STATE OF CONNECTICUT *v.* MICHAEL D. PIRES, SR.
(SC 18742)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, McDonald and Espinosa, Js.

Argued April 22—officially released October 8, 2013

April E. Brodeur, special public defender, for the appellant (defendant).

Paul J. Narducci, senior assistant state's attorney, with whom *was John P. Gravalec-Pannone*, former senior assistant state's attorney, and, on the brief, was *Michael L. Regan*, state's attorney, for the appellee (state).

Opinion

NORCOTT, J. This certified appeal presents us with another opportunity to determine whether, pursuant to *Faretta* v. *California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), statements made by a defendant indicating dissatisfaction with the performance of his appointed counsel developed into a clear and unequivocal request invoking the right to self-representation under the sixth amendment to the United States constitution. The defendant, Michael D. Pires, Sr., appeals, upon our grant of his petition for certification,[1] from the judgment of the Appellate Court affirming the judgment of conviction, rendered after a jury trial, of murder in violation of General Statutes § 53a-54a. See *State* v. *Pires*, 122 Conn. App. 729, 731, 2 A.3d 914 (2010). On appeal, the defendant claims that, on several occasions throughout these proceedings, the trial court improperly failed to (1) canvass him pursuant to Practice Book § 44-3[2] in response to his invocations of his right to self-representation, made both personally and through counsel, and (2) expressly inform him of his right to self-representation while advising him of his right to counsel. Guided by, inter alia, our decisions in *State* v. *Jordan*, 305 Conn. 1, 44 A.3d 794 (2012), and *State* v. *Flanagan*, 293 Conn. 406, 978 A.2d 64 (2009), we conclude that the trial court did not violate the defendant's right to self-representation, which he claimed to have invoked at a pretrial hearing and at sentencing. Accordingly, we affirm the judgment of the Appellate Court.

The record and the Appellate Court's opinion reveal the following relevant facts and procedural history. The defendant, along with Michael D. Pires, Jr., and Tamir Dixon, were charged with murder in violation of § 53a-54a in connection with a 2004 drug related homicide in Norwich.[3] See *State* v. *Pires*, supra, 122 Conn. App. 731–33. The case was tried to a jury, which found the defendant guilty of murder, and the trial court, *Schimelman*, *J.*, rendered a judgment of conviction in accordance with the jury's verdict, sentencing the defendant to sixty years imprisonment. See id., 731.

"Prior to the commencement of trial, the defendant made several requests to the court to remove defense counsel, [S]pecial [P]ublic [D]efender Linda Sullivan, from the case. On May 25, 2005, the defendant requested that the court, *Clifford*, *J.*, remove Sullivan from the case. The court found no cause to do so. Similar exchanges occurred on October 12, 2005, and November 15, 2005, in appearances before [the court, *Handy*, *J.*] On December 20, 2005, the defendant renewed his request, and [Judge Handy][4] also denied the request. When the defendant mentioned his constitutional rights, the court informed him that as an indigent defendant, he had the right to counsel but not the right to choose his own counsel. After a recess granted by the court so that the defendant could discuss strategy with

Sullivan, the court reconvened and Sullivan reported that the defendant had not discussed strategy but had told her that he wanted to represent himself.[5] The court ordered the case to the firm trial list, and the hearing concluded.

"The next time the defendant appeared before the court, in March, 2006, Sullivan filed a motion to withdraw as counsel, and attorneys Kevin Barrs and Bruce Sturman asked to be appointed due to the conflict between Sullivan and the defendant. The court [*Handy*, *J.*] granted the motion to withdraw and appointed Barrs and Sturman with the proviso that it did not want the defendant to continue requesting a new attorney at every hearing. The defendant did not make another request to replace counsel until August 2, 2006, at the start of trial, when he filed a pro se motion to dismiss counsel. At a hearing on August 3, 2006, the defendant withdrew that motion. The defendant filed another motion at the time of sentencing, titled 'motion to dismiss' that the court [*Schimelman*, *J.*] treated as a motion to dismiss counsel, and the court denied the motion." (Footnote added.) Id., 733.

The defendant appealed from the judgment of conviction to the Appellate Court, contending, inter alia,[6] that "he was denied the right to self-representation because the court failed to canvass him pursuant to the federal and state constitutions and Practice Book § 44-3, thereby violating his sixth amendment right to self-representation and his right to due process." (Footnote omitted.) Id., 734. In a divided opinion, the Appellate Court disagreed with this claim, concluding that the defendant had never made the "clear and unequivocal assertion" of his right to self-representation required by, inter alia, *Faretta* v. *California*, supra, 422 U.S. 835, and *State* v. *Carter*, 200 Conn. 607, 611–13, 513 A.2d 47 (1986). See *State* v. *Pires*, supra, 122 Conn. App. 735–36. In so concluding, the Appellate Court rejected, in particular, the defendant's reliance on colloquies during the pretrial hearing held on December 20, 2005 (December 20 hearing), and the sentencing hearing held on October 13, 2006 (sentencing hearing). See id., 736, 741–43.

With respect to the December 20 hearing, the Appellate Court concluded that "any pretrial request by the defendant to represent himself was not clear and unequivocal such that it would trigger the trial court's responsibility to engage in an inquiry under Practice Book § 44-3 . . . ." Id., 739. The Appellate Court stated that, although "Sullivan did inform the court that the defendant had expressed to her a desire to represent himself . . . she immediately qualified that statement by telling the court that she had advised him that the court was not likely to grant the request. The court reasonably could have interpreted counsel's statement to mean that the defendant did not want to pursue self-representation as an option."[7] Id. The Appellate Court

then concluded that the trial court's "discuss[ion of] the constitutional right to counsel without noting self-representation as an option" was not "a denial of the defendant's right to self-representation. The court is not obligated to suggest self-representation to a defendant as an option simply because the defendant repeatedly expressed dissatisfaction with his court-appointed counsel."[8] Id., 739.

The Appellate Court then concluded that the defendant's comments at the sentencing hearing did not constitute a "clear and unequivocal request to proceed with self-representation." Id., 742. The Appellate Court rejected the defendant's argument "that his request was one for self-representation because the court stated that granting his request to dismiss counsel would result in either him proceeding pro se or in delaying the hearing. Such an acknowledgement, however, simply stated the possible outcomes of a dismissal of counsel at that point in time. At no time was the issue of self-representation ever raised by the defendant in either the motion or in his statements to the court."[9] (Emphasis omitted.) Id., 742–43. Accordingly, the Appellate Court rendered judgment affirming the defendant's conviction.[10] Id., 750. This certified appeal followed. See footnote 1 of this opinion.

On appeal, the defendant contends that (1) he clearly and unequivocally invoked his unqualified[11] right to self-representation through Sullivan's comment to the trial court at the December 20 hearing, (2) the trial court was obligated to inform him of his right to represent himself, and (3) he again clearly and unequivocally invoked his right of self-representation through a written motion and oral argument at the sentencing hearing. We address each claim in turn.

Before turning to the defendant's specific claims in this certified appeal, "[w]e begin with general principles. The sixth amendment to the United States constitution provides in relevant part: In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense. The sixth amendment right to counsel is made applicable to state prosecutions through the due process clause of the fourteenth amendment. . . . In *Faretta* v. *California*, [supra, 422 U.S. 807] the United States Supreme Court concluded that the sixth amendment [also] embodies a right to self-representation and that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. . . . In short, forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so. . . .

