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**APPELLATE COURT**  
**OF THE**  
**STATE OF CONNECTICUT**

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AC 42784

MARLON SYMS

V.

COMMISSIONER OF CORRECTION

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ATTACHED APPENDIX OF THE PETITIONER-APPELLANT,  
PARTS I & II

---

ROBERT L. O'BRIEN, ESQ (ARGUING ATTORNEY)  
CHRISTOPHER Y. DUBY, ESQ (ON THE BRIEF)  
ASSIGNED COUNSEL

JURIS NO. 434478

LAW OFFICE OF CHRISTOPHER DUBY, LLC  
2558 WHITNEY AVENUE, SUITE 203  
HAMDEN, CONNECTICUT 06518

TEL (203) 234-2888

FAX (203) 234-1329

EMAIL [robert@cdubylaw.com](mailto:robert@cdubylaw.com)

COUNSEL OF RECORD

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**PETITIONER'S APPENDIX, PART I**



# State of Connecticut Judicial Branch Superior Court Case Look-up



Superior Court Case Look-up  
Civil/Family  
Housing  
Small Claims

TSR-  
CV15-4007376-S **SYMS, MARLON #165217 v. WARDEN, STATE PRISON**

Suffix: MIS Case Type: M30 File Date: 07/27/2015 Return Date: 09/29/2015

[Case Detail](#) [Notices](#) [History](#) [Scheduled Court Dates](#) [E-Services Login](#) [Screen Section Help](#) ▶

[To receive an email when there is activity on this case, click here.](#) ✉

Attorney/Firm Juris Number Look-up ✉

Case Look-up  
By Party Name  
By Docket Number  
By Attorney/Firm Juris Number  
By Property Address

Short Calendar Look-up  
By Court Location  
By Attorney/Firm Juris Number  
Motion to Seal or Close  
Calendar Notices

Court Events Look-up  
By Date  
By Docket Number  
By Attorney/Firm Juris Number

Pending Foreclosure Sales ✉

Understanding  
Display of Case Information

Contact Us

Information Updated as of: 09/05/2019

### Case Information

**Case Type:** M30 - Misc - Habeas Corpus (extradition release from Penal Institution)  
**Court Location:** ROCKVILLE-GA19  
**List Action:** COURT (CT)  
**Trial List Claim:** 03/02/2018  
**Last Action Date:** 04/10/2019 (The "last action date" is the date the information was entered in the system)

### Disposition Information

**Disposition Date:** 01/31/2019  
**Disposition:** JUDGMENT OF DISMISSAL  
**Judge or Magistrate:** HON JOHN NEWSON

### Party & Appearance Information

Party	No Fee Party	Category
<b>P-01 MARLON SYMS #165217</b> Attorney: ZINGARO & CRETELLA LLC (419037) File Date: 08/26/2015 1087 BROAD STREET BRIDGEPORT, CT 06604		Plaintiff
<b>D-01 WARDEN, STATE PRISON</b> Attorney: KELLY A MASI (420492) File Date: 10/09/2015 CSAO-CIVIL LITIGATION 300 CORPORATE PLACE ROCKY HILL, CT 06067		Defendant



Comments

### Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an  in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.\* For more information on what you can view in all cases, view the [Electronic Access to Court Documents Quick Card](#).
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.\*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.\*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.\*

- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.\*

\*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by the public online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

Motions / Pleadings / Documents / Case Status				
<u>Entry No</u>	<u>File Date</u>	<u>Filed By</u>	<u>Description</u>	<u>Arguable</u>
101.00	07/27/2015	P	<b>APPLICATION FOR WRIT OF HABEAS CORPUS</b>	No
102.00	07/27/2015	P	<b>MOTION TO WAIVE ENTRY FEE AND PAY COSTS OF SERVICE</b> <i>RESULT: Granted 7/30/2015 BY THE COURT</i>	No
103.00	07/30/2015	C	<b>ORDER SEE FILE</b> <i>RESULT: Order 7/30/2015 BY THE COURT</i>	No
104.00	01/08/2018	D	<b>CASEFLOW REQUEST (JD-CV-116)</b> <i>RESULT: Granted 1/12/2018 HON HUNCHU KWAK</i>	No
105.00	03/02/2018	C	<b>SCHEDULING ORDER</b> <i>RESULT: Accepted 3/2/2018 HON DAWNE WESTBROOK</i>	No
106.00	03/02/2018	C	<b>CERTIFICATE OF CLOSED PLEADINGS AND CLAIM FOR TRIAL LIST</b>	No
107.00	01/24/2019	P	<b>MOTION FOR PERMISSION TO WITHDRAW APPEARANCE</b>	Yes
108.00	01/31/2019	C	<b>JUDGMENT OF DISMISSAL</b> <i>RESULT: HON JOHN NEWSON</i>	No
109.00	02/13/2019	P	<b>PETITION FOR CERTIFICATION - HABEAS</b> <i>RESULT: Denied 2/20/2019 HON JOHN NEWSON</i>	No
109.10	02/20/2019	C	<b>ORDER SEE FILE</b> <i>RESULT: Denied 2/20/2019 HON JOHN NEWSON</i>	No
110.00	02/27/2019	P	<b>APPLICATION FOR APPOINTMENT OF COUNSEL AND WAIVER OF FEES ON APPEAL</b> <i>RESULT: Granted 3/19/2019 HON JOHN NEWSON</i>	No
110.10	02/27/2019	C	<b>ORDER SEE FILE</b> <i>RESULT: Order 2/27/2019 HON JOHN NEWSON</i>	No
111.00	04/08/2019	P	<b>APPEAL TO APPELLATE COURT</b>	No
112.00	04/10/2019	C	<b>COMPLETE COPIES OF COURT FILE SENT TO SUPREME/APPELLATE COURT - PB SEC 68-1</b>	No

