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STATE OF CONNECTICUT *v.* MITCHELL
HENDERSON
(SC 18860)

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

Argued April 22—officially released June 4, 2013

Katharine S. Goodbody, special public defender, for the appellant-appellee (defendant).

Emily L. Graner Sexton, special deputy assistant state's attorney, with whom, on the brief, was *Gail P. Hardy*, state's attorney, and *Herbert Carlson*, former senior assistant state's attorney, for the appellee-appellant (state).

Opinion

PER CURIAM. The defendant, Mitchell Henderson, was convicted after a jury trial of robbery in the first degree, assault in the third degree, threatening and attempt to escape from custody.¹ Following his conviction on these charges, the defendant pleaded guilty, pursuant to the *Alford*² doctrine, to two part B informations charging him with being a persistent dangerous felony offender under General Statutes (Rev. to 1993) § 53a-40 (a)³ and (f)⁴ and a persistent serious felony offender under § 53a-40 (b)⁵ and (g).⁶ The trial court, *Espinosa, J.*, sentenced the defendant, inter alia, to twenty-five years incarceration for the crime of robbery in the first degree as a persistent dangerous felony offender and to a consecutive sentence of twenty years incarceration, execution suspended after ten years, for the crime of attempt to escape custody as a persistent serious felony offender. The defendant's judgment of conviction subsequently was affirmed by the Appellate Court. *State v. Henderson*, 37 Conn. App. 733, 658 A.2d 585, cert. denied, 234 Conn. 912, 660 A.2d 355 (1995).

Thereafter, the defendant filed a motion to correct an illegal sentence pursuant to Practice Book § 43-22,⁷ claiming that the trial court had enhanced his sentence based on its finding that an extended incarceration and lifetime supervision would best serve the public interest, thereby violating his constitutional rights to due process and a trial by jury under this court's decision in *State v. Bell*, 283 Conn. 748, 931 A.2d 198 (2007).⁸ The state filed a motion to dismiss the defendant's motion, which the trial court, *Gold, J.*, granted on the ground that the court lacked subject matter jurisdiction over the defendant's claim because it did not involve the imposition of an illegal sentence. The defendant then appealed from the judgment of dismissal to the Appellate Court, which reversed the judgment. *State v. Henderson*, 130 Conn. App. 435, 448, 24 A.3d 35 (2011).

Addressing the merits of the defendant's claim, the Appellate Court concluded that this court's decision in *Bell* was not retroactive and, therefore, remanded the case to the trial court with direction to render judgment denying the defendant's motion to correct. *Id.* This court then granted the defendant's petition for certification to appeal and the state's cross petition for certification to appeal, limited to the following identical issues: (1) "Did the Appellate Court properly determine that the defendant's claim fell within the purview of Practice Book § 43-22, and that the trial court had jurisdiction to consider the defendant's motion to correct an illegal sentence?"; and (2) "If the answer to question one is affirmative, did the Appellate Court properly determine that the decision in *State v. Bell*, [supra, 283 Conn. 748], does not apply retroactively to this case?" *State v. Henderson*, 302 Conn. 938, 28 A.3d 992, 993 (2011).

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

The appeals are dismissed.

¹ The defendant also was convicted, following his guilty plea, of criminal mischief in the third degree.

² See *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

³ General Statutes (Rev. to 1993) § 53a-40 (a) provides in relevant part: “A persistent dangerous felony offender is a person who (1) stands convicted of . . . robbery in the first . . . degree . . . and (2) has been, prior to the commission of the present crime, convicted of and imprisoned under a sentence to a term of imprisonment of more than one year . . . for any of the following crimes: (A) The crimes enumerated in subdivision (1) of this subsection. . . .”

⁴ General Statutes (Rev. to 1993) § 53a-40 (f) provides in relevant part: “When any person has been found to be a persistent dangerous felony offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration and lifetime supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by . . . section 53a-35a . . . may impose the sentence of imprisonment authorized by said section for a class A felony.”

⁵ General Statutes (Rev. to 1993) § 53a-40 (b) provides in relevant part: “A persistent serious felony offender is a person who (1) stands convicted of a felony, and (2) has been, prior to the commission of the present felony, convicted of and imprisoned under an imposed term of more than one year . . . for a crime. . . .”

⁶ General Statutes (Rev. to 1993) § 53a-40 (g) provides in relevant part: “When any person has been found to be a persistent serious felony offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court in lieu of imposing the sentence of imprisonment authorized by . . . section 53a-35a . . . may impose the sentence of imprisonment authorized by said section for the next more serious degree of felony.”

⁷ Practice Book § 43-22 provides: “The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner.”

⁸ This court concluded in *State v. Bell*, supra, 283 Conn. 810, that the provision of General Statutes (Rev. to 2005) § 53a-40 (h) requiring the trial court to make the determination as to whether extended incarceration of the defendant would best serve the public interest violated the defendant’s constitutional right to due process and a trial by jury.