"It is well established that [t]he right to counsel and the right to self-representation present mutually exclusive alternatives. A criminal defendant has a constitutionally protected interest in each, but since the two

rights cannot be exercised simultaneously, a defendant must choose between them. When the right to have competent counsel ceases as the result of a sufficient waiver, the right of self-representation begins. . . . Put another way, a defendant properly exercises his right to self-representation by knowingly and intelligently waiving his right to representation by counsel. . . .

"The inquiry mandated by Practice Book § 44-3 is designed to ensure the knowing and intelligent waiver of counsel that constitutionally is required. . . . We ordinarily review for abuse of discretion a trial court's determination, made after a canvass pursuant to . . . § 44-3, that a defendant has knowingly and voluntarily waived his right to counsel. . . . In cases like the present one, however, where the defendant claims that the trial court improperly failed to exercise that discretion by canvassing him after he clearly and unequivocally invoked his right to represent himself . . . whether the defendant's request was clear and unequivocal presents a mixed question of law and fact, over which . . . our review is plenary. . . .

"State and federal courts consistently have discussed the right to self-representation in terms of invoking or asserting it . . . and have concluded that there can be no infringement of the right to self-representation in the absence of a defendant's proper assertion of that right. . . . The threshold requirement that the defendant clearly and unequivocally invoke his right to proceed pro se is one of many safeguards of the fundamental right to counsel. . . . Accordingly, [t]he constitutional right of self-representation depends . . . upon its invocation by the defendant in a clear and unequivocal manner. . . . In the absence of a clear and unequivocal assertion of the right to self-representation, a trial court has no independent obligation to inquire into the defendant's interest in representing himself . . . . [Instead] recognition of the right becomes a matter entrusted to the exercise of discretion by the trial court. . . . Conversely, once there has been an unequivocal request for self-representation, a court must undertake an inquiry [pursuant to Practice Book § 44-3], on the record, to inform the defendant of the risks of self-representation and to permit him to make a knowing and intelligent waiver of his right to counsel. . . .

"Although a clear and unequivocal request is required, there is no standard form it must take. [A] defendant does not need to recite some talismanic formula hoping to open the eyes and ears of the court to [that] request. *Insofar as the desire to proceed pro se is concerned*, [*a defendant*] *must do no more than state his request*, *either orally or in writing*, *unambiguously to the court so that no reasonable person can say that the request was not made*. . . . Moreover, it is generally incumbent upon the courts to elicit that elevated

degree of clarity through a detailed inquiry. That is, the triggering statement in a defendant's attempt to waive his right to counsel need not be punctilious; rather, the dialogue between the court and the defendant must result in a clear and unequivocal statement. . . .

"Finally, in conducting our review, we are cognizant that the context of [a] reference to self-representation is important in determining whether the reference itself was a clear invocation of the right to self-representation. . . . The inquiry is fact intensive and should be based on the totality of the circumstances surrounding the request . . . which may include, inter alia, whether the request was for hybrid representation . . . or merely for the appointment of standby or advisory counsel . . . the trial court's response to a request . . . whether a defendant has consistently vacillated in his request . . . and whether a request is the result of an emotional outburst . . . ." (Citations omitted; emphasis altered; internal quotation marks omitted.) *State* v. *Jordan*, supra, 305 Conn. 12–15.

I

We begin with the defendant's claims arising from the December 20 hearing, namely, that (1) Sullivan's statement informing the court of the defendant's desire to represent himself was the requisite clear and unequivocal request required by *Faretta*, and (2) the trial court improperly failed to advise him of his right to proceed as a self-represented party.

The Appellate Court's opinion sets forth the following additional relevant facts and procedural history. "At the December 20 . . . hearing, Sullivan reported that the defendant had cut short their discussions concerning the case. When the court inquired into the reason for the defendant's refusal to communicate with his attorney, the defendant expressed the desire to 'fire' his attorney.[12] The court informed the defendant that he did not have the right to fire his attorney and that no cause existed for dismissing Sullivan from the case. The defendant mentioned his constitutional rights while making his request to remove his attorney. In response, Judge [Handy] told him that his constitutional rights only include the right to be represented by an attorney, not to be represented by the attorney of his choice. After several similar exchanges, Judge [Handy] told the defendant and Sullivan to try and work things out between them and then return to the courtroom. The record reflects that when they returned, the court asked for an update. Sullivan stated: '*Well, I did go downstairs and attempt to talk to* [*the defendant*]. *He did want to discuss strategy with me. He indicated now that he wishes to represent himself in this matter. I informed him that I didn't think Your Honor was going to allow him to represent himself on a murder charge simply because that would be much too dangerous and it would not be in his best interest.* And that's about

where we stand, Your Honor.'

"The court then asked Sullivan whether the defendant refused to discuss evidence and whether he had copies of the transcripts from the probable cause hearing. Sullivan affirmatively answered the court's questions, and the court responded: 'I'm going to put this on the trial list because at some point you need to communicate with [Attorney] Sullivan. You're on the firm trial list. You're on two hour notice.' The hearing ended. On March 8, 2006, after granting Sullivan's motion to withdraw, [Judge Handy] appointed attorneys Sturman and Barrs as counsel. The court engaged in the following colloquy with the defendant:

" 'The Court: Simply because you may not like the advice that you're getting from your attorneys, who happen to have law degrees and happen to know what they're doing, is not a reason for me to remove an attorney. Do you understand that?

" 'The Defendant: Yes. I do, ma'am.

" 'The Court: I think you're going to have differences of opinions with these guys as well, and, you know, I don't want to hear complaints about the fact that you feel you're not being properly represented. Do I make myself clear?

" 'The Defendant: Yes, ma'am.' "[13] (Emphasis added; footnote altered.) *State* v. *Pires*, supra, 122 Conn. App. 736–39.

A

We first address the defendant's claim that Sullivan's statement informing the trial court of the defendant's desire to represent himself must be viewed in the context of his multiple requests to "dismiss counsel," including that made later at sentencing. See part II of this opinion. The defendant argues that these motions constituted an inexperienced layman's way of expressing his desire to proceed as a self-represented party, rather than have new counsel appointed. The defendant argues that, under *State* v. *Flanagan*, supra, 293 Conn. 426, he was not obligated to reassert his request to proceed as a self-represented party once the trial court, *Handy*, *J.*, implicitly rejected it by failing to acknowledge Sullivan's remarks at the December 20 hearing. The defendant contends that this relief extended even after Judge Handy had permitted Barrs and Sturman to appear in lieu of Sullivan, arguing as a corollary that he "did not waive his clear and unequivocal pretrial request to represent himself on December 20, 2005, when he accepted the appointment of counsel in March of 2006 and it is clear that he maintained the desire to be pro se through sentencing."

