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NELSON E. ARRIAGA *v.* COMMISSIONER OF
CORRECTION
(SC 18659)

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

Argued January 9—officially released February 21, 2012

David J. Reich, special public defender, for the appellant (petitioner).

Sarah Hanna, assistant state's attorney, with whom, on the brief, were *Michael Dearington*, state's attorney, and *James R. Turcotte*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

PER CURIAM. The habeas court dismissed the petition for a writ of habeas corpus filed by the petitioner, Nelson E. Arriaga, on the ground that it lacked jurisdiction over the matter because the petitioner was not in the custody of the respondent, the commissioner of correction (commissioner), when he filed the petition. Upon the habeas court's granting of his petition for certification to appeal, the petitioner appealed from the dismissal to the Appellate Court claiming that he was in the custody of the commissioner when he filed the petition because he was still on probation pursuant to his sentence for the challenged conviction. *Arriaga v. Commissioner of Correction*, 120 Conn. App. 258, 260, 990 A.2d 910 (2010). He further claimed that he had failed to allege in his petition that he was in custody because he had represented himself, and the Appellate Court should take judicial notice of his criminal records reflecting his custodial status. *Id.*, 261. The Appellate Court affirmed the judgment of the habeas court dismissing the petition. *Id.*, 265. This court then granted the petitioner's petition for certification to appeal to this court, limited to the following question: "Did the Appellate Court properly affirm the judgment of the [habeas] court in dismissing the petitioner's habeas corpus petition for lack of subject matter jurisdiction?"¹

After examining the entire record on appeal and considering the briefs and oral arguments of the parties, we have determined that the appeal in this case should be dismissed on the ground that certification was improvidently granted.

The appeal is dismissed.

¹ The certified question originally provided: "Did the Appellate Court properly dismiss the petitioner's habeas corpus petition for lack of subject matter jurisdiction"; *Arriaga v. Commissioner of Correction*, 297 Conn. 928, 998 A.2d 1195 (2010); but we rephrased the certified question in an amended order on the petition for certification dated January 4, 2011.