Scheduled Court Dates as of 09/04/2019				
TSR-CV15-4007376-S - SYMS, MARLON #165217 v. WARDEN, STATE PRISON				
#	Date	Time	Event Description	Status
1	01/14/2020	10:00AM	Trial	Off

Judicial ADR events may be heard in a court that is different from the court where the case is filed. To check location information about an ADR event, select the **Notices** tab on the top of the case detail page.

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page. The date displayed on this page is the date of the calendar.

All matters on a family support magistrate calendar are presumed ready to go forward.

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the [civil](#) or [family](#)

[🔗](#) standing orders. Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services. Markings made by telephone can only be obtained through the clerk's office. If more than one motion is on a single short calendar, the calendar will be listed once on this page. You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the [Civil/Family Case Look-Up](#) page and [Short Calendars By Juris Number](#) or [By Court Location](#).

Periodic changes to terminology that do not affect the status of the case may be made.

This list does not constitute or replace official notice of scheduled court events.

**Disclaimer:** For civil and family cases statewide, case information can be seen on this website for a period of time, from one year to a maximum period of ten years, after the disposition date. If the Connecticut Practice Book Sections 7-10 and 7-11 give a shorter period of time, the case information will be displayed for the shorter period. Under the Federal Violence Against Women Act of 2005, cases for relief from physical abuse, foreign protective orders, and motions that would be likely to publicly reveal the identity or location of a protected party may not be displayed and may be available only at the courts.

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Page Created on 9/5/2019 at 10:08:43 AM

# PETITION FOR WRIT OF HABEAS CORPUS

Notice A petition that challenges a conviction, confinement or other deprivation of liberty that is a result of a conviction of a crime, must be filed at the Superior Court, 20 Park Street, Rockville, CT 06066. File the original and TWO copies with the court clerk.

Revised 2/15

**NOTE: Page 5 and Page 6 must be signed and notarized before filing.**

If you are held on something *other than* a criminal conviction (such as adjudications of not guilty by reason of insanity or as a juvenile), the petition and two copies must be filed in the Judicial District where the petitioner is confined or held.

FOR SUBMISSION TO SUPERIOR COURT AT:

Rockville Superior Court

Address: 20 Park St, P.O. Box 980  
Rockville, CT. 06066

CT Inmate No.: <u>165217</u>
Other No: _____ A# _____
Name of Inmate: <u>Marlon Syme</u>
v. Commissioner of Correction

**1. Details of conviction(s) and sentence(s) now being served:**

1a.	Date of Arrest: <u>4/15/2008</u>
1b.	Location of Court: <u>Hartford Superior Court, 101 Lafayette St., Hfd, CT</u>
1c.	Sentencing Judge: <u>David Gold</u>
1d.	Date(s) of sentencing: <u>June 24, 2009</u>
1e.	Sentence(s) (specify individual counts): <u>Robbery 1, Conspiracy Robber 1</u> <u>14 yrs. 14 yrs.</u>
Concurrent or Consecutive: <u>CONSECUTIVE</u>	
Total effective sentence: <u>16 year</u>	
Probation/Special Parole: <u>6 years Special Parole</u>	
1f.	I <input checked="" type="checkbox"/> Plead guilty. Date of plea: <u>March 19, 2009</u>
(or) I <input type="checkbox"/> was convicted by: a jury <input type="checkbox"/> a judge <input type="checkbox"/>	
1g.	Total time in jail before sentencing: <u>424</u> (days)
1h.	My lawyer was: <input type="checkbox"/> A Public Defender <input type="checkbox"/> Special Public Defender (Assigned Counsel) <input checked="" type="checkbox"/> Privately retained (paid to represent you):
Name(s) of your lawyer(s): <u>Wesley Spears</u>	

STATE OF CONNECTICUT  
 DEPARTMENT OF CORRECTIONS  
 2015 JUL 27 PM 2:00  
 G.A. ID  
 Receipt No: 0320286  
 Amount: \$0.00  
 Bocket: 01540073765  
 List Total: 001 \$0.00  
 State of Connecticut  
 Post Date: 07/30/2015  
 File: 1521032-1

**2. Did you apply for sentence review?  Yes  No**

My lawyer was: <input type="checkbox"/> A Public Defender <input type="checkbox"/> Special Public Defender (Assigned Counsel) <input type="checkbox"/> Privately retained (paid to represent you)
Name of Lawyer:
If yes, what result?:

Inmate No.: 165217

3. Did you appeal your conviction?  Yes  No

3a. What issues did you appeal?:

3b. Result of your appeal:

3c. My lawyer was:  A Public Defender  Special Public Defender (Assigned Counsel)  
 Privately retained (paid to represent you)

Name of Appellate Attorney:

4. Have you filed any other habeas corpus petitions?  Yes  No  
(please list information on each petition separately)

4a. Docket #: [REDACTED] Court Location: Hartford Superior Court  
My lawyer was:  A Public Defender  Special Public Defender (Assigned Counsel)  
 Privately retained (paid to represent you)

Name of Habeas Lawyer: Brian Russell

Disposition: Denied

Was the habeas decision appealed?  Yes  No

Result of your habeas appeal: Affirmed

My lawyer was:  A Public Defender  Special Public Defender (Assigned Counsel)  
 Privately retained (paid to represent you)

Name of Habeas Appellate Attorney: Brian Russell

4b. Docket #: TRS CV 10 4003372 Court Location: Rockville Superior Court  
My lawyer was:  A Public Defender  Special Public Defender (Assigned Counsel)  
 Privately retained (paid to represent you)

Name of Habeas Lawyer: William B. Wynne

Disposition: Denied

Was the habeas decision appealed?  Yes  No

Result of your habeas appeal: Affirmed

My lawyer was:  A Public Defender  Special Public Defender (Assigned Counsel)  
 Privately retained (paid to represent you)

Name of Habeas Appellate Attorney: Edward McAnaney

(If there are additional prior habeas corpus petitions please use an additional page)

40. Docket #: ~~CV 92-1430~~  
CV 92-1430

COURT LOCATION: ROCKVILLE SUPERIOR COURT

My law Was: Special Public Defender (Assigned Counsel)

NAME OF Habeas Lawyer: James Shanley

Disposition: Denied

Was the habeas decision appealed? Yes

Result of your Habeas Appeal: Affirmed

My Lawyer Was: Special Public Defender (Assigned Counsel)

Name of Habeas appellate Attorney: James Shanley

Inmate No.: 165217

Please check all that apply. You must state facts supporting each claim. Use additional pages if necessary. Any false statement in this petition could result in a conviction for false statement (G.G.S. 53a-157).

**5. This petition claims that my conviction is illegal because:**

5a. Guilty plea not voluntary:
5b. Plea bargain was not followed:
5c. My sentence is not being calculated according to my understanding when I pleaded guilty:
5d. Sentencing illegal:
5e. My attorney did not represent me properly:
5f. Illegal arrest, search, or advice of rights:
5g. Impaired mental state at plea or trial:
5h. Other <i>See attached</i>

**6. This petition claims that my incarceration/sentence is illegal because:**

6a. Department of Correction has not correctly credited my pre-sentence incarceration. Total days credited is _____ days; I think the total should be _____ days. What are the missing dates? (Please include detailed explanation)
6b. Department of Correction has not correctly credited my statutory time. Total days credited is _____ days; I think the total should be _____ days. What are the missing dates? (Please include detailed explanation)
6c. I have been given a parole eligibility date that is statutorily illegal because:
6d. Other (be specific):

7. Have any of the claims raised in this petition been previously raised at trial, direct appeal or in any previous habeas petition?  Yes  No

Explain:

**I am asking the court to:**

1. <input type="checkbox"/> Let me withdraw my guilty plea
2. <input type="checkbox"/> Order new trial or release me
3. <input type="checkbox"/> Correct my sentence _____; sentence calculation _____ by:
4. Other (specify): <i>Allow the original Habeas Petition to Proceed or reinstate Petitioners right to Appeal</i>

- 1) The habeas Court failed to appoint Counsel on habeas Conference "order to show Cause why the petition should not be dismissed," on which I asserted to the court that I lacked the skill to argue/represent myself on the matter of Cause and requested an Attorney for the proceeding.
- 2) The Court dismissed the case for lack of Jurisdiction based on incorrect information that I was seeking to challenge my 1991 conviction of which the sentence was fully ~~expired~~ in 2006, when the actual sentence did not expire until 2014.
- 3) Having no Attorney petitioner inquired of the Court about the appeals process but the Court declined to give me any any advise.
- 4) I was mailed forms for Certification to appeal and applications for Waiver fees, Cost, expenses and Appointment of Counsel. The Certification to Appeal was denied; Waiver fees and Appointment of Counsel was approved, but the Court failed to forward notice of Counsel to the Legal Service Unit of the Chief Public Defender, resulting in substantial collapse in the Appeal process and depriving petitioner of my right to an Appeal.
- 5) Petitioner also filed a Motion for Extention of Time <sup>in order</sup> to file a Motion Seeking Review of the Habeas Courts denial of Counsel, which the Court recieved and failed to schedule a hearing, thus depriving petitioner due process.

