JERMAINE HARDY *v.* SUPERIOR COURT, JUDICIAL DISTRICT OF FAIRFIELD, GEOGRAPHICAL AREA NUMBER TWO
(SC 18527)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.

Argued October 27, 2011—officially released August 7, 2012

Bradford Buchta, assistant public defender, for the plaintiff in error.

Harry Weller, senior assistant state's attorney, with whom, on the brief, was *John C. Smriga*, state's attorney, for the defendant in error.

Opinion

PALMER, J. This case is before us on a writ of error brought by the plaintiff in error, Jermaine Hardy (plaintiff), who seeks reversal of the trial court's judgment, pursuant to which the plaintiff was summarily convicted of criminal contempt of court and sentenced to a term of 120 days incarceration.[1] The plaintiff claims that, because the trial court did not inform him of the charge against him or afford him an opportunity to present exculpatory or mitigating evidence, his conviction and sentence for summary criminal contempt are illegal under the due process clause of the fourteenth amendment to the United States constitution,[2] article first, §§ 8[3] and 9,[4] of the Connecticut constitution, and Practice Book § 1-16.[5] The defendant in error, the Superior Court, judicial district of Fairfield, geographical area number two, represented in this case by the office of the chief state's attorney (state), counters that (1) this court may not review the plaintiff's claim because it falls outside our scope of review of a writ of error, (2) the proceeding in which the trial court found the plaintiff in contempt and sentenced him substantially complied with Practice Book § 1-16, and (3) the state and federal constitutions do not guarantee a right of allocution in summary criminal contempt proceedings. We reject the state's contention that we may not review the plaintiff's claim, but, upon considering the merits of that claim, we conclude that the plaintiff's conviction was proper and, therefore, dismiss the writ of error.

The relevant facts are not in dispute. On June 12, 2009, the plaintiff appeared in court for a pretrial hearing in connection with two pending criminal cases in which he was the defendant.[6] The trial court agreed to continue the matter until June 17 so that the plaintiff could discuss with his attorney (defense counsel) the plea offer that the assistant state's attorney (prosecutor) presumably had just conveyed. Speaking to defense counsel, the plaintiff voiced his displeasure with the continuance, saying: "You ain't telling me nothing. You told me June [3]. What are they talking about?" Meanwhile, the trial court indicated that it was "done" with the plaintiff's case and was ready to proceed to the next matter. Immediately thereafter, something occurred that prompted the trial court to exclaim to the plaintiff, "Sir? Sir? Excuse me. Out. Out of the courtroom." The judicial marshal told the plaintiff to "[k]nock it off," and the plaintiff replied, "[d]on't treat me like that. . . . Why are you treating me like that?" Hearing this statement and observing whatever else was occurring in the courtroom, the trial court ordered the marshal to "[b]ring him back." Then, an extended exchange ensued between the plaintiff, the marshal, defense counsel, the prosecutor, and the trial court, during which the trial court summarily convicted and sentenced the plaintiff for criminal contempt. Because

what occurred during this exchange is critical to our resolution of the plaintiff's claim, we set forth the exchange in its entirety.

"The Marshal: Go on back.

"[The Plaintiff]: Why are you pushing me like that?

"The Marshal: Go on back.

"[The Plaintiff]: This dude, man. Hey, yo, don't push me like no more, man. You want to walk with us, you don't have to push.

"The Marshal: You listen to him.

"[The Plaintiff]: Get your hands off of me.

"The Court: Excuse me.

"[The Plaintiff]: Get your hands off.

"The Court: Excuse me.

"[The Plaintiff]: This dude [has] got his hands on me, for what?

"The Court: Excuse me. You're in court.

"[The Plaintiff]: I know, but he's pushing me for no reason at all. I'm walking back slowly. Come on, man. I'm a human being like him, man. Fuck, 'cause I mean, I'm in chains, because I'm different? Come on, man.

"The Court: [Defense counsel]?

"[The Plaintiff]: This dude, man.

"The Court: [Defense counsel]?

"The Marshal: Stop talking. Look at the judge.

"[The Plaintiff]: [I've] got so much anger in me right now, man.

"The Court: All right. All right.

"[The Plaintiff]: I'm telling you, man.

"The Court: I've heard enough. I've heard enough. Sir, you're represented by counsel, and normally I would say—

"[The Plaintiff]: Yo. The cuff, hold on my cuff.

"The Marshal: Relax.

"[Defense Counsel]: Stop.

"The Court: Normally, I would say that your attorney should—sir, I excused you from the courtroom. Thank you. Normally, I would allow a chance for your attorney to talk to you. However, based on your continued conduct, I'm going to find you in contempt.

"[The Plaintiff]: Whatever, man. Put me back.

"The Court: I'm going to find you in contempt of this court. You have prevented the orderly processes of this court. You've interrupted the orderly processes of this court.

"[The Plaintiff]: I did what?

"The Court: And, sir, if you wish to keep it up, sixty days, dead time.

"[The Plaintiff]: You see what this dude just did to me, man.

"The Court: See you in sixty days. You're committed to the commissioner of correction for sixty days.

"[The Plaintiff]: You see what this dude just did to me.

"The Court: Thank you. Thank you.

"[The Plaintiff]: I'm what? I'm what for sixty days? Fuck you, sixty days, motherfucker.

"The Court: Back.

"[The Plaintiff]: Ain't that nothing.

"The Court: Back.

"[The Plaintiff]: Yo, get the fuck off of me. Yo, get the fuck off of me, man. Wait until I get off these cuffs, yo. Wait until I get off these cuffs, man.

