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NORCOTT, J., concurring. Although I agree with the result reached by the majority, I write separately because I arrive at the same conclusion by a very different route. The majority, in my view, does not adequately consider the significant question of whether we have jurisdiction over a case in which the defendant, Mark Reid, who no longer is in the custody of the state, allowed his right of appeal to lapse nearly seven years ago. Although I ultimately agree with the majority's conclusion that we have jurisdiction to consider the defendant's direct appeal, I disagree with its decision to exercise our rarely invoked supervisory power to reach the merits of the present case.[1]

I

I begin with the question of whether we have subject matter jurisdiction over a direct appeal filed nearly seven years late by a defendant who no longer is in the custody of the state. Although the parties did not raise this issue, I note we have an obligation to address questions of our subject matter jurisdiction sua sponte. See *Miller* v. *Egan*, 265 Conn. 301, 323–24, 828 A.2d 549 (2003) ("we acknowledge that, because the doctrine of sovereign immunity implicates subject matter jurisdiction, we could and should have raised the issue sua sponte"). "It is axiomatic that, except insofar as the constitution bestows upon this court jurisdiction to hear certain cases . . . the subject matter jurisdiction of the Appellate Court and of this court is governed by statute." (Internal quotation marks omitted.) *Banks* v. *Thomas*, 241 Conn. 569, 582, 698 A.2d 268 (1997); see also *State* v. *Curcio*, 191 Conn. 27, 30, 463 A.2d 566 (1983) ("The right of appeal is purely statutory. It is accorded only if the conditions fixed by statute and the rules of court for taking and prosecuting the appeal are met."). The applicable statutes; General Statutes §§ 52-263[2] and 54-95;[3] however, merely establish the right of appeal from a final judgment of the trial court, and do not provide specific guidance as to the limits of appellate jurisdiction.

The legislature has left the duty of crafting specific rules governing appellate procedure to the judiciary. See General Statutes §§ 51-14[4] and 52-264.[5] In the present case, the defendant's motion to withdraw his guilty plea, which the majority treats as a request to file an untimely appeal, was filed almost seven years after the expiration of the twenty day period for filing an appeal provided in Practice Book § 63-1.[6]

Nevertheless, it is well established that, as enumerated in § 51-14 (a), time restrictions contained in the rules of practice are not jurisdictional in nature because they do not reflect "constitutionally or legislatively cre-

ated condition[s] precedent to the jurisdiction of this court. The source of the authority for the adoption of the rule lies in the inherent right of constitutional courts to make rules governing their procedure." *LaReau* v. *Reincke*, 158 Conn. 486, 492, 264 A.2d 576 (1969); see also General Statutes § 51-14 (a) ("[the rules of practice] shall not abridge, enlarge or modify any substantive right nor the jurisdiction of any of the courts"). Accordingly, this court has, in past situations, concluded that it was empowered to hear late appeals, both at the agreement of the parties and over a party's timely filed motion to dismiss. See, e.g., *Connelly* v. *Doe*, 213 Conn. 66, 69–70 n.5, 566 A.2d 426 (1989) (concluding that, despite state's attorney's failure to file timely appeal, defendant's motion to dismiss for want of subject matter jurisdiction was "without merit because the time limited for filing an appeal is not jurisdictional"); *Silverman* v. *St. Joseph's Hospital*, 168 Conn. 160, 170–71, 363 A.2d 22 (1975) (concluding that court was "merely exercising the undoubted appellate jurisdiction which [it] has over the judgment of a trial court in this state" despite fact that appeal was filed nearly one year late).

Indeed, we have, on other occasions, determined that even certain *statutory* time limits on the filing of an appeal did not bar this court from exercising jurisdiction. See *Ambroise* v. *William Raveis Real Estate*, *Inc.*, 226 Conn. 757, 762–64, 628 A.2d 1303 (1993). In *Ambroise*, we concluded not only that time limitations contained in the rules of practice were not jurisdictional, but also that the proper inquiry when faced with a statutory limitation on the right of appeal becomes "a question of statutory construction: did the legislature, in imposing the time limitation, intend to impose a subject matter jurisdictional requirement on the right to appeal," which we approach through our normal methods of statutory interpretation. Id., 764.