Inmate No.: 165217

Do not answer question 8 on the same petition with any claim under question 5 and/or question 6. Please use a separate petition to raise any claim under Question 8. Answering Question 8 on the same petition with any other claim may result in its being returned to you and/or substantial delay.

Please check all that apply. You must state facts supporting each claim. Use additional pages if necessary. Any false statement in this petition could result in a conviction for false statement (G.G.S. 53a-157).

8. This petition claims that my conditions of confinement are illegal because:

8a. Prison hearing on: discipline ___ ; parole ___ ; other (specify) ___ being denied or is improper because:
8b. The conditions here are inhumane or dangerous to me because:
8c. The medical ___ ; drug/ alcohol ___ ; dental ___ ; mental health treatment program ___ here is:
8d. A correction officer ___ ; inmate ___ ; other person (specify) _____, named _____ has done the following:
8e. Other (be specific or use this space to complete above answers if needed):
8f. State all facts and details regarding your claim:

I am asking the court to:

1. <input type="checkbox"/> Correct the institutional condition complained of
2. Other (specify) :

Inmate No.: 165217

OATH

I, Marlon Symms solemnly and sincerely affirm and declare that the statements contained herein are true to the best of my knowledge and belief, upon the pains and penalties of perjury or false statement.

Marlon Symms  
Signature of Petitioner

State of Connecticut, County of Hartford, being duly sworn, states that the above information is true to the best of his or her knowledge.

5/22/15  
Date Notarized

[Signature]  
Notary Public  
Commissioner of the Court/  
Paralegal/Investigator (per C.G.S. 1-24)

6/30/17  
Date my commission expires

Inmate No.:

**REQUEST FOR APPOINTMENT OF COUNSEL**

(Counsel will not be appointed for claims under question 8)

I do  do not  want an attorney to represent me in this claim.

7/2/15  
Date signed

Marlon Syms  
Signature of Petitioner

**APPLICATION FOR WAIVER OF FEES**

I, Marlon Syms, the petitioner herein, am without funds and am unable to pay court fees and costs. I have \$ 2.50 in my prison account and total assets valued at \$ 00-00. I ask the court to waive fees and costs having to do with this petition. I, Marlon Syms, further understand that any false statement in this petition could result in a conviction for false statement (C.G.S. 53a-157).

Marlon Syms  
Signature of Petitioner

State of Connecticut, County of Hartford, being duly sworn, states that the above information is true to the best of his or her knowledge.

7/2/15  
Date Notarized

[Signature]  
Notary Public  
Commissioner of the Court/  
Paralegal/Investigator (per C.G.S. 9-24)

2015 JUL 27 PM 2 58  
G.A. 19

STATE OF CONNECTICUT  
SUPERIOR COURT

6/30/17  
Date my commission expires

ORDER: GRANTED / DENIED scram  
BY THE COURT

[Signature] 7-30-15  
JUDGE / CLERK DATE

NOTE: THIS PETITION MUST BE SIGNED AND NOTARIZED ON PAGE 5 AND PAGE 6 OR THIS PETITION WILL BE REJECTED AND RETURNED TO YOU BY THE CLERK.

DOCKET NO: TSRCV154007376S

SYMS, MARLON #165217  
V.  
WARDEN, STATE PRISON

SUPERIOR COURT

JUDICIAL DISTRICT OF TOLLAND  
AT SOMERS

ORDER 431663

1/31/2019

ORDER

The following order is entered in the above matter:

ORDER:

NOTICE OF DISMISSAL PURSUANT TO PRACTICE BOOK §23-29

Upon review of the complain, the above-titled matter is DISMISSED pursuant to Practice Book §23-29, in that:

(1) The court lacks jurisdiction, because the claims asserted in the operative petition (filed 7-25-2015) fail to assert claim relating to any protected liberty interest over which the habeas court has jurisdiction, but instead asserts claims solely challenging the legality of a prior habeas court's rulings.

Judicial Notice (JDNO) was sent regarding this order.

431663

Judge: JOHN M NEWSON

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

Sent by mail 2/4/2019  
with return & Appico  
marlon syms # 165217  
Zingaro & Cretella, LLC

**NOTICE OF APPEAL PROCEDURES  
(HABEAS CORPUS)**

JD-CR-84 Rev. 8-12  
C.G.S. §§ 52-259, 52-259b, 52-470  
Pr. Bk. Sec. 43-30, 63-1, 63-5, 63-6, 63-7, 63-8, 66-1

STATE OF CONNECTICUT  
SUPERIOR COURT  
www.jud.ct.gov



Judicial District of <u>Tolland At Rockville</u>	Date of decision <u>January 31, 2019</u>	Docket number <u>T8RCV1540073765</u>
Name of petitioner <u>Marlon Syms</u>	Name of respondent <u>Kelly A. Masi, CSAO-Civil Litigation</u>	