"The Marshal: I can't wait.

"[The Plaintiff]: Wait until I get off these cuffs, man. Yo.

"The Court: I'll vacate the prior sentence—

"[The Plaintiff]: Man, get the fuck out of here, man.

"The Court: You're committed to the custody of [the] commissioner of correction for a period of one hundred—

"[The Plaintiff]: Hey, yo, I don't give a fuck, man.

"The Court: One hundred twenty days.

"[The Plaintiff]: Fuck you. Fuck you. Fuck you. I don't give a fuck, motherfucker.

"The Court: We'll see you in a hundred—

"[The Plaintiff]: Fuck you. You don't see me nothing, motherfucker. Fuck all of you.

"The Court: See you—see you in six months, sir.

"The Plaintiff: You won't see me, shit, motherfucker. Dick head, motherfucker. Fucking bitch. You, I want you bad. I want you bad.

"[The Marshal]: All right."

The trial court then continued the case for six months.

The plaintiff filed a writ of error, seeking reversal of the trial court's judgment, pursuant to which he was summarily convicted of criminal contempt of court and sentenced to a term of 120 days incarceration. The plaintiff claims that, because the trial court did not inform him of the charge against him or afford him an

opportunity to present exculpatory or mitigating evidence, his conviction and sentence for summary criminal contempt are illegal under the due process clause of the fourteenth amendment to the United States constitution, article first, §§ 8 and 9, of the Connecticut constitution, and Practice Book § 1-16.[7]

Before considering the merits of the plaintiff's claim, we first must address the threshold question of whether it is subject to our review. The state contends that, under existing precedent of this court, we may not review the claim because the plaintiff, in challenging a summary contempt conviction on procedural grounds, asserts a claim that cannot be adjudicated by means of a writ of error. Although the state acknowledges that we previously have reviewed writs of error involving claims that a summary contempt proceeding did not comport with due process or our rules of practice; see *Jackson* v. *Bailey*, 221 Conn. 498, 513–15, 605 A.2d 1350, cert. denied, 506 U.S. 875, 113 S. Ct. 216, 121 L. Ed. 2d 155 (1992); *In re Dodson*, 214 Conn. 344, 362–76, 572 A.2d 328, cert. denied sub nom. *Dodson* v. *Superior Court*, 498 U.S. 896, 111 S. Ct. 247, 112 L. Ed. 2d 205 (1990); the state maintains that, in *Jackson* and *In re Dodson*, we did not specifically consider, and therefore did not decide, whether such review is proper. In support of the claim that such review is not proper under our prior case law, the state relies primarily on *Jackson*, in which we stated that, "[i]n a review of summary criminal contempt, the inquiry is limited to a determination of the jurisdiction of the court below. *Tyler* v. *Hammersley*, 44 Conn. 393, 413 (1877). Subsumed in this inquiry are three questions, namely, (1) whether the designated conduct is legally susceptible of constituting a contempt; *Goodhart* v. *State*, [84 Conn. 60, 63, 78 A. 853 (1911)]; (2) whether the punishment imposed was authorized by law; *State* v. *Jackson*, 147 Conn. 167, 169, 158 A.2d 166 (1960); and (3) whether the judicial authority was qualified to conduct the hearing. *Mayberry* v. *Pennsylvania*, 400 U.S. 455, 465–66, 91 S. Ct. 499, 27 L. Ed. 2d 532 (1971)."[8] (Citations omitted; internal quotation marks omitted.) *Jackson* v. *Bailey*, supra, 500.

Although this passage from *Jackson* v. *Bailey*, supra, 221 Conn. 500, undoubtedly expresses the scope of review as we typically have *described* it; see, e.g., *Rowe* v. *Superior Court*, 289 Conn. 649, 654, 960 A.2d 256 (2008); *In re Dodson*, supra, 214 Conn. 346; *Moore* v. *State*, 186 Conn. 256, 257, 440 A.2d 969 (1982); we take this opportunity to clarify that we may undertake a broader review, one that encompasses the plaintiff's claim that his summary contempt adjudication was procedurally defective. We reject as both unjust and unfounded the proposition that, upon reviewing a summary contempt proceeding, we may consider only three questions, namely, (1) whether the conduct was contemptuous, (2) whether the punishment was lawful, and

(3) whether the judge was qualified. Because "a writ of error . . . is the sole method of review of [summary contempt] proceedings"; (internal quotation marks omitted) *Rowe* v. *Superior Court*, supra, 654; if we limited our scope of review to the foregoing three questions, we would render completely unreviewable any procedural error that a trial court might commit in a summary contempt proceeding, even an error of great magnitude. Moreover, the purported limitation of our scope of review apparently lacks any considered basis. We proclaimed the limitation for the first time in *State* v. *Moore*, supra, 257, offering in its support neither argument nor authority. Although we have enunciated the purported limitation numerous times since *Moore*, we never have examined or justified it, much less have we even consistently *adhered* to it. See *Jackson* v. *Bailey*, supra, 513–15; *In re Dodson*, supra, 362–76. Finally, we disavow the obscure and seemingly anachronistic proposition that, "[i]n a review of summary criminal contempt, [our] inquiry is limited to a determination of the jurisdiction of the court below." (Internal quotation marks omitted.) *Jackson* v. *Bailey*, supra, 500. This proposition has long been suspect anyway, as it is doubtful whether any of the three questions identified in *Jackson* v. *Bailey*, supra, 500, truly pertains to the issue of jurisdiction. We therefore conclude that the plaintiff's claim is subject to our review.[9]