Because of our historically generous construction of provisions limiting the time within which a party may appeal, I agree with the majority that, despite the extraordinary delay between the defendant's sentencing and the present matter, this court theoretically could exercise jurisdiction over the present case. Although there are a handful of other states that adopt similarly open ended views of appellate jurisdiction,[7] I note that this position deviates from the vast majority of federal and sister state precedent, which strictly construes as jurisdictional temporal limitations on the right of appeal.[8] I, therefore, would not invoke our jurisdiction over this very late appeal without a complete analysis of the supervisory powers by which we may overlook the lapse of the twenty day appeal period.

II

Although I agree with the majority's conclusion that we could have jurisdiction, I disagree with its decision to use our supervisory power to reach the merits of the

present case. In my view, the majority's decision to do so constitutes a broad and unprecedented application of our supervisory power.

"As an appellate court, we possess an inherent supervisory authority over the administration of justice." *State* v. *Patterson*, 230 Conn. 385, 397, 645 A.2d 535 (1994); see also Practice Book § 60-2 ("[t]he supervision and control of the proceedings on appeal shall be in the court having appellate jurisdiction from the time the appeal is filed, or earlier, if appropriate"); Practice Book § 60-3 (authorizing court to "suspend the requirements or provisions of any of these rules [of practice] in a particular case on motion of a party or on its own motion"). However, "[o]ur supervisory powers are not a last bastion of hope for every untenable appeal. They are an extraordinary remedy to be invoked only when circumstances are such that the issue at hand, while not rising to the level of a constitutional violation, is nonetheless 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. . . . Constitutional, statutory and procedural limitations are generally adequate to protect the rights of the defendant and the integrity of the judicial system. Our supervisory powers are invoked only in the rare circumstance where these traditional protections are inadequate to ensure the fair and just administration of the courts." (Citations omitted; internal quotation marks omitted.) *State* v. *Hines*, 243 Conn. 796, 815, 709 A.2d 522 (1998). A survey of the relevant cases illustrates the limited circumstances under which this court traditionally has granted review of claims not timely appealed, none of which are present in this case.

In *State* v. *Stead*, 186 Conn. 222, 224, 440 A.2d 299 (1982), the defendant was found guilty of robbery in the first degree and larceny in the first degree following a jury trial and was sentenced on November 6, 1979. The defendant, through counsel, timely moved for an extension of time to file an appeal two days thereafter. Id. Shortly thereafter, the defendant, who had been represented at trial by private counsel, requested the appointment of a public defender to prosecute his appeal. Id. The defendant's new counsel filed a supplemental motion for an extension of time to file an appeal, which the trial court granted, setting January 15, 1980, as the deadline. Id. The defendant subsequently elected to have his original counsel prosecute the appeal, and the special public defender withdrew his appearance. Id., 225. It erroneously was assumed that there was another motion for extension of time to file an appeal pending, and notice of appeal was not filed by the January 15 deadline. Id., 224–25. The defendant, through his original counsel, then filed another motion for extension of time on January 25, 1980, which the trial court denied as untimely. Id., 225.

The defendant appealed from the judgment of the trial court to this court, which, pursuant to its supervisory authority, allowed the defendant to file a late appeal. Id., 229. In that case, however, the defendant's appeal was filed a mere ten days late, and we noted that, "[t]he defendant's trial counsel had expressed his client's intention to appeal, and his own intention to serve as appellate counsel, and had timely filed for a waiver of costs and fees in November, 1980. *It is clear that the defendant never waived his right of appeal* and has become mired in a procedural bog largely created by his own counsel." (Emphasis added.) Id., 228.