1. Before you can appeal to the Connecticut Appellate Court from the decision on your habeas corpus petition, you must: **Within 10 days from the date of decision**, file a request with either the judge who decided the case, or if that judge is not available, to the judge of the Superior Court designated by the Chief Court Administrator, to certify that a question is involved in the decision which ought to be reviewed by the Appellate Court. If you want to appeal, you may use the bottom part of this form (*Petition for Certification - Habeas Corpus*) to make your request. (Connecticut General Statutes, Section 52-470).
2. **Within 20 (twenty) days from the issuance of the notice to you** on the petition for certification ("date notice issued" on the back or page 2 of this form), you have a right to file an appeal with the clerk of this court. (Connecticut Practice Book Sections 63-1, 80-1). The court rule concerning extensions of this 20-day appeal period is printed on the back/page 2 of this form.
3. You must pay the entry fee of \$250.00 when you appeal; and the court may order that you give security for costs unless the court says that you do not have to under the next section. (Connecticut Practice Book Section 63-5; Connecticut General Statutes Section 52-259).

4. If you want to appeal, but you cannot pay the fees, costs and expenses listed in item 3 or you cannot afford to pay for a lawyer, you have a right, **before the 20-day period for appeal stated in item 2 is over**, to ask the court to (1) appoint a lawyer for you and (2) allow you to appeal without paying the fees, costs and expenses. Your request must be under oath and state the basis on which you plan to appeal and the facts of your financial situation. You may use the attached form, JD-CR-73, to make this request. (Connecticut Practice Book, Sections 63-6 and 63-7, Connecticut General Statutes, Section 52-259b).

If you ask to not have to pay the fees, costs and expenses, or you ask the court to appoint an attorney for you and the court denies your request, but the judge certifies that a question is involved in the decision which ought to be reviewed by the Appellate Court, you or a lawyer acting for you, must file your appeal and pay the expenses listed in item 3 within 20 days from the issuance of the notice to you that your request for appointment of an attorney or waiver of fees, costs and expenses was denied. (Connecticut Practice Book, Section 63-1).

STATE OF CONNECTICUT  
 SUPERIOR COURT  
 2019 FEB 13 PM 2:08  
 www.jud.ct.gov

STATE OF CONNECTICUT  
SUPERIOR COURT  
www.jud.ct.gov



**PETITION FOR CERTIFICATION  
(HABEAS CORPUS)**

JD-CR-84A Rev. 8-12  
C.G.S. 52-470, Pr. Bk. 80-1

Judicial District of <u>Tolland At Rockville</u>	Date of decision <u>January 31, 2019</u>	Docket number <u>T5RCV1540073765</u>
Name of petitioner <u>Marlon Syms</u>	Name of respondent <u>Kelly A. Masi, CSAO, Civil Litigation</u>	

To: *(fill in the name of the trial Judge)* Judge John M. Newson, who decided case or, if the judge is not available, to the judge of the Superior Court designated by the Chief Court Administrator to certify this matter.

I request a certification that a question is involved in the decision on my habeas corpus petition which ought to be reviewed by the Connecticut Appellate Court. The grounds for my request for certification are:

- written in the Application for Waiver of Fees, Costs and Expenses and Appointment of Counsel on Appeal (Form JD-CR-73), which I am submitting with this petition.
- (Specify grounds, attach additional sheets if necessary) Did claims of petitioner's Habeas Petition (filed 7-25-15) assert protected liberty interest of which habeas court had jurisdiction?

**NOTICE:** This petition must be made within 10 days from the date of decision and sent to the clerk of the Superior Court for the Judicial District named above.

Signed Marlon Syms  
(Petitioner)

(See back/page 2 for certification)

109.00  
HCKLEY  
m

**Sec. 66-1. Extension of Time**

(a) Except as otherwise provided in these rules, the judge who tried the case may, for good cause shown, extend the time limit provided for filing the appeal, except that such extension shall be of no effect if the time within which the appeal must be taken is set by statute and is a time limit that the legislature intended as a limit on the subject matter jurisdiction of the court to which the appeal is taken. In no event shall the trial judge extend the time for filing the appeal to a date which is more than twenty days from the expiration date of the appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, the party seeking to appeal shall have no less than ten days from issuance of notice of denial of the motion to file the appeal.

For extensions of time to file a cross appeal, see Section 61-8; to file a petition for certification to the supreme court, see Section 84-7; to file a petition for certification to the appellate court, see Section 81-5.

(b) If an appeal has been filed, the time provided for taking any step necessary to prosecute or to defend the appeal may be extended by the court in which the appeal is pending.

(c) (1) Extensions shall be granted only upon a written motion filed with the clerk of the trial court, in the case of a preappeal motion, and with the appellate clerk, in the case of a postappeal motion. The motion, only an original of which need be filed, should set forth the reason for the requested extension and shall be accompanied by a certification that complies with Section 62-7. An attorney filing such a motion on a client's behalf shall also indicate that a copy of the motion has been mailed to each of his or her clients who are parties to the appeal. The moving party shall also include a statement as to whether the other parties consent or object to the motion. A motion for extension of time to file a brief must

specify the current status of the brief or preparations therefor, indicate the estimated date of completion, and, in criminal cases, state whether the defendant is incarcerated as a result of the proceeding in which the appeal has been taken.