In response, the state first observes that whether a defendant has clearly and unequivocally invoked his right of self-representation is a fact intensive inquiry

that must be based on the totality of the circumstances. See *State* v. *Jordan*, supra, 305 Conn. 15. In arguing that there was no clear and unequivocal request, the state emphasizes that the comment upon which the defendant relies was not made by the defendant himself, but rather, amounted to Sullivan reporting to Judge Handy the content of an off-the-record conversation with her client—without stating explicitly that the defendant had asked her to report his request to the court. The state also posits that the defendant's silence at that time and thereafter is telling, because he never personally made an oral or written request to the court to represent himself, and "[i]t strains credibility to believe that the defendant was clearly asserting his right to self-representation through . . . Sullivan, the attorney who he wished to 'fire.' " The state further argues that the trial proceedings leading up to and beyond the December 20 hearing indicate that the defendant was not seeking to represent himself, but rather, wanted the appointment of a different attorney because of his dissatisfaction with Sullivan. The state then relies on, inter alia, *State* v. *Carter*, supra, 200 Conn. 607, to establish the equivocal nature of the defendant's request, noting that it was not "definitive," but rather, was an expression of frustration that was ancillary to his demands for a new attorney. The state further relies on *State* v. *Gethers*, 197 Conn. 369, 497 A.2d 408 (1985), and contends that the defendant's lack of objection to the appointment of Sturman and Barrs in lieu of Sullivan constituted a subsequent waiver of his right to represent himself. We agree with the state and, accordingly, conclude that the Appellate Court properly determined that the trial court did not violate the defendant's right to self-representation at the December 20 hearing.

We view the record in the present case under the totality of the circumstances standard set forth in *State* v. *Jordan*, supra, 305 Conn. 15. Under this standard, we first conclude that Sullivan's comments at the December 20 hearing, namely, that the defendant had, in an off-the-record conversation, "indicated . . . that he wishes to represent himself in this matter," did not constitute the requisite clear and unequivocal request for self-representation. The defendant accurately observes that, as a general proposition, the trial court may rely on factual and legal representations by counsel to the court, which are then attributable to and binding on the attorney's client.[14] See, e.g., *Collins* v. *Lewis*, 111 Conn. 299, 305, 149 A. 668 (1930); see also *State* v. *Smith*, 289 Conn. 598, 609, 960 A.2d 993 (2008). This isolated statement by counsel cannot, however, be considered a clear and unequivocal request for self-representation in the context of the present case. Specifically, the defendant remained silent at that time, including when Sullivan informed Judge Handy that she had advised the defendant it was unlikely that the court would grant his request. This silence is, at best, indica-

tive of the equivocal nature of Sullivan's comments, particularly given that the defendant had previously exhibited no reluctance to address the court, either orally or in lengthy written motions, when he wanted to be heard. See *People* v. *Valdez*, 32 Cal. 4th 73, 99, 82 P.3d 296, 8 Cal. Rptr. 3d 271 (2004) ("the fact that defendant made only a single reference to the right to self-representation, immediately following the denial of his . . . motion [for substitution of counsel], further supports the conclusion that defendant did not make an unequivocal *Faretta* motion"), cert. denied, 543 U.S. 1145, 125 S. Ct. 1294, 161 L. Ed. 2d 105 (2005). Indeed, without further comment by the defendant personally, it is quite plausible that Sullivan was reporting an emotional reaction by the defendant borne out of his frustration with her—such outbursts of "passing anger or frustration" do not, without more, rise to the level of clear and unequivocal requests for self-representation.[15] See, e.g., *State* v. *Jordan*, supra, 305 Conn. 15.

Second, although a defendant may condition an invocation of the right to self-representation on the court's denial of his request for a new attorney, that alternatively phrased request still must be clear and unequivocal. See, e.g., *State* v. *Jordan*, supra, 305 Conn. 18–19; see also *Williams* v. *Bartlett*, 44 F.3d 95, 100 (2d Cir. 1994) ("a defendant is not deemed to have equivocated in his desire for self-representation merely because he expresses that view in the alternative, simultaneously requests the appointment of new counsel, or uses it as a threat to obtain private counsel").

The record demonstrates, however, that, beyond the one isolated comment by Sullivan at the December 20 hearing, the defendant's energies at and before that pretrial proceeding had been exclusively devoted to trying to "fire" Sullivan and have her *replaced* with different court-appointed counsel. This pattern of activity began with the defendant's "motion to dismiss [counsel]" filed on May 25, 2005, and denied that same day by the trial court, *Clifford*, *J.*, which had specifically requested "that I be appointed a special attorney for my case, because me and my attorney are having a conflict of interest. Therefor I ask to dismiss [counsel]."[16] Thereafter, at a pretrial conference held on November 15, 2005, wherein Judge Handy reviewed a plea offer with the defendant and gave him until the December 20 hearing to accept or reject it, the defendant informed the court: "I'd like to fire my lawyer. I have this on record." Although Judge Handy declined to replace Attorney Sullivan at that time, the defendant stated in response only that "I still want her off my case," not once saying that he wanted to represent himself in lieu of having new counsel appointed.

Thus, in this context, the one isolated comment made by Sullivan on December 20 did not amount to the requisite clear and unequivocal invocation by the defen-

dant.[17] See *State* v. *Carter*, supra, 200 Conn. 611 (defendant's repeated complaints about public defender's performance and requests for appointment of special public defender, and his statements that " 'I am misrepresented and now I have to represent myself' " and " 'I'll have to represent myself,' " along with "his desire to question a witness" did not constitute clear and unequivocal request where "couched in terms of his request for a different public defender" and where defendant "raised no further objections to the adequacy of his representation"); *State* v. *Turner*, 133 Conn. App. 812, 831, 37 A.3d 183 ("[t]he remark that 'if I had to take that choice [of self-representation] to rather have him represent me, then I take it, but I just want another attorney, Your Honor,' is neither clear nor unambiguous in context"), cert. denied, 304 Conn. 929, 42 A.3d 390 (2012); see also *Commonwealth* v. *Davido*, 582 Pa. 52, 66–67, 868 A.2d 431 (alternately phrased request made in letter to court not clear and unequivocal when defendant did not renew subject of self-representation in extensive court hearing on that letter, wherein "trial court gave Appellant the opportunity to air his grievances, and Appellant's focus was on retaining new counsel; his need for a continuance; and his dissatisfaction with his current counsel," and subsequently declined opportunity to represent himself at trial), cert. denied, 546 U.S. 1020, 126 S. Ct. 660, 163 L. Ed. 2d 534 (2005).

Further, Judge Handy's failure to acknowledge Sullivan's comment about the defendant's apparent desire to represent himself—and rule definitively on that particular matter—suggests that Sullivan's comment was not a "clear and unequivocal" request by the defendant. The trial court's response is one factor that we consider in determining whether the defendant's request was clear and unequivocal. See, e.g., *State* v. *Jordan*, supra, 305 Conn. 15; see also *State* v. *Flanagan*, supra, 293 Conn. 425 (request was clear and unequivocal given that trial court "recognized and ruled on the defendant's request when it stated '[i]n a word, no' in response to the defendant's request, '[d]on't I have the right to finish this case myself without [defense counsel] there' and, more tellingly, when the court stated that 'if you're making a request of me that you be allowed to represent yourself or that you be allowed to retain or have a new counsel appointed for you, that request is denied' " [emphasis omitted]). Contrary to the defendant's argument, the trial court's failure to rule definitively on whether the defendant could represent himself did not amount to agreement with Sullivan's comments about the likely success of that request.[18] Indeed, in a recent decision, the Second Circuit specifically rejected the argument that a trial judge's failure to rule definitively on a defendant's apparent request to proceed as a self-represented party constitutes a " 'pocket veto' of his request," holding that concept "inapplicable to this judicial proceeding." *United States* v. *Barnes*, 693 F.3d 261,

272–73 (2d Cir. 2012), cert. denied, U.S. , 133 S. Ct. 917, 184 L. Ed. 2d 704 (2013); see also *Wilson* v. *Walker*, 204 F.3d 33, 38 (2d Cir.) ("To be sure, [trial judge's] remarks . . . may indicate that she would have been disinclined to grant [the petitioner's] request to represent himself had it been renewed. However, in the absence of additional evidence, we are unwilling to assume that a renewal of [the petitioner's] request would have been 'fruitless.' "), cert. denied, 531 U.S. 892, 121 S. Ct. 218, 148 L. Ed. 2d 155 (2000).

