowledge of the state or the court that a defendant might one day rely on pretrial plea offers in connection with a motion to modify could have a deleterious effect on the state's or the court's willingness to engage in such plea negotiations or on the nature of the offers made.