Turning to the merits of that claim, we begin by setting forth the basic contours of the law of contempt. "Contempt is a disobedience [of] the rules and orders of a court which has power to punish for such an offense. . . . Contempt may be civil or criminal in character. . . . A civil contempt is one in which the conduct constituting the contempt is directed against some civil right of an opposing party and the proceeding is initiated by him." (Citations omitted.) *State* v. *Jackson*, supra, 147 Conn. 168–69. "[T]he punishment [for civil contempt] is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public." (Internal quotation marks omitted.) *McClain* v. *Robinson*, 189 Conn. 663, 666, 457 A.2d 1072 (1983). "Criminal contempt is conduct which is directed against the dignity and authority of the court." *State* v. *Jackson*, supra, 169. "Sanctions [for criminal contempt] are imposed in order to vindicate that authority." *McClain* v. *Robinson*, supra, 666. The inherent power of the court to punish as a criminal contempt conduct that constitutes an affront to the court's dignity and authority is expressly recognized in our statutes; see General Statutes § 51-33a (a);[10] and in our rules of practice. See Practice Book § 1-14.[11]

"[When] contemptuous conduct is committed in the presence of the court, punishment may be announced summarily. . . . Under such circumstances, no witnesses are required in proof of the contempt, and the

court has inherent power to impose punishment on its own knowledge and of its own motion without formal presentation or hearing of the person adjudged in contempt . . . .'' (Citations omitted; internal quotation marks omitted.) *McClain* v. *Robinson*, supra, 189 Conn. 666. ''Without the [summary contempt] power, a court would be helpless against persons disposed to obstruct, delay or thwart it.'' *State* v. *Jackson*, supra, 147 Conn. 169. This being the summary contempt power's justification, ''the sole credible basis for the summary contempt process is necessity, a need that the assigned role of the judiciary be not frustrated. . . . [T]his judicial power . . . should be exercised sparingly and in accordance with the requirements of due process. Summary criminal contempt should not be employed as a means of abuse . . . .'' (Citations omitted; internal quotation marks omitted.) *In re Dodson*, supra, 214 Conn. 375–76. ''Whenever possible, the trial court should rely on its superior ability to defuse confrontation in lieu of invoking its power to impose sanctions for contempt.'' *Jackson* v. *Bailey*, supra, 221 Conn. 513. ''[When] the judge decides to impose sanctions for misconduct, ordinarily [the judge should] impose the least severe sanction appropriate to correct the abuse and to deter repetition . . . .'' (Internal quotation marks omitted.) *In re Dodson*, supra, 353. ''[T]he United States Supreme Court has indicated that it is wary of the [summary contempt] power and cognizant of its potential for abuse. It, therefore, became established early in American jurisprudence that contempt limits a court in such cases to the least possible power adequate to the end proposed. *Anderson* v. *Dunn*, 19 U.S. (6 Wheat.) 204, 231, 5 L. Ed. 242 (1821) . . . .'' (Citations omitted; internal quotation marks omitted.) *Banks* v. *Thomas*, 241 Conn. 569, 588, 698 A.2d 268 (1997).

Because the criminal contempt power poses a ''heightened potential for abuse''; *Taylor* v. *Hayes*, 418 U.S. 488, 500, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974); alleged contemnors enjoy an important, if limited, measure of procedural protection. As the United States Supreme Court has ''stated time and again . . . *reasonable notice of a charge and an opportunity to be heard in defense before punishment is imposed* are basic in our system of jurisprudence. . . . Even [when] summary punishment for contempt is imposed during trial, the contemnor has normally been given an opportunity to speak in his own behalf in the nature of a right of allocution.'' (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 498. ''The provision of fundamental due process protections for contemnors accords with our historic notions of elementary fairness. While we have no desire to imprison the discretion of judges within rigid mechanical rules . . . we remain unpersuaded that the additional time and expense possibly involved . . . will seriously handicap the effective functioning of the courts. . . . Due process cannot

be measured in minutes and hours or dollars and cents. For the accused contemnor facing a jail sentence, his liberty is valuable and must be seen as within the protection of the [f]ourteenth [a]mendment. Its termination calls for some orderly process, however informal."[12] (Citations omitted; internal quotation marks omitted.) Id., 500.

In Connecticut, "[o]ur precedents make clear that [although] a proceeding for [criminal] contempt . . . is not a criminal prosecution . . . [c]riminal contempt is a crime in the ordinary sense . . . . Accordingly, this court long has recognized that [p]roceedings for the punishment of contempts should generally conform as nearly as possible to proceedings in criminal cases . . . ." (Citations omitted; internal quotation marks omitted.) *Rowe* v. *Superior Court*, supra, 289 Conn. 656–57. In service of such conformity, Practice Book § 1-16 sets forth a procedure that the trial court must follow before summarily holding someone in contempt: "Prior to any finding of guilt, the judicial authority shall inform the defendant of the charges against him or her and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of summary criminal contempt by presenting evidence of acquitting or mitigating circumstances." Although fast and informal, the procedure set forth in Practice Book § 1-16 clearly includes notice and an opportunity to be heard, two due process elements that the United States Supreme Court has described as "basic in our system of jurisprudence." (Internal quotation marks omitted.) *Taylor* v. *Hayes*, supra, 418 U.S. 498. Moreover, Practice Book § 1-16 requires in clear terms that the aforementioned notice and hearing be afforded to an alleged contemnor *before* he is found guilty.