Moreover, the defendant's conduct at his subsequent court appearances after the December 20 hearing suggests that Sullivan's comment on that date was not a clear and unequivocal request invoking the defendant's right to self-representation. Although a defendant is not required to reiterate fruitlessly his request for permission to proceed as a self-represented party once the court has denied that request; see, e.g., *State* v. *Flanagan*, supra, 293 Conn. 426; the record in the present case demonstrates that, at December 20 hearing, the defendant wanted the court to appoint new attorneys to his defense—relief that the defendant received on March 8, 2006, when Barrs and Sturman replaced Sullivan as appointed counsel.[19] At that proceeding, the defendant expressed no dissatisfaction with the appointment of Barrs and Sturman as Sullivan's replacements, and did not request to represent himself. Thus, on March 8, 2006, the defendant received exactly what he requested during the December 20 hearing, namely, the appointment of new counsel.

Further, as the state notes, this pattern of conduct continued into trial, as, on August 2, 2006, the defendant filed another "motion to dismiss [counsel]," authored on July 26, 2006, wherein he complained at length about the failures of Barrs and Sturman, as well as Sullivan, to provide him with evidence and transcripts from the probable cause hearing that had been held in this case. After informing the trial court of his belief that Barrs and Sturman are "going to damage my case," the defendant asked the court "to [as]sign me a special public defender" after explaining that groups such as the Connecticut Bar Association and the American Civil Liberties Union (ACLU) had declined to assist him. Subsequently, on August 3, 2006, the defendant informed the trial court, *Schimelman*, *J.*, that he had changed his mind about proceeding with that motion, and withdrew it.[20] Indeed, the defendant again sought to replace counsel during appellate proceedings, seeking "a pro bono to assist me on my case" and did not mention his right to self-representation.[21]

Finally, even if we were to assume that Sullivan's comments on December 20 amounted to a clear and unequivocal invocation of the defendant's right of self-representation, the defendant subsequently waived that right through his conduct following the appointment

of Barrs and Sturman. "[I]t is well established that a [defendant] may successfully invoke the right to self-representation but thereafter waive it by acquiescing, either overtly or by a failure to object, to a subsequent reappointment of counsel." *Quint* v. *Commissioner of Correction*, 99 Conn. App. 395, 405, 913 A.2d 1120 (2007). Specifically, the defendant's silent acceptance of the appointment of Barrs and Sturman at the next court appearance on March 8, 2006, when coupled with Judge Handy's apparent failure to acknowledge the request for self-representation expressly at the December 20 hearing, strongly suggests a course of conduct by the defendant that waived his right to self-representation, if it were invoked in the first place. To this end, we find persuasive a decision from the United States Court of Appeals for the Second Circuit, *Wilson* v. *Walker*, supra, 204 F.3d 33. In that case, the court observed that, the trial judge's failure to rule on the request notwithstanding, the habeas petitioner had "clearly and unequivocally [invoked] his right to represent himself" at a pretrial hearing at his underlying criminal trial. Id., 37. Nevertheless, the Second Circuit concluded that the petitioner had "waived his right to self-representation through abandonment," as the record demonstrated that "both [the petitioner and the trial judge] considered the matter still open for discussion" at subsequent proceedings wherein new attorneys were appointed. Id., 38. The Second Circuit emphasized that, in "view of the fact that there were two subsequent changes in the attorney appointed to represent [the petitioner] and the question of self-representation was left open for possible further discussion, we conclude that [the petitioner's] failure to reassert his desire to proceed pro se constituted a waiver of his previously asserted [s]ixth [a]mendment right." Id. In particular, the court noted that, at two separate hearings addressing the petitioner's representation, "and during the remainder of pre-trial proceedings and during trial—[the petitioner] remained silent with respect to the issue of his representation, voicing no dissatisfaction with the attorneys appointed to represent him and choosing not to reassert his desire to proceed pro se. Moreover, this silence stands in stark contrast to [the petitioner's] willingness to assert his perceived rights at other points during the proceedings."[22] Id., 38–39. Accordingly, we conclude that the Appellate Court properly determined that the trial court did not deprive the defendant of his right of self-representation following the December 20 hearing because, even if the defendant had clearly and unequivocally invoked his right to self-representation, that right was waived by the defendant's subsequent conduct in accepting the appointment of new counsel.

B

We next address the defendant's claim that the Appellate Court improperly concluded that the trial court was not obligated to advise him of his right to proceed

as a self-represented party, in the context of the discussion of his right to counsel.[23] We disagree. Our research, coupled with the authorities cited by the state, indicates that all state and federal "courts reaching the question have uniformly and explicitly held that absent a request from the defendant a court has no duty sua sponte to advise him of his right to self-representation, nor any duty to ensure on the record that waiver of this right was knowing and intelligent." (Internal quotation marks omitted.) *Porter* v. *Singletary*, 883 F. Supp. 660, 666 (M.D. Fla. 1995); see also *Munkus* v. *Furlong*, 170 F.3d 980, 983 (10th Cir. 1999); *United States* v. *Martin*, 25 F.3d 293, 296 (6th Cir. 1994); *United States* v. *White*, 429 F.2d 711, 712 (D.C. Cir. 1970); *United States* v. *Denno*, 348 F.2d 12, 16 (2d Cir. 1965), cert. denied sub nom. *DiBlasi* v. *McMann*, 384 U.S. 1007, 86 S. Ct. 1950, 16 L. Ed. 2d 1020 (1966); *Johnson* v. *State*, 188 P.3d 700, 704 (Alaska App. 2008); *State* v. *Hanson*, 138 Ariz. 296, 300, 674 P.2d 850 (1983); *People* v. *Salazar*, 74 Cal. App. 3d 875, 888, 141 Cal. Rptr. 753 (1977); *State* v. *Craft*, 685 So. 2d 1292, 1295 (Fla. 1996); *State* v. *Lippert*, 145 Idaho 586, 594–95, 181 P.3d 512 (2007), review denied, 2008 Idaho LEXIS 77 (2008); *People* v. *Woodruff*, 85 Ill. App. 3d 654, 659–60, 406 N.E.2d 1155 (1980); *Russell* v. *State*, 270 Ind. 55, 60, 383 N.E.2d 309 (1978); *State* v. *Smith*, 215 N.W.2d 225, 226 (Iowa 1974); *Baker* v. *Commonwealth*, 574 S.W.2d 325, 328 (Ky. App. 1978); *Commonwealth* v. *Myers*, 51 Mass. App. 627, 629, 748 N.E.2d 471 (2001); *People* v. *McIntyre*, 36 N.Y.2d 10, 17, 324 N.E.2d 322, 364 N.Y.S.2d 837 (1974); *State* v. *Darby*, 317 Wis. 2d 478, 492, 766 N.W.2d 770, review denied, 322 Wis. 2d 124, 779 N.W.2d 177 (2009); *Williams* v. *State*, 655 P.2d 273, 275 (Wyo. 1982).