(2) The appellate clerk is authorized to grant or to deny motions for extension of time promptly upon their filing. Motions for extension of time to complete any step necessary to prosecute or to defend the appeal, to move for or to oppose a motion for reconsideration, or to petition for or to oppose a petition for certification will not be granted except for good cause. Claims of good cause shall be raised promptly after the cause arises.

(3) An opposing party who objects to a motion for extension of time filed pursuant to subsection (b) of this section shall file an objection with reasons in support thereof with the appellate clerk within five days from the filing of the motion.

(4) A motion for extension of time shall be filed at least ten days before the expiration of the time limit sought to be extended or, if the cause for such extension arises during the ten day period, as soon as reasonably possible after such cause has arisen. No motion under this rule shall be granted unless it is filed before the time limit sought to be extended by such motion has expired.

(5) Any action by the trial court judge pursuant to subsection (a) of this section or the appellate clerk pursuant to subsection (c) (2) of this section is reviewable pursuant to Section 66-6.

(6) Postappeal motions for extension of time may be filed, signed or verified by electronic means that comply with procedures and technical standards set forth on the judicial branch website. A paper filed by electronic means in compliance with such procedures and standards constitutes a written paper for the purpose of applying these rules. Service and proof of service shall be made pursuant to Sections 10-13, 10-14 and 62-7.

**Certification And Notice**



It is certified that a question is involved in the decision on the petition for habeas corpus which ought to be reviewed by the Appellate Court and the Petition for Certification is granted.

The Petition for Certification is denied.

By the Court (Print or type name of Judge) Newson, J.	On (Date) 2/20/19	Signed (Judge, Assistant Clerk) (Newson, J.)	Date notice issued 2/20/19
--	----------------------	---	-------------------------------

To:   
Name and address of petitioner

Copies mailed to  
Marlon Syms  
Eugene Zingaro  
Kelly A Masi

Scanned and emailed to  
Jennifer Bourn  
Tina Nelson

**APPEAL**     **JOINT APPEAL**     **CROSS APPEAL**     **AMENDED APPEAL**     **CORRECTED FORM**

JD-SC-33 Rev. 11-17  
P.B. Sections 3-8, 60-7, 60-8, 62-7, 62-8, 63-3, 63-4, 63-10, 72-3  
C.G.S. Sections 31-301b, 51-197f, 52-470

All appeals must be filed electronically unless an exemption from the requirements of electronic filing has been granted or you are an incarcerated self-represented party. For further information about e-filing or this form, see the Appeal Instructions, form JD-SC-34.

To Supreme Court     To Appellate Court

Name of case (State full name of case)  
**SYMS, MARLON #165217 v. WARDEN, STATE PRISON**  
Type of appellate matter (If a writ of error, the writ and the signed marshal's return must be filed on the same business day as this form. See Practice Book Section 72-3.)

**Appeal**

<b>Trial Court History</b>	Tried to <b>Court</b>	Trial court location <b>20 PARK STREET Rockville CT 06066</b>		
	Trial court judges being appealed <b>HON. JOHN M. NEWSON</b>	List all trial court docket numbers, including location prefixes <b>TSR-CV-15-4007376-S</b>		
	All other trial court judges who were involved with the case <b>HON. DAWNE G. WESTBROOK Continued</b>	Judgment for (Where there are multiple parties, specify those for whom judgment was rendered) <b>WARDEN, STATE PRISON</b>		
	Date of judgment(s) or decision(s) being appealed <b>01/31/2019</b>	Date of issuance of notice on any order on any motion that would render judgment ineffective	Date for filing appeal extended to	
	Case type <b>Civil</b>	<input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Order of Temporary Custody <input type="checkbox"/> Other		
For Civil/Family Case Types, Major/Minor code: <b>M30</b>				

**Appeal**

Appeal filed by (Party name(s))  
**MARLON SYMS**

From (the action that constitutes the appealable judgment or decision)  
**denial of petitioner's petition for certification to appeal and denial of petitioner's writ of habeas corpus**

If this appeal is taken by the State of Connecticut, provide the name of the judge who granted permission to appeal and the date of the order

Statutory Basis for Appeal to Supreme Court

By (Signature of counsel of record) ▶ <b>423253</b>	Telephone number <b>860-566-1345</b>	Fax number <b>860-566-1408</b>	Juris number (If applicable) <b>423253</b>
--	---	-----------------------------------	---

**Appearance**

Type name and address of counsel of record filing this appellate matter (This is your appearance; see Practice Book Section 62-8)  
**CHIEF PUBLIC DEFENDER-LSU-HARTFORD CHF PUBLIC DEF-HARTFORD  
330 MAIN STREET 2ND FLR HARTFORD CT 06106**

E-mail address  
**jennifer.bourn@jud.ct.gov**

"X" one if applicable  
 Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court.  
 Counsel or self-represented party who files this appeal is appearing in place of:

Name of counsel of record <b>Zingaro &amp; Cretella &amp; all previous counsel of r</b>	Juris number (If applicable) <b>419037</b>
--	---

**Certification**

I certify that a copy of the appeal form I am filing will immediately be delivered to each other counsel of record and I have included their names, addresses, e-mail addresses and telephone numbers; the appeal form has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the appeal form complies with all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3.