Notwithstanding the clear terms of the rules of practice, we previously have recognized that "[t]he lack of a mechanistic application . . . of Practice Book [1978–97] § 988[13] [the predecessor to Practice Book § 1-16] should not serve to defeat its due process requirements if they were substantively met. The design of the rules of practice is both to facilitate business and to advance justice; they will be interpreted liberally in any case [in which] it shall be manifest that a strict adherence to them will work surprise or injustice. . . . Rules of practice must be construed reasonably and with consideration of this purpose. . . . Rules are a means to justice, and not an end in themselves; their purpose is to provide for a just determination of every proceeding." (Citations omitted; internal quotation marks omitted.) *In re Dodson*, supra, 214 Conn. 363. Accordingly, we twice before have upheld a summary contempt conviction that resulted from a proceeding that did not comply with the literal terms of the rules of practice.

In *In re Dodson*, supra, 214 Conn. 347–48, 376, we upheld the summary contempt conviction of a defense

attorney who had made intemperate remarks at a sentencing hearing, even as we acknowledged that the trial court had not "compl[ied] literally"; id., 363; with Practice Book (1978–97) § 988, which, in terms nearly identical to those of Practice Book § 1-16, required that, "[p]rior to the adjudication of guilt the judicial authority shall inform the defendant of the accusation against him and inquire as to whether he has any cause to show why he should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances." (Internal quotation marks omitted.) Id., 346–47 n.3. The defense attorney, having complained that his client's sentence was "totally outrageous," was advised by the court that he was "out of order." (Internal quotation marks omitted.) Id., 347. The defense attorney replied, "I know I am, but there is no basis for that sentence," whereupon the court held the defense attorney in contempt. (Internal quotation marks omitted.) Id. "The court [then] took a recess. The [defense attorney] was asked to remain in the courtroom and was allowed access to a telephone to obtain counsel. Shortly thereafter, [counsel] arrived at [the judge's] chambers to indicate that he represented the [defense attorney]. At that time, [counsel] was shown a copy of the transcript of the prior proceedings that had already been prepared. The court was prepared to continue and finish the summary contempt proceedings at that time. A request for a continuance, made by [counsel], was granted . . . . [Five days later] the court held a hearing at which the [defense attorney] appeared with [counsel]. After the court inquired whether the [defense attorney] wished to be heard, both [counsel] and the [defense attorney] addressed the court. At the conclusion of the hearing, the court imposed a fine of $100." Id., 348. After reviewing these proceedings, we determined that they had substantially complied with the requirement of Practice Book (1978–97) § 988 that, "[p]rior to the adjudication of guilt the judicial authority shall inform the defendant of the accusation against him . . . ." (Internal quotation marks omitted.) Id., 346–47 n.3; see id., 363–64. The court reasoned that the defense attorney could not have been surprised that he was held in contempt "because his conduct as an officer of the court was such that he acknowledged that he knew, as he should have, that he was 'out of order.' Moreover, there was nothing unclear or indefinite about that caution given by the court." Id., 363–64. We also determined that the proceedings had complied with the requirement of Practice Book (1978–97) § 988 that, "[p]rior to the adjudication of guilt the judicial authority shall . . . inquire as to whether [the alleged contemnor] has any cause to show why he should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances . . . ." (Internal quotation marks omitted.) Id., 364–65. The court reasoned that "there was no violation of the *substance* of this portion of the rule. Any claim that this portion was not literally

complied with overlooks the fact that the [defense attorney] availed himself of the opportunity . . . to obtain counsel who forthwith came to court, spoke to the trial judge and was shown a copy of the transcript at that time. The trial court was prepared to continue and finish the summary contempt proceedings at that time. We are entitled to presume that the trial court would have done so by according the [defense attorney] the due process prescribed by Practice Book [1978–97] § 988." (Emphasis added; internal quotation marks omitted.) Id., 365.

In a subsequent case, *Jackson* v. *Bailey*, supra, 221 Conn. 498, we upheld as substantially compliant with the rules of practice three summary contempt convictions that the trial court had rendered in quick succession, even though the trial court had rendered the second and third convictions without having afforded the contemnor either notice or an opportunity to be heard. See id., 513–15. The contemnor was a pretrial detainee who had "uttered various obscenities to the trial court" during a bond reduction hearing. Id., 501. After the detainee's first profanity, the following exchange between the trial court and the detainee ensued:

"The Court: . . . For that statement, I'm finding you in contempt of [c]ourt, for saying an obscenity in this courtroom. Do you understand that?

"The [Detainee]: So what? So what?

"The Court: Do you have any reason why I should not find you in contempt? . . .

"The [Detainee]: Why shouldn't you?" (Internal quotation marks omitted.) Id., 514

The court then sentenced the detainee to ninety days imprisonment for contempt. Id., 515. Shortly thereafter, the detainee uttered a second and third profanity and was met in both cases with a contempt conviction, without either notice of the charge or an opportunity to be heard.[14] Id. In light of the circumstances, we determined that "the [rules of practice were] substantially complied with, as the [detainee] had been put on notice that his conduct would result in further findings of contempt. . . . Lack of literal compliance with [the rules of practice] does not invalidate the trial court's findings of contempt." (Citation omitted.) Id.

The foregoing precedents establish that we deem a summary contempt proceeding to have been in substantial compliance with the relevant rule of practice when it is clear from the record that the proceeding served the overarching purpose that the relevant provision evidently was intended to serve, namely, to ensure fairness in the adjudication of summary contempt by requiring that no one be convicted of that crime unless he was on notice of the charge against him and was given an opportunity to allocute, that is, to defend or mitigate

his alleged misconduct.

