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D'AURIA, J., concurring. I concur in the result because I agree with the majority that the lack of an instruction pursuant to *State v. Salamon*, 287 Conn. 509, 949 A.2d 1092 (2008), was not harmless. As in my concurrence in the companion case we also decided today; see *Banks v. Commissioner of Correction*, 339 Conn. 1, 56, A.3d (2021) (*D'Auria, J.*, concurring); which I hereby incorporate by reference, however, I do not agree with the standard that the majority adopts for determining harmless error. The majority determines that, when a petitioner seeking habeas relief establishes a *Salamon* error, the habeas court must assess the harm of that error according to the legal standard that the United States Supreme Court articulated in *Brecht v. Abrahamson*, 507 U.S. 619, 623, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993) (new trial mandated if instructional error “had [a] substantial and injurious effect or influence in determining the jury’s verdict” (internal quotation marks omitted)), rather than the more petitioner friendly standard that the high court adopted in *Neder v. United States*, 527 U.S. 1, 18, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999) (new trial required if it is “clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the [instructional] error”). As I discussed in detail in my concurrence in *Banks*, I take issue with the majority’s holding for two reasons. First, because I believe that the merits of this case would be the same under either standard,¹ I do not believe that this court needs to—or should—determine which standard applies, especially as it is unclear how many, if any, future cases this standard will apply to. Second, I believe that the *Neder* standard is the proper standard. Accordingly, I respectfully concur.

¹ Assuming that the majority is correct that the *Brecht* standard is the proper standard, I agree with the majority that the petitioner would prevail on his *Salamon* claim. Additionally, assuming that I am correct that the *Neder* standard is the proper standard, I agree fully with the Appellate Court majority’s thorough and well reasoned opinion that the absence of a *Salamon* instruction was not harmless beyond a reasonable doubt under the *Neder* standard. See *Bell v. Commissioner of Correction*, 184 Conn. App. 150, 158 n.6, 172, 194 A.3d 809 (2018), *aff’d*, 339 Conn. 79, A.3d (2021).