Date to be delivered **04/08/2019**

If you have an exemption from e-filing under Practice Book Section 60-8, attach a list with the name, address, e-mail address, and telephone number of each counsel of record and the address where the copy was delivered.

If this appeal is a criminal or habeas corpus matter, I certify that a copy of this appeal form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered **04/08/2019**

Signed (Counsel of record) ▶ <b>423253</b>	Date signed <b>04/08/2019</b>
---	----------------------------------

**Required Documents**

To be filed with the Appellate Clerk within ten days of the filing of the appeal, if applicable. See Practice Book Section 63-4.

1. Preliminary Statement of the Issues	4. Statement for Preargument Conference (form JD-SC-28A)
2. Court Reporter's Acknowledgment or Certificate that no transcript is necessary	5. Constitutionality Notice
3. Docketing Statement	6. Sealing Order form, if any

Entry Fee Paid     No Fees Required     Fees, Costs, and Security waived by Judge (enter Judge's name below)

Judge <b>Newson</b>	Date waived <b>03/19/2019</b>	<b>Court Use Only</b> Date and time filed
<input type="button" value="Print Form"/> <input type="button" value="Reset Form"/>		

111.00  
APPLAT  
X

## Appeal Form (continued)

**CASE NAME:**

SYMS, MARLON #165217 v. WARDEN, STATE PRISON

**OTHER TRIAL COURT JUDGES**

HON. DAWNE G. WESTBROOK

HON. HUNCHU KWAK

### Parties & Appearances

**PARTY/PARTIES INITIATING THE APPEAL**

**MARLON SYMS**

Juris: 419037 ZINGARO & CRETELLA LLC  
1087 BROAD STREET  
BRIDGEPORT, CT 06604  
Phone: (203) 367-0442 Fax: (203) 367-0493  
Email: jessica@zandc-law.com

Juris: 401721 CHIEF PUBLIC DEFENDER-LSU-HARTFORD  
CHF PUBLIC DEF-HARTFORD  
330 MAIN STREET 2ND FLR  
HARTFORD, CT 06106  
Phone: (860) 566-1345 Fax: (860) 566-1408  
Email: jennifer.bourn@jud.ct.gov

**ALL OTHER PARTIES AND APPEARANCES**

WARDEN, STATE PRISON - Judgment For

Juris: 420492 KELLY A MASI  
CSAO-CIVIL LITIGATION  
300 CORPORATE PLACE  
ROCKY HILL, CT 06067  
Phone: (860) 515-5250 Fax: (860) 515-5266  
Email: kelly.masi@ct.gov

A.C. 42784

MARLON SYMS

v.

COMMISSIONER OF CORRECTION

APPELLATE COURT

STATE OF CONNECTICUT

APRIL 16, 2019

**DOCKETING STATEMENT**

Pursuant to Practice Book § 63-4 (a) (3), the petitioner-appellant submits the following information:

(A) Parties:

Commissioner of Correction  
State of Connecticut  
24 Wolcott Hill Road  
Wethersfield, CT 06109

Kelly A. Masi (respondent's trial counsel)  
Juris No. 420492  
Office of the Chief State's Attorney, Civil Litigation  
300 Corporate Place  
Rocky Hill, CT 06067  
Tel. (860) 258-5887, Fax (860) 258-5968  
[tkelly.masi@ct.gov](mailto:tkelly.masi@ct.gov)

Office of the Chief State's Attorney - Appellate  
Juris No. 401795  
300 Corporate Place  
Rocky Hill, CT 06067  
Tel. (860) 258-5807, Fax (860) 258-5828  
Email: [DCJ.OCSA.Appellate@ct.gov](mailto:DCJ.OCSA.Appellate@ct.gov)

Marlon Syms, #165217 (petitioner-appellant)  
Osborn Correctional Institution  
335 Bilton Road  
Somers, CT 06071

Jennifer Bourn (appellate counsel)  
Supervisory Assistant Public Defender  
Office of the Chief Public Defender  
Legal Services Unit – Hartford  
330 Main Street, 2nd Fl.

Hartford, CT 06106  
Tel. (860) 566-1345, Fax (860) 566-1408  
[Jennifer.Bourn@jud.ct.gov](mailto:Jennifer.Bourn@jud.ct.gov)

Zingaro & Cretella, LLC (trial attorney)  
Juris No. 419037  
1087 Broad Street  
Bridgeport, CT 06604  
Tel. (203) 367-0442, Fax (203) 367-0493  
Email: [Don@zandc-law.com](mailto:Don@zandc-law.com)

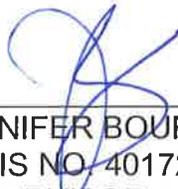
(B) None known or reasonably ascertainable, except parties to the appeal, trial and appellate counsel for the state and the petitioner and judges of record.

(C) There were exhibits in the trial court.