Our precedents also establish that varying degrees of compliance with the literal terms of the applicable rule of practice may satisfy the rule's overarching purpose of ensuring fairness in the adjudication of summary contempt. Above all, a summary contempt adjudication need not rigidly adhere to the timing requirements of the rules of practice. For example, contrary to the literal text of the relevant rule of practice, the trial court may find a person in contempt *before* affording him notice of the charge if it advises him of the basis of the contempt finding and then invites him to allocute. See id., 514 ("For that statement, I'm finding you in contempt . . . . Do you have any reason why I should not find you in contempt?" [Internal quotation marks omitted.]). In such circumstances, the contempt finding itself apparently serves as notice of the charge. It is also clear that the trial court generally may find a person in contempt before it invites him to allocute, even though the literal text of the rules of practice requires the reverse. See id.; *In re Dodson*, supra, 214 Conn. 347–48.

Furthermore, in certain circumstances, the trial court may dispense with notice or allocution altogether. If a contemnor has good reason to know that his conduct is contemptuous, the trial court need not afford him any express notice of the charge. See *In re Dodson*, supra, 214 Conn. 363–64 ("[The contemnor's] being held in contempt . . . cannot be said to have come as any surprise to him . . . because his conduct as an officer of the court was such that he acknowledged that he knew . . . that he was 'out of order.' Moreover, there was nothing unclear or indefinite about [the] caution given by the court [that is, 'you're out of order'].''). Even more so, if a contemnor *repeats* misconduct for which he already has been duly sanctioned, the trial court may find him in contempt for his repeat misconduct without affording him either notice or allocution. See *Jackson* v. *Bailey*, supra, 221 Conn. 514–15 (upholding detainee's second and third contempt convictions for uttering profanities, despite absence of notice and opportunity to allocute with respect to those convictions, because first contempt conviction was also for uttering profanities and was followed by invitation to allocute). The reason why a trial court may dispense altogether with notice and allocution in a case of repeat misconduct is that the contemnor in such a case already is aware of the nature of his misconduct and already has had the opportunity to give an explanation for *identical* misconduct.

Viewing the present case in the light of our holdings in *In re Dodson* and *Jackson*, we agree with the state that the proceeding in which the trial court convicted and sentenced the plaintiff for summary criminal contempt substantially complied with the requirements of Practice Book § 1-16. We hold that, because the record

establishes that the plaintiff was on notice of the nature of his misconduct and had availed himself of an opportunity to give an explanation for that misconduct, the proceeding served the overarching purpose of Practice Book § 1-16, namely, to ensure fairness in the adjudication of summary criminal contempt.

With respect to whether the plaintiff had adequate notice, the record contains abundant evidence that the plaintiff knew full well why he had been found in contempt. Although he was struggling with the marshal, the plaintiff was urged to stop misbehaving by almost all who were present—the court, the marshal and the plaintiff's own attorney. After the plaintiff's initial outburst, the court said: "Sir? Sir? Excuse me. Out. Out of the courtroom." The marshal then told the plaintiff to "[k]nock it off." As the marshal was escorting the plaintiff back into the courtroom, the plaintiff apparently continued to misbehave, prompting the court to say "[e]xcuse me" three times and to remind the plaintiff that he was "in court," to which the plaintiff responded, "I know . . . ." The marshal then told the plaintiff to "[s]top talking" and to "[l]ook at the judge." Eventually, even the plaintiff's attorney told the plaintiff to "[s]top." Having heard all of these remarks, the plaintiff must have known exactly what conduct constituted the basis of the contempt finding.[15]

Claiming nevertheless that he was afforded inadequate notice of the charge against him, the plaintiff contends that the trial court never expressly advised him that he would be charged with contempt of court and face a prison sentence if he continued. This contention conflates the concept of notice with the concept of a warning. The purpose of notice—the purpose of informing an alleged offender of the charge against him—is not to warn the alleged offender that continued misconduct may result in sanctions. Rather, the purpose of notice is to advise the alleged offender of exactly what conduct underlies the charge against him, for only if the alleged offender is so advised can he defend or mitigate that conduct. See H. Friendly, "Some Kind of Hearing," 123 U. Pa. L. Rev. 1267, 1280–81 (1975) ("It is . . . fundamental that notice be given and that it be timely and clearly inform the individual of the proposed action and the grounds for it. Otherwise the individual likely would be unable to marshal evidence and prepare his case so as to benefit from any hearing that was provided."). Thus, the issue before us is not whether the plaintiff, before being held in contempt, had received a warning, as no principle of law entitled him to receive one. The issue, rather, is whether the plaintiff knew exactly why he had been found in contempt. He obviously did. We therefore conclude that the plaintiff had adequate notice of the charge against him.

Whether the plaintiff also had an adequate opportunity to allocute is a closer question. At no point did

the trial court expressly invite the plaintiff to explain himself. Moreover, the only colloquy between the trial court and the plaintiff that actually resembled an allocution was highly truncated:

"The Court: Normally, I would say that your attorney should—sir, I excused you from the courtroom. Thank you. Normally, I would allow a chance for your attorney to talk to you. However, based on your continued conduct, I'm going to find you in contempt.

"[The Plaintiff]: Whatever, man. Put me back.

"The Court: I'm going to find you in contempt of this court. You have prevented the orderly processes of this court. You've interrupted the orderly processes of this court.

"[The Plaintiff]: I did what?

"The Court: And, sir, if you wish to keep it up, sixty days, dead time.

"[The Plaintiff]: You see what this dude [the marshal] just did to me, man.

"The Court: See you in sixty days. You're committed to the commissioner of correction for sixty days.

"[The Plaintiff]: You see what this dude just did to me.

"The Court: Thank you. Thank you."