Subsequently, in *Banks* v. *Thomas*, supra, 241 Conn. 572, we reviewed the merits of a criminal defendant's writ of error that was filed fifteen days after expiration of the then existing statutory time period.[9] In *Banks*, the defendant filed a writ of error claiming that the trial court improperly held him in summary criminal contempt of court and sentenced him to nine months imprisonment.[10] Id., 570–72. This court, after concluding that we had jurisdiction notwithstanding expiration of the statutory appeal period, reviewed the merits of the defendant's claim, and ultimately granted him relief, noting that, "[e]ven if a party to an appeal timely moves to dismiss an untimely appeal . . . [we] continue to have discretion to hear the appeal . . . ." (Internal quotation marks omitted.) Id., 586, quoting *Kelley* v. *Bonney*, 221 Conn. 549, 559, 606 A.2d 693 (1992). In that case, although we did not explicitly state that we had decided to review the defendant's claim pursuant to our supervisory authority, I am aware of no other method by which this court could waive the effect of a statutory time limitation on the right of appellate review.

Finally, in *Ramos* v. *Commissioner of Correction*, 248 Conn. 52, 55–56, 727 A.2d 213 (1999), this court addressed a case in which a prisoner had appealed from the habeas court's denial of a petition for writ of habeas corpus filed six months late due to failure of the chief public defender's office to appoint him appellate counsel. The Appellate Court, in response to the commissioner's objection to the appeal as untimely, ordered a hearing at which the petitioner was " 'to appear and give reasons, if any, why the appeal should not be dismissed as untimely . . . .' " Id., 56. Due to another oversight on the part of the chief public defender's office, counsel for the petitioner did not appear at the hearing, and the Appellate Court dismissed the defendant's appeal as untimely. Id., 56–57. Following our grant of the prisoner's petition for certification, we concluded that the Appellate Court abused its discretion by denying the late appeal because, not only did the petitioner repeatedly request that his appeal be prosecuted,[11] but also because "the delay in the appeal cannot be attributed to the petitioner but arose from specifically identi-

fied confusion in the office of the public defender." Id., 61–62.

Each of the previously mentioned cases differs from the present matter in three significant ways. First, appellate review in those cases was requested at most six months late, with the defendants in both *Banks* and *Stead* filing late by only a matter days. See *Ramos* v. *Commissioner of Correction*, supra, 248 Conn. 56; *Banks* v. *Thomas*, supra, 241 Conn. 622; *State* v. *Stead*, supra, 186 Conn. 223–25. Second, in each case, the defendant had clearly and unequivocally expressed his desire to appeal, but could not effectively prosecute the appeal because of various logistical or procedural shortcomings.[12] Finally, and perhaps most importantly, the defendants in each of the previously mentioned cases were either currently imprisoned, or faced imprisonment, in the absence of a favorable resolution of their appeals.

Conversely, in the present case, the defendant's motion to withdraw his guilty plea was filed nearly *seven years* after the date of his guilty plea and sentencing, which the majority treats as a late direct appeal.[13] Furthermore, nothing in the record indicates that the defendant in the present case desired to appeal his conviction anywhere near the time of his guilty plea. Indeed, the defendant affirmatively stated that he desired to plead guilty despite the trial court's warning that he might face "other consequences, such as deportation . . . from the United States, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." Thus, unlike the defendants in the previously cited cases, who each possessed, at the close of their proceedings before the trial court, a clearly expressed desire and intent to appeal, there is no evidence that the defendant in the present case seeks to appeal his seven year old conviction for any reason other than his unhappiness with the then unforeseen collateral consequences of his decision to plead guilty nearly seven years ago.

Finally, unlike the defendants in the previously cited cases, the defendant herein faces no present incarceration or threat of incarceration. Although he is, by virtue of the actions of another sovereign prohibited from reentering the United States, the defendant is not in any way imposed upon by the state of Connecticut and is, in fact, free to travel wherever he desires, except for the United States.[14]

Accordingly, because I conclude that the trial court was without jurisdiction to consider the merits of the defendant's motion to withdraw his guilty plea and because I believe that, under the present facts, this court is ill-advised to use its supervisory authority to resurrect the defendant's seven year old claim as a direct appeal, I would affirm the judgment of the trial court. I, therefore, concur in the result.

