Judicial Mulligans

By CHARLES D. RAY

What authority does a superior court judge have to open a judgment for purposes of a do-over? Given the competing issues involved, it's a perplexing problem at best and one that the Supreme Court tackled in *State v. Butler*, 348 Conn. 51 (2023). The facts are uncomplicated but rather disturbing. Mr. Butler was arrested in 2017 and charged with risk of injury to a minor and breach of the peace in the second degree, based on an incident involving inappropriate behavior with a twelve-year-old child in a public restaurant. He applied for participation in a diversionary program and, upon canvas by the trial court, agreed to have no contact with minors and that he stay away from away from any areas frequented by minors. The court approved Mr. Butler's application, but after issues arose, Mr. Butler was enrolled in a more rigorous program.

In 2019, the trial court received word that Mr. Butler had successfully completed his sessions in the program. In response, the court scheduled a hearing at which it would determine whether the charges against Mr. Butler should be dismissed pursuant to the terms set forth in Conn. Gen. Stat. § 54-56l(i). In advance of that hearing, the Court Support Services Division issued a final progress report that alleged Mr. Butler had not satisfactorily completed the diversionary program. Included in that report was a letter from Mr. Butler's probation officer, which contained information tending to show that Mr. Butler had violated the terms of the trial court's original order. At the hearing, the state objected to dismissal of the charges, while defense counsel argued that the allegations contained in the probations officer's letter had not been substantiated. The trial court dismissed the charges.

The next day, the state moved to open the judgment of dismissal, based on information it alleged demonstrated that Mr. Butler had not successfully completed the diversionary program. Mr. Butler objected and the trial court held another hearing, at which the state provided evidence that Mr. Butler "continues to seek contact with minors and actively engages in deceptive behavior to conceal such contact." Defense counsel claimed that the trial court lacked jurisdiction following the dismissal. The trial court, concluding that it had dismissed the charges based on erroneous information, opened the judgment and ordered that the charges against Mr. Butler not be dismissed. According to the trial court, this was "the right thing to do in this particular case.…"

Mr. Butler appealed, claiming that the trial court lacked jurisdiction to open a case

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following a dismissal. The appellate court agreed, albeit over a dissent from Judge Bishop. At the Supreme Court, the certified issues were whether the appellate court: 1) correctly concluded that the trial court lacked inherent common law authority to modify its judgment of dismissal within four months of the date on which it was rendered; and 2) properly reversed the trial court's decision to open its judgment despite the fact that the judgment of dismissal was predicated on a material misrepresentation made to the trial court.

The Supreme Court majority (Justice McDonald for himself, Chief Justice Robinson, Justice Mullins, and Judge Moll) affirmed on both questions. First, the Court held that the trial court relinquished jurisdiction when it issued a final and unconditional judgment of dismissal and, therefore, lacked jurisdiction to grant the state's motion to open. The majority did not address the second question, concluding that the record did not support a finding of intentional or material misrepresentation during the trial court's initial hearing. The end result? All charges dismissed.

In explaining its decision, the majority first cleared the air (and confusion) surrounding the ability of a trial court to open a judgment within four months of it having been rendered. On this point, a history lesson was forthcoming. At common law, the superior court sat in sessions and could modify judgments during the session in which those judgments were rendered. In criminal cases, however, a trial court lost jurisdiction "upon any action in execution of a defendant's sentence." In 1977, the legislature revised Section 51-181 of the General Statutes to remove any reference to "sessions" in regard to the superior court and to provide that the court would "sit continuously throughout the year.…" This rendered the common law rule about modifying judgments in the same session inoperable, but did nothing to the common law rule that a trial court could, in its discretion, modify or vacate a criminal judgment before the sentence had been executed.

Following the 1977 revision, the legislature granted continuing jurisdiction to the superior court in several instances and, in Section 52-212a, provided that "[u]nless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which the notice of judgment or decree was sent.…" This provision would have had no impact in Butler, except for the fact that the Court, in *State v. Wilson*, 199 Conn. 417 (1986) held that the four-month rule applied to criminal judgments as a matter of common law. Adding to the mix, the Court in *State v. McCoy*, 331 Conn. 561 (2019) held that *Wilson* could not be read to change the common law rule that jurisdiction is lost upon execution of a criminal defendant's sentence. The Court overruled *Wilson*, to the extent it held otherwise. And in *Butler*, the Court overruled *Wilson* to the extent it applied the four-month rule in criminal cases.

Having cleaned up the Court's prior history, the majority turned to the question at hand—"whether the dismissal of criminal charges . . . divests the trial court of jurisdiction." The majority answered "yes," finding support in the somewhat analogous situation of the entry of a nolle prosequi, which, except in one limited circumstance, divests the trial court of jurisdiction. Decisions in other jurisdictions (California, Washington, Missouri, and Texas) support the same view. And because a finding of fraud was not supported by the record, the Court did not address the issue of "whether the civil rule permitting a trial court to open a judgment obtained by fraud applies in the criminal context.…"

Justice D'Auria concurred in part and concurred in the judgment, based on his conclusions that the trial court did not lose jurisdiction to open the judgment but that it should have denied the state's motion to open regardless. Justice D'Auria began with the broad, common law proposition that courts enjoy inherent authority to open, correct, or modify their own judgments. Competing with this concept is the policy favoring finality of judgments, such that litigation on the subject typically focuses on what limits, if any, should be placed on the authority of courts to exercise their authority to open and modify judgments. Until 1977, the temporal limitation imposed on courts hinged on the conclusion of the "session" in which the judgment was rendered. But, according to Justice D'Auria, the legislature's elimination of "sessions" in that year did not, ipso facto, act to overrule the common law authority of courts in its entirety. Nor did implementation of the four-month rule for civil cases necessarily impose time limits in the criminal context.

Having reached this conclusion, the money question for Justice D'Auria was what rule should be applied to the opening of judgments in criminal cases? He settles on courts retaining jurisdiction "to open, correct, or modify a criminal judgment during the 20-day appeal period, but only if the state places the defendant on notice at the time of judgment that it may seek to appeal." Applying that rule, Justice D'Auria agrees with the majority's result, because the state "did not announce its intent to appeal from the dismissal of the criminal case or otherwise do anything to put the defendant on notice that the charges against him could be reinstated after the dismissal."

There's much more historical detail in the opinions, both of which are well worth a read. ■

■ Any views expressed herein are the personal views of the author.

Charles D. Ray *is a partner at McCarter & English LLP, in Hartford. He clerked for Justice David M. Shea during the Supreme Court's 1989–1990 term and appears before the Court on a regular basis.*