Were we to assess this brief colloquy in isolation, we might well conclude that it did not constitute an adequate allocution for purposes of Practice Book § 1-16. Not only did the trial court decline to "inquire [of the plaintiff] . . . whether [he] ha[d] any cause to show why he . . . should not be adjudged guilty of summary criminal contempt by presenting evidence of acquitting or mitigating circumstances"; Practice Book § 1-16; but, by sentencing the plaintiff almost immediately after holding him in contempt, the trial court prevented the plaintiff from offering any explanation for his conduct beyond the refrain of "[y]ou see what this dude just did to me."[16]

We do not assess the colloquy in isolation, however. Instead, we assess it in the context of the longer exchange that it followed, an exchange during which the plaintiff amply explained his conduct through his repeated complaints about how the marshal was treating him: "Don't treat me like that. . . . Why are you treating me like that? . . . Why are you pushing me like that? . . . This dude, man. Hey, yo, don't push me like no more, man. You want to walk with us, you don't have to push. . . . Get your hands off of me. . . . Get your hands off. . . . This dude [has] got his hands on me, for what? . . . I know [that I'm in court], but he's pushing me for no reason at all. I'm walking back slowly. Come on, man. I'm a human being like him, man. Fuck, 'cause I mean, I'm in chains, because I'm different? Come on, man."

Because the plaintiff already had offered the foregoing explanation for his conduct before being held in contempt, his truncated allocution, "[y]ou see what this dude just did to me," made it entirely clear that, if he had been permitted to allocute more extensively, he simply would have repeated his earlier explanation.[17] Because the trial court already had heard and rejected this explanation, it was under no obligation to invite the plaintiff to allocute more extensively. The trial court therefore acted in substantial compliance with Practice Book § 1-16 when it cut off the plaintiff's allocution and imposed a sentence. Much the way we have held that the trial court may dispense with allocution altogether if an alleged contemnor already has had the opportunity to give an explanation for *identical* misconduct; see *Jackson* v. *Bailey*, supra, 221 Conn. 514–15; we now hold that the trial court may afford an alleged contemnor only the briefest of allocutions if he already has availed himself of the opportunity to give an explanation for his conduct and, in his brief allocution, makes it entirely clear that, if he were to allocute more extensively, he simply would repeat his earlier explanation.[18]

To be clear, when an alleged contemnor does not indicate that he intends to repeat his earlier explanation for his conduct or has not already had an opportunity to give such an explanation, the trial court undoubtedly must inquire whether the alleged contemnor has "any cause to show why he or she should not be adjudged guilty of summary criminal contempt by presenting evidence of acquitting or mitigating circumstances." Practice Book § 1-16. The trial court need not make this inquiry before rendering a contempt finding, however, nor does the court need to make the inquiry immediately after rendering such a finding, provided the delay is no longer than necessary. See *In re Dodson*, supra, 214 Conn. 365. Indeed, experience suggests that it often may be the best practice to allow the contemnor a second chance to allocute several hours later, after tempers have cooled.

Having concluded that the proceeding in which the trial court convicted and sentenced the plaintiff for summary criminal contempt substantially complied with Practice Book § 1-16, we briefly address the issue of whether that proceeding might nevertheless have violated the plaintiff's right to due process as guaranteed by the fourteenth amendment to the United States constitution and article first, §§ 8 and 9, of the Connecticut constitution. We are skeptical of the plaintiff's claim that the state and federal constitutions require that the defendant in a summary contempt proceeding be afforded notice of the charge against him and an opportunity to be heard, as there is contrary federal authority directly on point; see *Taylor* v. *Hayes*, supra, 418 U.S. 497; *Bloom* v. *Illinois*, 391 U.S. 194, 205, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968); *Ex parte Terry*, 128 U.S. 289,

9 S. Ct. 77, 32 L. Ed. 405 (1888); and the plaintiff's state constitutional analysis under *State* v. *Geisler*, 222 Conn. 672, 685, 610 A.2d 1225 (1992), which sets forth the appropriate factors to be addressed in considering a state constitutional claim, reveals that none of the relevant factors supports his contention.[19] We need not resolve these constitutional questions, however, because, for the very reasons why we have concluded that the trial court substantially complied with Practice Book § 1-16, we also conclude that, to the extent that the state and federal constitutions actually embrace a requirement that the defendant in a summary contempt proceeding be afforded notice and an opportunity to allocute, the trial court substantially complied with that requirement. Like the requirements set forth in Practice Book § 1-16, "the [constitutional] requirements of due process cannot be ascertained through mechanical application of a formula." *Groppi* v. *Leslie*, 404 U.S. 496, 500, 92 S. Ct. 582, 30 L. Ed. 2d 632 (1972). Moreover, if the plaintiff is correct in contending that Practice Book § 1-16 is but a "reflecti[ion]" of underlying state and federal constitutional norms, then a proceeding that substantially complies with Practice Book § 1-16 ipso facto substantially complies with the state and federal constitutions. We therefore reject the plaintiff's constitutional claims.[20]

The writ or error is dismissed.

In this opinion NORCOTT, ZARELLA, McLACHLAN and EVELEIGH, Js., concurred.

[1] The parties agree that, although the trial court sentenced the plaintiff to 120 days incarceration, certain court records improperly indicate that he was sentenced to six months incarceration.

[2] The fourteenth amendment to the United States constitution, § 1, provides in relevant part: "No State shall . . . deprive any person of life, liberty or property, without due process of law . . . ."

[3] Article first, § 8, of the Connecticut constitution provides in relevant part: "No person shall . . . be deprived of life, liberty or property without due process of law . . . ."