This line of cases is grounded in the policy and practical consideration that, "such advices might suggest to the average defendant that he could in fact adequately represent himself and does not need an attorney, and it would be fundamentally unwise to impose a requirement to advise of the self-representation procedure which, if opted for by the defendant, is likely to be to no one's benefit." (Internal quotation marks omitted.) *Russell* v. *State*, supra, 270 Ind. 60; see also *State* v. *Smith*, supra, 215 N.W.2d 226 (noting that admonition of right to proceed pro se "would add nothing to the rights of the accused, save only the hope of another possible omission" because "[t]he courts in Iowa and throughout the country have demonstrated no dangerous tendency to saddle unwilling accused with unwelcomed counsel"); *Commonwealth* v. *Myers*, supra, 51 Mass. App. 629–30 (noting "the obvious danger associated with such judicial intervention, i.e., that a defendant will treat advice regarding the existence of the right as a subtle indicator that the judge is in fact recommending that he exercise the right"). It also is consistent with well settled Connecticut law, that, "[i]n the absence of a clear and unequivocal assertion of the right

to self-representation, *a trial court has no independent obligation to inquire into the defendant's interest in representing himself, because the right of self-representation, unlike the right to counsel, is not a critical aspect of a fair trial*, but instead affords protection to the defendant's interest in personal autonomy. . . . When a defendant's assertion of the right to self-representation is not clear and unequivocal, recognition of the right becomes a matter entrusted to the exercise of discretion by the trial court. . . . In the exercise of that discretion, the trial court must weigh into the balance its obligation to indulge in every reasonable presumption against waiver of the right to counsel."[24] (Citations omitted; emphasis added; footnotes omitted; internal quotation marks omitted.) *State* v. *Carter*, supra, 200 Conn. 613–14. Accordingly, we agree with the Appellate Court that, although Judge Handy "discussed the constitutional right to counsel without noting self-representation as an option, we cannot conclude that the discussion amounted to a denial of the defendant's right to self-representation. The court is not obligated to suggest self-representation to a defendant as an option simply because the defendant repeatedly expressed dissatisfaction with his court-appointed counsel." *State* v. *Pires*, supra, 122 Conn. App. 739.

II

We next turn to the defendant's claim that the Appellate Court improperly rejected his claim that the trial court, *Schimelman, J.*, had failed to canvass the defendant in response to his clear and unequivocal request for self-representation, made at the sentencing hearing. The defendant argues that the record demonstrates that Judge Schimelman, through his comments praising the trial performance of Barrs and Sturman and noting his concern about the defendant's ability to represent himself at sentencing, clearly understood the defendant to be invoking his right of self-representation. The defendant further argues that Judge Schimelman improperly "ignored the request, failed to inquire and focused instead on inappropriate factors such as whether granting the defendant the right to represent himself would be beneficial to the defendant, the family of the victim, or to the judicial process." We disagree. Assuming, without deciding, that the defendant made a clear and unequivocal request for self-representation at the sentencing hearing,[25] we conclude that Judge Schimelman's ruling on that request was not an abuse of discretion under the balancing test set forth in *State* v. *Flanagan*, supra, 293 Conn. 433.

The Appellate Court's opinion aptly sets forth the following additional relevant facts and procedural history. "On October 2, 2006, the defendant filed a handwritten 'motion to dismiss.' On October 13, 2006, the court took up the motion prior to the sentencing portion

of the hearing, giving the defendant the opportunity to make his claims concerning counsel. After the defendant stated several complaints concerning the evidence in the case, the following colloquy occurred between the court and the defendant:

" 'The Court: . . . [S]o that I'm clear, are you telling me why it is that I should dismiss your lawyers at this point? Is that why you're telling me this? Is that what you want?

" 'The Defendant: I asked that from the beginning. That's why I wrote you the motion to dismiss.

" 'The Court: I'm well aware of what you wrote me, and I'm well aware of what I have done to date. I'm asking you now, sir, whether or not you are asking me to dismiss your lawyers prior to this sentencing hearing. Is that what you're asking?

" 'The Defendant: Yes.'

"After allowing the defendant further opportunity to explain his request, during which the defendant continued to comment on the evidence and facts, the court stated: 'There is nothing that you said to me that leads me to believe that I [should dismiss] them at this time. In fact, it would be to your disadvantage, in my mind, to dismiss them because they have the ability to explain to the court in a way that perhaps you, as a layperson, [do] not have, those matters that need to be discussed during this sentencing. And it would be counterproductive, in my mind, to dismiss them and to leave you without representation or to make the determination that this sentencing should be delayed. I think neither is necessary, nor neither would be beneficial to you and, or, to the family of the victims in this case and, or, to the judicial process. Accordingly, your motion to dismiss your attorneys is denied.' " *State* v. *Pires*, supra, 122 Conn. App. 741–42.

A defendant's right to self-representation is not unqualified when that request is made after trial proceedings have commenced—even if the request is clear and unequivocal. Under *Faretta* v. *California*, supra, 422 U.S. 806–807, a trial court may deny "a defendant his right to self-representation," inter alia, if "he makes the request in untimely fashion such that granting it would disrupt the proceedings." (Internal quotation marks omitted.) *State* v. *Flanagan*, supra, 293 Conn. 431; see also id. (other grounds for denial are "serious obstructionist misconduct" and defendant's failure to "knowingly and intelligently [waive] . . . right to counsel" [internal quotation marks omitted]). "With respect to the timeliness ground [for denial], the Second Circuit has stated previously that [a] criminal defendant must make a timely and unequivocal request to proceed pro se in order to ensure the orderly administration of justice and prevent the disruption of both the pre-trial proceedings and a criminal trial. . . . Assuming, how-

ever, that a defendant's request to proceed pro se is informed, voluntary and unequivocal, [t]he right of a defendant in a criminal case to act as his own lawyer is unqualified if invoked prior to the start of the trial. . . . Distinct considerations bear upon requests made after a trial has begun. . . . After the commencement of a trial, the right of self-representation is sharply curtailed . . . and a trial court faced with such an application must balance the legitimate interests of the defendant in self-representation against the potential disruption of the proceedings already in progress." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 431, quoting *Williams* v. *Bartlett*, supra, 44 F.3d 99–100. "Trial commences, for this purpose, at voir dire." *State* v. *Bozelko*, 119 Conn. App. 483, 502 n.7, 987 A.2d 1102, cert. denied, 295 Conn. 916, 990 A.2d 867 (2010).