[1] I do, however, concur fully in the majority's well reasoned conclusion that the trial court lacked jurisdiction over the defendant's motion to withdraw his guilty plea.

[2] General Statutes § 52-263 provides in relevant part: "Upon the trial of all matters of fact in any cause or action in the Superior Court, whether to the court or jury, or before any judge thereof when the jurisdiction of any action or proceeding is vested in him, if either party is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial, including the denial of a motion to set aside a verdict, he may appeal to the court having jurisdiction from the final judgment of the court or of such judge . . . ."

[3] General Statutes § 54-95 (a) provides in relevant part: "Any defendant in a criminal prosecution, aggrieved by any decision of the Superior Court, upon the trial thereof, or by any error apparent upon the record of such prosecution, may be relieved by appeal, petition for a new trial or writ of error, in the same manner and with the same effect as in civil actions. . . ."

[4] General Statutes § 51-14 (a) provides: "The judges of the Supreme Court, the judges of the Appellate Court, and the judges of the Superior Court shall adopt and promulgate and may from time to time modify or repeal rules and forms regulating pleading, practice and procedure in judicial proceedings in courts in which they have the constitutional authority to make rules, for the purpose of simplifying proceedings in the courts and of promoting the speedy and efficient determination of litigation upon its merits. The rules of the Appellate Court shall be as consistent as feasible with the rules of the Supreme Court to promote uniformity in the procedure for the taking of appeals and may dispense, so far as justice to the parties will permit while affording a fair review, with the necessity of printing of records and briefs. ***Such rules shall not abridge, enlarge or modify any substantive right nor the jurisdiction of any of the courts***. Subject to the provisions of subsection (b), such rules shall become effective on such date as the judges specify but not in any event until sixty days after such promulgation." (Emphasis added.)

[5] General Statutes § 52-264 provides in relevant part: "The judges of the Supreme Court shall make such orders and rules as they deem necessary concerning the practice and procedure in the taking of appeals and writs of error to the Supreme Court . . . ."

[6] Practice Book § 63-1 (a) provides in relevant part: "Unless a different time period is provided by statute, an appeal must be filed within twenty days of the date notice of the judgment or decision is given. . . ."

[7] See *Isaacson Structural Steel Co.* v. *Armco Steel*, 640 P.2d 812, 815 n.8 (Alaska 1982) (failure to file timely notice of appeal does not create jurisdictional defect); *In re Richard S.*, 54 Cal. 3d 857, 863, 819 P.2d 843 (1991) (failure to comply with rules of practice or statutory requirements for appeal did not necessarily divest court of jurisdiction, rather "the question whether failure to comply with the rule deprives the tribunal of jurisdiction is one of legislative intent"); *State* v. *Knight*, 80 Haw. 318, 323, 909 P.2d 1133 (1996) ("As a general rule, compliance with the requirement of timely filing of a notice of appeal is jurisdictional, and we must dismiss an appeal on our motion if we lack jurisdiction. . . . However, we have permitted belated appeals under [certain] circumstances, namely, when . . . defense counsel has inexcusably or ineffectively failed to pursue a defendant's appeal from a criminal conviction in the first instance." [Citations omitted; internal quotation marks omitted.]); *Johnson* v. *Smith*, 885 S.W.2d 944, 949–50 (Ky. 1994) (timely filing of notice of appeal is not jurisdictional but is matter of procedure); *Commonwealth* v. *Pappas*, 432 Mass. 1025, 1026 n.1, 735 N.E.2d 1240 (2000) (late filing of notice of appeal does not divest appellate court of jurisdiction); *Schaefco, Inc.* v. *Columbia River Gorge Commission*, 121 Wash. 2d 366, 370–71, 849 P.2d 1225 (1993) (late filing of appeal does not bar review if equity demands it).