[4] Article first, § 9, of the Connecticut constitution provides: "No person shall be arrested, detained or punished, except in cases clearly warranted by law."

[5] Practice Book § 1-16 provides: "Misbehavior or misconduct in the court's presence causing an obstruction to the orderly administration of justice shall be summary criminal contempt, and may be summarily adjudicated and punished by fine or imprisonment, or both. Prior to any finding of guilt, the judicial authority shall inform the defendant of the charges against him or her and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of summary criminal contempt by presenting evidence of acquitting or mitigating circumstances. Upon an adjudication, the judicial authority shall immediately impose sentence of not more than one hundred dollars, or six months imprisonment, or both for each contumacious act. Execution of any sentence during the pendency of a trial or hearing may be deferred to the close of proceedings."

[6] In one case, the plaintiff was charged with violation of probation. In the other case, the plaintiff was charged with possession of narcotics with intent to sell by a person who is not drug dependent and with interfering with an officer.

[7] Even though he has finished serving his sentence for criminal contempt, the plaintiff contends, and the state does not challenge the plaintiff's contention, that his claim is not moot because a record of criminal contempt gives rise to a reasonable possibility of prejudicial collateral consequences. We agree that the plaintiff's claim is not moot. See, e.g., *Rowe* v. *Superior*

Court, 289 Conn. 649, 654–55, 960 A.2d 256 (2008) (because of prejudicial collateral consequences of contempt convictions, writ of error was not moot even though plaintiff in error had completed his sentences for contempt).

[8] In *Mayberry*, the United States Supreme Court held that the trial judge was not qualified to make a finding of summary criminal contempt when he had become "embroiled in a running, bitter controversy" with the contemnor. *Mayberry* v. *Pennsylvania*, 400 U.S. 465.

[9] We note that, although the plaintiff does not expressly ask us to overrule any case law purporting to limit the scope of our review of summary criminal contempt proceedings to the three questions identified in *Jackson* v. *Bailey*, supra, 221 Conn. 500, at oral argument, the state acknowledged that we could expand the scope of our review if we deemed such expansion prudent. Indeed, at oral argument, the state also clarified that it took no position as to whether we should adhere to the jurisdictional restriction identified in *Jackson* and other cases or, alternatively, disavow that limitation.

[10] General Statutes § 51-33a (a) provides: "Any person who violates the dignity and authority of any court, in its presence or so near thereto as to obstruct the administration of justice, or any officer of any court who misbehaves in the conduct of his official duties shall be guilty of contempt and shall be fined not more than five hundred dollars or imprisoned not more than six months or both."

[11] Practice Book § 1-14 provides: "Conduct that is directed against the dignity and authority of the court shall be criminal contempt, and may be adjudicated summarily or nonsummarily. The sanction for a criminal contempt is punitive to vindicate the authority of the court."

[12] Although the defendant in a summary contempt proceeding "has *normally* been given an opportunity to speak in his own behalf in the nature of a right of allocution"; (emphasis added; internal quotation marks omitted) *Taylor* v. *Hayes*, supra, 418 U.S. 498; the United States Supreme Court never has regarded such allocution as constitutionally required. See id., 497 ("[w]e are not concerned here with the trial judge's power, for the purpose of maintaining order in the courtroom, to punish summarily and *without notice or hearing* contemptuous conduct committed in his presence and observed by him" [emphasis added]); see also *Bloom* v. *Illinois*, 391 U.S. 194, 205, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968); *Ex parte Terry*, 128 U.S. 289, 306–309, 9 S. Ct. 77, 32 L. Ed. 405 (1888).

[13] Practice Book (1978–97) § 988 provided: "A criminal contempt may be punished summarily if the conduct constituting the contempt was committed in the actual presence of the court or of the judicial authority and such punishment is necessary to maintain order in the courtroom. A judgment of guilty of contempt shall include a recital of those facts on which the adjudication of [guilt] is based. Prior to the adjudication of guilt the judicial authority shall inform the defendant of the accusation against him or her and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances."

Although some of the requirements of Practice Book (1978–97) § 988 have been eliminated from Practice Book § 1-16, for purposes of the present case, Practice Book § 1-16 and Practice Book (1978–98) § 988 are identical in all material respects.

[14] "The three [contempt convictions] resulted from the following exchange:

" 'The Court: Well—OK. Just remember, you're in a courtroom, Sir.

" 'The [Detainee]: I wouldn't give a fuck about your courtroom. I would just like to—

" 'The Court: . . . [B]ring him back. For that statement, I'm finding you in contempt of [c]ourt, for saying an obscenity in this courtroom. Do you understand that?

" 'The [Detainee]: So what? So what?

" 'The Court: Do you have any reason why I should not find you in contempt? . . .

" 'The [Detainee]: Why shouldn't you?

" 'The Court: . . . Ninety days for contempt.

" 'The [Detainee]: Suck my dick for giving me another [ninety] days.

" 'The Court: Six months consecutive for contempt.

" 'The [Detainee]: Fuck your mother with a stick.

" 'The Court: Another six months consecutive for contempt. . . . Take him out of here now. Make sure the contempt reads "consecutive," three contempts.

" 'The Clerk: The total was a year and three months?

" 'The Court: A year and three months.' " *Jackson* v. *Bailey*, supra, 221

Conn. 501–502 n.2.