In *Flanagan*, we adopted the Second Circuit's balancing test to determine "whether the defendant made his request in untimely fashion such that granting it would disrupt the proceedings . . . ." (Internal quotation marks omitted.) *State* v. *Flanagan*, supra, 293 Conn. 432–33. We concluded that, "when a defendant clearly and unequivocally has invoked his right to self-representation after the trial has begun, the trial court must consider: (1) the defendant's reasons for the self-representation request; (2) the quality of the defendant's counsel; and (3) the defendant's prior proclivity to substitute counsel. If, after a thorough consideration of these factors, the trial court determines, *in its discretion*, that the balance weighs in favor of the defendant's interest in self-representation, the court must then proceed to canvass the defendant in accordance with Practice Book § 44-3 to ensure that the defendant's choice to proceed pro se has been made in a knowing and intelligent fashion. If, on the other hand, the court determines, on the basis of those criteria, that the potential disruption of the proceedings already in progress outweighs the defendant's interest in self-representation, then the court should deny the defendant's request and need not engage in a § 44-3 canvass." (Emphasis added.) Id., 433; see also id., 429–31 (rejecting proposed " 'exceptional circumstances' " test for evaluating eve of trial or midtrial requests to proceed pro se, and disagreeing with defendant's argument that right of self-representation is completely unfettered as to time). Trial courts' decisions to deny requests for self-representation that are made after the commencement of trial are reviewed for abuse of discretion. See, e.g., *State* v. *Thompson*, 122 Conn. App. 20, 39, 996 A.2d 1218 (2010), aff'd, 305 Conn. 806, 48 A.3d 640 (2012); *State* v. *Bozelko*, supra, 119 Conn. App. 502.

Assuming, without deciding, that the defendant's request at sentencing to dismiss Barrs and Sturman constituted a clear and unequivocal request to proceed as self-represented party, we nevertheless conclude

that Judge Schimelman did not abuse his discretion by declining to permit the defendant to represent himself or canvassing him under *Faretta* and Practice Book § 44-3. Although Judge Schimelman did not have the benefit of our decision in *Flanagan* at the time of the sentencing hearing, his explanation of his decision to deny the defendant's request is consistent with the balancing test that we adopted in that decision, meaning that a remand for further proceedings is not required.[26] See *State* v. *Bozelko*, supra, 119 Conn. App. 502–503 (finding no abuse of discretion when trial took place before release of *Flanagan*, but court's colloquy with defendant and its decision was consistent with the balancing analysis therein); see also *State* v. *Thompson*, supra, 122 Conn. App. 38–39 (same).

Specifically, Judge Schimelman considered the defendant's reasons for his self-representation request, namely, that he was dissatisfied with the work of Sturman and Barrs, and the quality of the representation that they had provided, when the court observed that, "you don't want to kill the messenger. Your lawyers, in my mind, did fantastic legal work with respect to your representation. Unfortunately for you, the result was not that the result that you sought. I'm sure if there had been an acquittal, you would be the first to be congratulating your attorneys on what they did." Consistent with the third factor namely, the defendant's "prior proclivity to substitute counsel"; *State* v. *Flanagan*, supra, 293 Conn. 433; Judge Schimelman had been aware of and commented on the defendant's past motion practice and difficulties relating to his appointed attorneys. Finally, with respect to the determination that "the potential disruption of the proceedings already in progress outweighs the defendant's interest in self-representation"; id.; Judge Schimelman observed that, "it would be counterproductive, in my mind, to dismiss [Barrs and Sturman] and to leave you without representation or to make the determination that this sentencing should be delayed. *I think neither is necessary, nor neither would be beneficial either to you and, or, to the family of the victims in this case and, or, to the judicial process.*" (Emphasis added.) Having thoroughly reviewed the record, we conclude that Judge Schimelman's denial of the defendant's request for self-representation at sentencing was not an abuse of discretion. Accordingly, the defendant's right to self-representation was not violated, regardless of whether his request at the sentencing hearing was clear and unequivocal.

The judgment of the Appellate Court is affirmed.

In this opinion ZARELLA, EVELEIGH, MCDONALD and ESPINOSA, Js., concurred.

[1] We granted the defendant's petition for certification to appeal limited to the following issue: "Did the Appellate Court properly determine that the defendant was not deprived of his constitutional right to self-representation?" *State* v. *Pires*, 300 Conn. 904, 12 A.3d 1002 (2011).

[2] Practice Book § 44-3 provides: "A defendant shall be permitted to waive the right to counsel and shall be permitted to represent himself or herself at any stage of the proceedings, either prior to or following the appointment of counsel. A waiver will be accepted only after the judicial authority makes a thorough inquiry and is satisfied that the defendant:

"(1) Has been clearly advised of the right to the assistance of counsel, including the right to the assignment of counsel when so entitled;

"(2) Possesses the intelligence and capacity to appreciate the consequences of the decision to represent oneself;

"(3) Comprehends the nature of the charges and proceedings, the range of permissible punishments, and any additional facts essential to a broad understanding of the case; and

"(4) Has been made aware of the dangers and disadvantages of self-representation."

[3] For a detailed recitation of the background facts of this case, see *State* v. *Pires*, supra, 122 Conn. App. 731–33.

[4] We note that the Appellate Court's opinion states that Judge Schimelman presided at the pretrial hearing on December 20, 2005. See *State* v. *Pires*, supra, 122 Conn. App. 733, 736–39. This likely is a reflection of an error contained on the original cover page from the transcript of this proceeding. While this certified appeal was pending before this court, the trial court, *Schimelman*, *J.*, granted the state's motion pursuant to Practice Book § 66-5 and rectified the record by revising that cover page to indicate that Judge Handy had presided on December 20.

[5] We note that the transcript indicates that Attorney Bruce Sturman, not Sullivan, made this statement to the court. There is, however, no evidence within the record indicating that Sturman filed an appearance on behalf of the defendant before this hearing took place. Consequently, consistent with the parties' apparent agreement on this point in their briefing and argument of this case, we assume that the transcript contains a clerical error and that Sullivan was the individual speaking to the court. We further note, however, that this particular distinction is not relevant to the present appeal.

[6] The defendant also contended that the trial court had improperly instructed the jury in numerous ways, including as to (1) the intent element of the crime of murder, (2) unanimity with regard to his liability as a principal or an accessory, and (3) commenting on his exercise of his constitutional right not to testify. See *State* v. *Pires*, supra, 122 Conn. App. 743–50. The Appellate Court rejected these claims, observing that, "when read as a whole, the court's jury instructions could not have reasonably misled the jury and impinged on the defendant's right to a fair trial." Id., 750. We note that the defendant's instructional claims are not before us in this certified appeal.

[7] The Appellate Court majority observed that the defendant "cites no law to support the proposition that the court's silence, in the face of advice given by an attorney to a defendant and relayed to the court, amounts to agreement with the attorney. We already have concluded that the court reasonably could have interpreted the statement by Sullivan to mean that the defendant accepted her advice concerning the likely ruling of the court and did not want to pursue self-representation. Because no motion was pending before the court concerning self-representation or any other matter, the court properly did not respond to the statement made by Sullivan." (Footnote omitted.) *State* v. *Pires*, supra, 122 Conn. App. 740.

[8] The Appellate Court noted further that, after new attorneys had been substituted for Sullivan, "[t]he defendant made no attempt to protest the appointment of new attorneys or in any way indicate that he was not satisfied with the resolution to his requests to remove Sullivan. [*State* v. *Flanagan*, supra, 293 Conn. 426] holds that a defendant does not waive his right to self-representation merely by failing to reassert it, but in the present case the court granted the defendant precisely what he had requested—the dismissal of Sullivan as his counsel." *State* v. *Pires*, supra, 122 Conn. 740.

[9] The Appellate Court observed that the trial court "here did not treat the defendant's request as one for self-representation. The court simply noted that if it were to grant the request to dismiss counsel, the defendant would proceed on his own or the court would need to delay the sentencing in order to appoint new counsel for him. Such a statement by the court does not turn statements by the defendant expressing dissatisfaction with counsel into a clear and unequivocal request for self-representation." *State* v. *Pires*, supra, 122 Conn. App. 743.