[8] *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312, 315, 108 S. Ct. 2405, 101 L. Ed. 2d 285 (1988) ("[Federal Rules of Appellate Procedure 3 and 4] combine to require that a notice of appeal be filed with the clerk of the [D]istrict [C]ourt within the time prescribed for taking an appeal. Because the timely filing of a notice of appeal is mandatory and jurisdictional . . . compliance with the provisions of those rules is of the utmost importance." [Citation omitted; internal quotation marks omitted.]); *Woods* v. *State*, 371 So. 2d 944, 945 (Ala. 1979) ("[t]imely filing of notice of appeal is a jurisdictional requisite"); *In re Marriage of Gray*, 144 Ariz. 89, 90, 695 P.2d 1127 (1985) ("[c]ertainly, the timely filing of a notice of appeal is a jurisdictional prerequisite to appellate review"); *Stacks* v. *Marks*, 354 Ark. 594, 599, 127 S.W.3d 483 (2003) ("[t]imely filing of a notice of appeal is jurisdictional"); *Estep* v. *People*, 753 P.2d 1241, 1246 (Colo. 1988) ("[t]he timely filing of a notice of appeal is a jurisdictional prerequisite to appellate review"); *Carr* v. *State*,

554 A.2d 778, 779 (Del. 1989) ("[t]ime is a jurisdictional requirement"); *Peltz* v. *District Court of Appeal*, 605 So. 2d 865, 866 (Fla. 1992) ("[t]he untimely filing of a notice of appeal precludes the appellate court from exercising jurisdiction"); *Cain* v. *State*, 275 Ga. 784, 784–85, 573 S.E.2d 46 (2002) ("[t]imely filing of a notice of appeal is a jurisdictional requisite"); *Hoskinson* v. *Hoskinson*, 139 Idaho 448, 464, 80 P.3d 1049 (2003) (timely appeal filing is jurisdictional requirement); *People* v. *Partee*, 125 Ill. 2d 24, 33, 530 N.E.2d 460 (1988) (same); *Ostertag* v. *Ostertag*, 755 N.E.2d 686, 687 (Ind. App. 2001) (same); *Albia* v. *Stephens*, 461 N.W.2d 326, 328 (Iowa 1990) ("[f]ailure to give a timely notice of appeal is jurisdictional"); *State* v. *Moses*, 227 Kan. 400, 404, 607 P.2d 477 (1980) (filing of appeal within 130 day period fixed by statute is jurisdictional); *State* v. *Ellis*, 272 A.2d 357, 359 (Me. 1971) (no jurisdiction to review appeal of bail bond forfeiture decision where notice of appeal not filed within required time); *State* v. *Barrett*, 694 N.W.2d 783, 786 (Minn. 2005) ("[e]xcept for the timely filing of the notice of appeal, a party's failure to comply with the appellate rules does not affect the validity of the appeal" [internal quotation marks omitted]); *Smith* v. *Parkerson Lumber, Inc.*, 890 So. 2d 832, 834 (Miss. 2003) ("if the notice of appeal is not timely filed, the appellate court simply does not have jurisdiction"); *DeBose* v. *State*, 267 Neb. 116, 119, 672 N.W.2d 426 (2003) ("[i]n order to vest an appellate court with jurisdiction, a notice of appeal must be [timely] filed"); *Lozada* v. *State*, 110 Nev. 349, 352, 871 P.2d 944 (1994) (timely filing notice of appeal is jurisdictional requirement); *People* v. *Thomas*, 47 N.Y.2d 37, 43, 389 N.E.2d 1094, 416 N.Y.S.2d 573 (1979) ("the time limits within which appeals must be taken are jurisdictional in nature and courts lack inherent power to modify or extend them"); *State* v. *Guthmiller*, 497 N.W.2d 407, 408 (N.D. 1993) (time limit for filing notice of appeal is jurisdictional); *Cleveland Electric Illuminating Co.* v. *Lake County Board of Revision*, 96 Ohio St. 3d 165, 168, 772 N.E.2d 1160 (2002) ("[f]iling requirements for notices of appeal are mandatory, jurisdictional requirements which cannot be waived" [internal quotation marks omitted]); *Young* v. *Peterson*, 304 Or. 421, 422, 746 P.2d 217 (1987) (pursuant to statute, timely filing appeal is jurisdictional requirement); *Sadisco of Greenville, Inc.* v. *Board of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383 (2000) (timely filing of notice of appeal is jurisdictional prerequisite); *State* v. *Mulligan*, 696 N.W.2d 167, 169 (S.D. 2005) ("it is settled law that the failure to timely file a notice of appeal is a jurisdictional defect"); *Massey* v. *State*, 592 S.W.2d 333, 334 (Tenn. Crim. App. 1979) (like federal rule after which it was modeled, Tennessee rule mandating that appeals be filed within thirty days is jurisdictional); *Verburgt* v. *Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (timely filing of notice is jurisdictional requirement); *Manning* v. *State*, 122 P.3d 628, 635–36 (Utah 2005) (same); *In re Shantee Point, Inc.*, 174 Vt. 248, 259, 811 A.2d 1243 (2002) (same); *Dobberfuhl* v. *Madison White Trucks, Inc.*, 118 Wis. 2d 404, 405–406, 347 N.W.2d 904 (App. 1984) (same).