[15] The dissent offers three reasons why the plaintiff might not have known the basis for the contempt finding, none of which we find credible. First, the dissent asserts that "there is nothing in the record to indicate what conduct by the plaintiff prompted the court to order him out of the courtroom, and the record is not entirely clear as to what conduct prompted the court to direct the marshal to bring the plaintiff back." On the contrary, it is quite clear from the transcript, which recounts the plaintiff's repeated complaints about the manner in which the marshal was handling him, that what prompted the court to order the plaintiff out of the courtroom and then to order him brought back in was what the plaintiff's own attorney described at oral argument as "a disturbance between the marshal and [the plaintiff]." Second, the dissent observes that "the court's statements to the plaintiff—'Excuse me. You're in court.'; '[B]ased on your continued conduct, I'm going to find you in contempt.'; 'You have prevented the orderly processes of this court.'; and 'You've interrupted the orderly processes of this court.'—were either vague or simply a restatement of the legal standard for summary contempt." Although the dissent of course is correct that the court's statements do not amount to a *description* of the plaintiff's misconduct, no such description was necessary because the plaintiff's misconduct was obvious and ongoing. Third, the dissent asserts that "the plaintiff's inquiry—'I did what?'—in response to the court's admonition that the plaintiff had 'prevented the orderly processes of this court' and [had] 'interrupted the orderly processes of this court' suggests a lack of understanding on his part as to what the court meant." We find this assertion wholly implausible in light of the fact that the plaintiff was urged to stop misbehaving by almost everyone who was present—the court, the marshal and the plaintiff's own attorney.

Finally, we also are puzzled by the dissent's unexplained statement that it "strongly disagree[s] . . . that the marshal's comments . . . may be considered in determining whether the court has fulfilled its obligation to provide the plaintiff with notice . . . ." *Any* relevant portion of the record, the marshal's comments included, may be considered in determining whether the plaintiff was afforded notice of the charge against him.

[16] To the extent that this colloquy might be construed as revealing that the trial court punished the plaintiff not for his prior misconduct but for his attempt to allocute—a construction that the plaintiff notably does not advocate—we reject this construction because "we [must] read an ambiguous record, in the absence of a motion for articulation, to support rather than to undermine the judgment." *Water Street Associates Ltd. Partnership* v. *Innopak Plastics Corp.*, 230 Conn. 764, 773, 646 A.2d 790 (1994). Even though the plaintiff never has argued that he was punished for allocuting, the dissent apparently would reverse the plaintiff's conviction on account of what it calls "a concern about the appearance of injustice . . . ." Footnote 9 of the dissenting opinion. Because the plaintiff did not raise this claim himself, we cannot see how the "concern" that the dissent identifies could possibly warrant reversal of the plaintiff's summary contempt conviction.

[17] The dissent disagrees, arguing that we cannot "foreclose as a matter of law" the possibility that, if the trial court had made an affirmative inquiry as to whether there was any reason not to hold the plaintiff in contempt, the plaintiff "might have tendered a sincere apology that the court in turn might have accepted" or the plaintiff "might have offered a different explanation unrelated to the reasons he previously stated." We decline to reverse the plaintiff's conviction on the basis of such speculation—speculation in which even the plaintiff himself does not invite us to engage. The plaintiff never once has argued that, if he had been afforded an opportunity to allocute, he would have "tendered a sincere apology" or would "have offered a different explanation unrelated to" his repeated protests that the marshal was mistreating him, much less has he indicated what form such an explanation would have taken or why the trial court would have found the explanation persuasive. On the contrary, at oral argument before this court, the plaintiff's attorney expressly acknowledged that "we don't know what he would have said, we don't know what he could have presented, we don't know what would have happened, [and] we don't know if the trial court would have been moved by that or would have made the same finding." Moreover, we find it noteworthy that the plaintiff's attorney, who stood by the plaintiff's side as he repeatedly hurled obscenities at the trial court, never asked that the plaintiff be afforded an opportunity to return to court, on that day or at any time thereafter, so that he could apologize or explain himself.

[18] We are aware of no reason why our holding should, as the dissent asserts, "substantially [lower] the bar for substantial compliance," and we reject the dissent's characterization of our holding as a "new legal standard . . . ." Although we determine that a trial court may afford an alleged contemnor only the briefest of allocutions in the unusual circumstance in which he already has availed himself of the opportunity to give an explanation for his conduct and, in his brief allocution, makes it entirely clear that, if he were to allocute more extensively, he simply would repeat his earlier explanation, we otherwise agree completely with the dissent's statement that, "for an initial act of contempt, the trial court substantially complies with the requirements of Practice Book § 1-16 when the record establishes that the contemnor knew or should have known the basis of the contempt charge before the court made a formal finding of contempt, and that, after making such a finding but before imposing any punishment, the court affirmatively inquired whether the contemnor had evidence relative to mitigation or acquittal." Text accompanying footnote 3 of the dissenting opinion.

[19] We note that the plaintiff does not claim that the right to due process guaranteed by article first, §§ 8 and 9, of the Connecticut constitution affords greater protection to defendants in summary criminal contempt proceedings than the comparable federal constitutional right.

[20] Although we understand the dissent's view that the plaintiff's initial contempt finding resulted from a proceeding that did not comply with Practice Book § 1-16, we cannot understand why the dissent would have us reverse the plaintiff's contempt conviction and effectively render unpunishable the egregious and indefensible string of obscenities that the plaintiff hurled at the court after the court's initial contempt finding but before its imposition of a 120 day sentence. Nor can we discern the relevance of the fact that "the plaintiff has [not] gotten off scot-free given that he [already] has served his sentence for the contempt." Footnote 1 of the dissenting opinion. Whether a defendant has finished serving his sentence before his case reaches this court is plainly of no legal significance.