[10] Then-Chief Judge Flynn dissented from the judgment of the Appellate Court, concluding that Sullivan's comments at the December 20 hearing constituted "an unequivocal request made under *Faretta* v. *California*,

[supra, 422 U.S. 806]. If there was any doubt about that, it was incumbent on the court 'to elicit that elevated degree of clarity through a detailed inquiry.' " *State* v. *Pires*, supra, 122 Conn. App. 750–51, quoting *State* v. *Flanagan*, supra, 293 Conn. 424. Chief Judge Flynn, acknowledging that "the trial court in this case did not have the benefit of . . . *Flanagan* at the time the defendant made his request for self-representation," nevertheless determined that "the request was clear enough to trigger the court's obligation to canvass the defendant in accordance with Practice Book § 44-3. I realize that this places an additional trial management burden on the court, but the right of self-representation is an important civil right guaranteed to all citizens by both the state and federal constitutions, which the *Flanagan* court found to be structural, requiring a new trial when a Practice Book § 44-3 canvass has not been made." Id., 751.

[11] The defendant argues that the balancing test articulated in *State* v. *Flanagan*, supra, 293 Conn. 433, is inapplicable in this case because his request for self-representation was made pretrial, thereby requiring the trial court to canvass him about his decision to proceed as a self-represented party without any consideration of the disruptive effects of that decision. We agree with the defendant with respect to the December 20 hearing, but not with respect to the sentencing hearing discussed in part II of this opinion.

[12] In specific detail, we note that the following colloquy took place between the trial court, *Handy*, *J.*, and the defendant at the December 20 hearing, after the trial court discussed with Sullivan whether the defendant would sign a stipulation that would allow the return of the car in which the victim was found to his wife.

"[Defense Counsel]: [The defendant] has cut short our discussions before I was able to discuss [the return] with him. And obviously I didn't have the opportunity to discuss that with him.

"The Court: Why did he cut short your discussions?

"[Defense Counsel]: Apparently he does not want to talk with me, Your Honor.

"The Court: Mr. Pires, [W]e've been through this before.

"The Defendant: Yes. My constitutional—rights; I'm firing my lawyer.

"The Court: . . . [Y]our constitutional rights are as follows: You have the right to be represented by an attorney. If you can afford to hire an attorney yourself, then you are entitled to be represented by the attorney of your choice. If you are unable and financially incapable of hiring an attorney, then the court appoints an attorney to represent you. [Attorney] Sullivan has been appointed to represent you, and for some reason you're not cooperating with that; and I don't understand why because it's clearly in your best interest to do so, sir, because she is the attorney who is going to be representing you.

"So, I suggest very strongly that you sit down and speak with her and that I don't have you coming out of lockup every time you're here, saying, I want a new attorney, because it's not going to happen . . . . This is the attorney who has been selected to represent you. She has a great deal of experience. She's been trying cases for years. She knows what she's doing. So, instead of bucking her, I expect that you will cooperate with her.

"So I'm going to pass this case and I want you to talk with your client . . . . Thank you, Mr. Pires. I'll see you shortly after you talk with Attorney Sullivan.

"The Defendant: I still—

"The Court: Mr. Pires.

"The Defendant. Constitutional rights, I am firing my lawyer.

"The Court: You can't fire her; you didn't hire her, Mr. Pires.

"The Defendant: I want that to be on the record, too.

"The Court: Mr. Pires. Bring him right back over here. Let me repeat this again, sir.

"The Defendant: I did what you said.

"The Court: The United States constitution and the constitution in the state of Connecticut, sir, you are entitled to be represented by an attorney.

"The Defendant: Yes.

"The Court: You, unfortunately, are not in a financial situation to hire who you would like. Therefore, the court is required to appoint someone to represent you. That has been done. That individual is Attorney Sullivan. With all due respect, Mr. Pires, you cannot fire her; you did not hire her. The only situation under which a new attorney would be appointed for you, Mr. Pires, is if for some reason [Attorney] Sullivan was deemed incompetent or incapable of representing you.

"The Defendant: There you go. There you go. I put in a motion for question—

"The Court: She is not incompetent and she is not incapable. You, sir,

have refused to speak with her, to work with her, and to help her with your defense. And so I am passing this case and asking you to do so because the case is on for accept or reject today, and we either need to go to trial or you need to plea. So, speak with your client. Please take [the defendant] downstairs, and [Attorney] Sullivan will meet him there.

"[Defense Counsel]: Thank you, Your Honor."

After counsel and the defendant returned to open court, the trial court asked Sullivan to "educate" the court on what happened. In response, the following colloquy occurred:

"[Defense Counsel]: Well, I did go downstairs and attempt to talk to [the defendant]. He did want to discuss strategy with me. *He indicated that he now wishes to represent himself in this matter*. I informed him that I didn't think Your Honor was going to allow him to represent himself on a murder charge simply because that would be much too dangerous, and it would not be in his best interest. And that's about where we stand, your Honor.

"The Court: You've attempted to discuss with him the evidence and he refuses to discuss that with you?

"[Defense Counsel]: Yes, Your Honor.

"The Court: He has copies of the transcripts from the probable cause hearing?

"[Defense Counsel]: He does.

"The Court: I'm going to put this on the trial list, because at some point you need to communicate with [Attorney] Sullivan. You're on the firm trial list. You're on two hour notice.

"[Defense Counsel]: Thank you, your honor." (Emphasis added.)

[13] On March 8, 2006, Sturman informed the trial court, *Handy, J.*, that the relationship between the defendant and Sullivan had broken down, and that the defendant had filed a grievance against Sullivan. Prior to admonishing the defendant, Judge Handy emphasized that she did "not want some circumstances to arise down the road where [the defendant] comes back and is unhappy with the advice that you and Attorney Barrs have given him and thus assumes that he is going to get a new attorney because in my opinion that's what happened here." Judge Handy emphasized that she put her admonition to the defendant on the record because "sometimes defendants feel that they're entitled to be represented by someone who is going to tell them what they want to hear."

[14] This extends to statements by counsel, made in good faith, which indicate that his or her client is clearly and unequivocally invoking the right of self-representation. See *Johnson* v. *State*, Docket No. 12-02-00165-CR, 2003 WL 21254906, *2 (Tex. App. May 30, 2003) (trial court was obligated to conduct inquiry under *Faretta* when record demonstrated that court understood counsel's pretrial statement that, " 'my client has informed me that he wishes to represent himself and not continue with my representation' " as defendant's clear and unequivocal invocation of his right of self-representation).

[15] To the extent that the defendant claims that Sullivan ineffectively relayed the content of their off-the-record discussion in lockup when she communicated his desire to proceed as a self-represented party—a topic discussed at oral argument before this court—that claim, along with the potentially erroneous legal advice identified by the dissent that Sullivan had rendered with respect to that wish, is more appropriately a matter for a habeas corpus petition. See *Commonwealth* v. *Davido*, 582 Pa. 52, 81, 868 A.2d 431 (Castille, J., concurring) ("[C]ommunications between counsel and client may explain why counsel never requested that appellant be permitted to proceed pro se or why appellant changed his mind. On the other hand, proper review of the claim as one sounding in counsel ineffectiveness may reveal that appellant truly did desire to represent himself, but was impeded by counsel."), cert. denied, 546 U.S. 1020, 126 S. Ct. 660, 163 L. Ed. 2d 534 (2005); accord *State* v. *Leecan*, 198 Conn. 517, 541, 504 A.2d 480 (ineffective assistance of counsel claim "more properly pursued" in habeas corpus or new trial petition, rather than direct appeal, because "trial transcript seldom discloses all of the considerations of strategy that may have induced counsel to follow a particular course of action"), cert. denied, 476 U.S. 1184, 106 S. Ct. 2922, 91 L. Ed. 2d 550 (1986).