[9] General Statutes (Rev. to 1997) § 52-273 provides in relevant part: "No writ of error may be brought in any civil or criminal proceeding, unless allowed and signed within two weeks after the rendition of the judgment or decree complained of. . . ."

[10] The trial court subsequently stayed the execution of the defendant's sentence pending resolution of the proceedings in this court. *Banks* v. *Thomas*, supra, 241 Conn. 580 n.9.

[11] Indeed, the court in *Ramos* noted that the defendant therein clearly attempted to assert his right to appeal, stating: "Throughout the proceedings that followed, the petitioner manifested his intent to appeal the dismissal of his petition." *Ramos* v. *Commissioner of Correction*, supra, 248 Conn. 55.

[12] I further note that logistical or procedural difficulties, such as institutional problems like confusion between a defendant's appointed attorneys, satisfies the requirement that a party desiring to file a late appeal demonstrate, under Practice Book § 60-2 (6), "good cause" for the late filing. See *Alliance Partners, Inc.* v. *Voltarc Technologies, Inc.*, 263 Conn. 204, 211, 820 A.2d 224 (2003) (Appellate Court did not abuse its discretion by denying permission to file late appeal occasioned by counsel's misreading of rules of practice).

[13] The defendant pleaded guilty and was sentenced to one year imprisonment on April 25, 1997. He filed a motion to withdraw his guilty plea on February 24, 2004.

[14] The majority correctly states that "[t]he defendant cannot bring an action for state habeas corpus relief because he is no longer in the custody of the government." See footnote 17 of the majority opinion; see, e.g., *Lebron* v. *Commissioner of Correction*, 274 Conn. 507, 530–31, 876 A.2d 1178 (2005). Federal courts disagree on whether a person who has been denied reentry into the United States is in "custody" within the meaning of the federal

habeas corpus statute, 28 U.S.C. § 2241 (c) (1). Compare *Samirah* v. *O'Connell*, 335 F.3d 545, 551 (7th Cir. 2003) (construction of term "custody" to include people who can travel wherever they wish without reentering the United States "stretches the word . . . beyond what the English language or logic will bear") with *Subias* v. *Meese*, 835 F.2d 1288, 1289 (9th Cir. 1987) ("the requirement of custody is broadly construed to include restriction from entry into the United States, since denial of entry amounts to a restraint on liberty"). The Second Circuit Court of Appeals, however, has concluded that a deportee may challenge the legality of his deportation via petition for writ of habeas corpus. See *Swaby* v. *Ashcroft*, 357 F.3d 156, 160 (2d Cir. 2004) (The Court of Appeals concluded that prohibition from reentering the United States satisfies custody requirement because although "petitioner is no longer imprisoned . . . he faces a lifetime bar from reentering the United States as a result of having been ordered removed after an aggravated felony conviction. . . . He thereby suffers a collateral consequence." [Citation omitted; internal quotation marks omitted.]).