[16] The defendant's May 25, 2005 handwritten motion stated that the purported conflict of interest arose from Sullivan "not doing what I ask of her," namely, "ignor[ing]" his requests for the police reports and discovery motions. At a hearing held that same day, Judge Clifford denied the motion for lack of a legal basis, and encouraged Sullivan and the defendant to work on improving their attorney-client relationship.

[17] The actions of the defendant and trial court in the present case stand, then, in stark contrast to those that we recently considered in *State* v. *Jordan*, supra, 305 Conn. 1. In *Jordan*, we deemed the defendant's request to be clear and unequivocal when trial court clearly "denied the motion that included *both* the defendant's request for new counsel and his request to represent himself, and immediately commenced considering a different motion filed by the state. [Defense counsel's] subsequent attempt to remind the court of the defendant's request for self-representation garnered no response. In reply to the defendant's earlier, oral assertion of the right, the trial court had cut the defendant off and ordered him to leave the courtroom, a dismissive approach that was consistent with the court's reaction, at a previous hearing, to the defendant's attempt to argue his speedy trial motion pro se." (Emphasis in original.) Id., 21. We further observed that the defendant's motion to proceed as a self-represented party "did not seek to delay the proceedings but, rather, to expedite them" by enforcing his speedy trial right. Id., 22. Lastly, we observed that the defendant's "detailed presentation of his request to proceed pro se, both in a written motion with citation to the applicable rules of practice and orally to the trial court at the hearing on that motion, is evidence that his assertion of the right to self-representation was not an impulse, borne by anger or frustration. [T]he defendant's substantial prior period of self-representation, lasting for approximately seven months during which he filed and argued several motions, adds further support to our conclusion that his request to reassume representing himself was sincere, and was not merely an attempt to disrupt the proceedings." Id.

[18] The defendant contends that "the fact that the [trial] court did not respond does not mean that the request was not communicated to the court clearly," and that it "seems that the state is implying that the court can discharge its duty to protect constitutional rights by ignoring a defendant." We do not suggest that a trial court may or should simply ignore a defendant's invocation of the right of self-representation in the hopes that he will subsequently change his mind or forget about the request. Rather, the trial court's reaction to the comment about self-representation—if any—is simply one factor that we, as a reviewing court, consider in determining whether a request was ever made, and if so, whether it was clear and unequivocal. But see *State* v. *Towle*, 162 N.H. 799, 810, 35 A.3d 490 (2011) (Lynn, J., concurring) ("[i]t is not the responsibility of the legally untrained defendant to divine meaning at his peril from a [nonresponsive] or otherwise ambiguous trial court reaction to his pro se request").

[19] The March 8 proceeding followed the filing of another handwritten motion on February 27, 2006, wherein the defendant had informed the court that he had "fire[d]" Sullivan, "she is no longer taken on my case," and that he intended to utilize his daughter to assist him in his defense because of Sullivan's failure to provide him with the discovery documents that he had requested in May, 2005.

[20] Further, common sense suggests that a defendant committed to exercising his right to self-representation would not write to the bar association for assistance with his defense.

[21] On April 2, 2009, the defendant moved the Appellate Court to dismiss and replace his appellate counsel, who continues to represent him in this certified appeal. In that motion, the defendant argued that appellate counsel was ineffective for failing to raise numerous issues, including the sufficiency of the evidence or the conflicts of interest in his representation by Barrs and Sturman. The Appellate Court referred this motion to the trial court; see Practice Book § 62-9A; and the trial court, *Handy*, *J.*, denied the motion after a hearing held on May 1, 2009. At that motion hearing, the defendant did not request to represent himself.

[22] More recent Second Circuit cases remain consistent with *Walker*. See *United States* v. *Abdur-Rahman*, 512 Fed. Appx. 1, 3–4 (2d Cir. 2013) (concluding that motion "clearly styled as a motion for self-representation" was not unequivocal in context wherein defendant expressed dissatisfaction with experience of counsel and his "prior and unresolved motion for new counsel, coupled with his repeated complaints about [defense attorney] and his expressed wish for substitute counsel, evinced a desire not to represent himself but instead to have the district court appoint new counsel"); *United States* v. *Barnes*, supra, 693 F.3d 272 ("[w]here there has been no clear denial of the request to proceed pro se and the question of self-representation [i]s left open for possible further discussion, the defendant's failure to reassert his desire to proceed pro se and his apparent cooperation with his appointed counsel, who conducts the remaining pretrial and trial proceedings, constitute[s] a waiver of his previously asserted [s]ixth [a]mendment

right to proceed pro se" [internal quotation marks omitted]).

[23] Positing that the defendant has failed to raise this issue as a "separate and distinct claim," the dissent does not address the question of whether a trial court is, in the interest of accuracy and completeness, obligated to advise a criminal defendant of his right to proceed as a self-represented party, in the context of the discussion of his right to counsel. We agree with the dissent insofar as the defendant's briefing of this issue is far from comprehensive or clear, but, like the Appellate Court; see *State* v. *Pires*, supra, 122 Conn. App. 739; deem this issue adequately briefed for the purpose of review.

[24] The defendant accurately notes that, as a frequent practice, "[c]ourts often offer a defendant the option of proceeding pro se where a request to discharge counsel and appoint a new lawyer has been denied." In light of the cited authorities, we emphasize that whether to invite that option remains in the discretion of the trial court.

[25] We note that the state's brief is silent on the question of whether the defendant invoked his right to self-representation at the sentencing hearing, and it did not elaborate further on this issue at oral argument before this court, instead focusing on the defendant's claims vis–vis the pretrial proceedings. Inasmuch as the state does not expressly concede error on this point, and remanding this case for a new sentencing would impose institutional costs for the court and emotional costs for the victim's family, we independently review the merits of the defendant's sentencing claims.

[26] In contrast, in *Flanagan*, "our review of the record demonstrate[d] that the trial court did not apply this balancing test when it denied the defendant's request to proceed pro se and instead improperly applied the 'exceptional circumstances' test employed for untimely requests to substitute counsel." (Footnote omitted.) *State* v. *Flanagan*, supra, 293 Conn. 433; see also id., 433 n.18 (observing that "only factor that the trial court considered when it denied the defendant's request was the fact that the performance of the defendant's attorney was 'beyond competent and . . . superior' "). Prior to finding structural error and ordering a new trial in *Flanagan*, though, we followed *State* v. *Connor*, 292 Conn. 483, 533, 973 A.2d 627 (2009), and "remand[ed] the case to the trial court to apply the appropriate criteria, as set forth in this opinion, to the defendant's request, to determine if it would have been required to canvass the defendant in accordance with § 44-3." *State* v. *Flanagan*, supra, 433–34. Given the structural nature of the right of self-representation, "in the event that the trial court determine[d] on remand that, after applying the balancing test adopted herein it would have been required to canvass the defendant pursuant to § 44-3, we direct[ed] that court to order a new trial." Id., 434.