(D) Following a jury trial, the petitioner was convicted in docket number HHD-CR91-0400616-T of two counts of kidnapping in the first degree in violation of Conn. Gen. Stat. § 53a-92, two counts of robbery in the first degree in violation of Conn. Gen. Stat. § 53a-134 (a) (4), and one count of robbery in the second degree in violation of Conn. Gen. Stat. § 53a-102. He was sentenced on December 5, 1991, (*Corrigan, J.*), to twenty years of incarceration. The petitioner is incarcerated.

Respectfully submitted,  
PETITIONER-APPELLANT  
MARLON SYMS

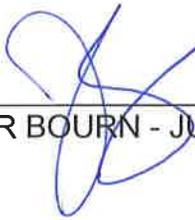
BY: \_\_\_\_\_

  
JENNIFER BOURN  
JURIS NO. 401721  
SUPERVISORY ASST. PUBLIC DEFENDER  
OFFICE OF THE CHIEF PUBLIC DEFENDER  
LEGAL SERVICES UNIT – HARTFORD  
330 MAIN STREET, 2ND FL.  
HARTFORD, CT 06106  
TEL. (860) 566-1345/FAX (860) 566-1408  
[Jennifer.Bourn@jud.ct.gov](mailto:Jennifer.Bourn@jud.ct.gov)

HIS ATTORNEY

### CERTIFICATION

Pursuant to P.B. §§ 62-7 and 66-3 it is hereby certified that a copy of the foregoing was sent electronically this 16th day of April, 2019 to: Bruce R. Lockwood , Juris No. 401795, Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, tel. (860) 258-5807, fax (860) 258-5828, email: [DCJ.OCSA.Appellate@ct.gov](mailto:DCJ.OCSA.Appellate@ct.gov), and was sent by mail to the petitioner, Marlon Syms, #165217, Osborn Correctional Institution , 335 Bilton Road , Somers, CT 06071. It is also certified that this document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law. It is also certified that this document complies with all applicable rules of appellate procedure.

  
\_\_\_\_\_  
JENNIFER BOURN - JURIS NO. 401721

**PETITIONER'S APPENDIX, PART II**

STATE OF CONNECTICUT

DOCKET NUMBER: TSR CV-15-4007376

Marlon Symus

V.

WARDEN

SUPERIOR COURT  
JUDICIAL DISTRICT OF TOLLAND  
AT ROCKVILLE  
DATE: 3/2/18

HABEAS - SCHEDULING ORDER

Unless otherwise ordered by the Court, the following schedule shall enter in accordance with Practice Book § 23-34 and become an order of the Court:

- 1) Amended Petition due: 1/14/19. (One year prior to trial date)  
Failure to file by the date above constitutes notice that an Amended Petition will not be filed. In which case, the Respondent is ordered to file a Return forthwith.
- 2) Return due: 2/11/19. (30 days from the date amended petition filed)
- 3) Reply due: 3/11/19. (30 days from the date return filed if special defenses raised)
- 4) Certificate of Closed Pleadings no later than: 3/25/19. (10 days from the date reply is or would be due if special defenses not raised in return)
- 5) Any Motion for Summary Judgment, Motion to Dismiss, or Motion filed pursuant to CGS §52-470 shall be filed prior to: 6/17/19 (Six months prior to the date of trial)
- 6) Simultaneous Witness Lists due: : 6/17/19 (Six months prior to the date of trial)  
(Note: Parties are expected to provide written notice to professional witnesses at least a month in advance of trial date to ensure their availability)
- 7) Disclosure of Expert Witnesses: Petitioner due: 6/17/19 (Six months prior to the date of trial);  
Respondent due: 7/1/19 (Two weeks later)
- 8) Any requests for Audiovisual/telephone witness testimony and/or transportation of a petitioner incarcerated out-of-state are due by : 12/9/19 (30 days prior to the date of trial)
- 9) Simultaneous Trial Briefs due: 12/30/19 (2 weeks prior to trial)  
(Note: The filing of a pretrial brief is optional, unless otherwise ordered by the court.)
- 10) Trial Date(s): 1/14/20. This case shall be claimed to the trial list.

2018 MAR 2 PM 12:41  
STATE OF CONNECTICUT  
SUPERIOR COURT  
G.A. 19

The foregoing dates are firm and may only be altered by filing a Motion to Modify the Scheduling Order. Failure to comply with this order may subject the non-complying party to any and all sanction(s) deemed necessary and appropriate by the Court and allowed by law, including dismissal.

Withdrawals and Stipulations: Will NOT be accepted unless signed by counsel and the petitioner.

[Signature]  
Petitioner's Counsel  
[Signature]  
Respondent's Counsel

jack@zawc-law.com  
Email address  
keith.mari@olgw.com  
Email address

SCHORD 105.00  
TLCLAIM 106.00

Accepted BY THE COURT, (westbrook, J)  
m. miller Adam Hart Hab  
A22

3/2/18 emailed copies sent to all parties & record

TSR-CV15-4007376-S : SUPERIOR COURT  
 MARLON SYMS #165217 : JD OF TOLLAND  
 V. : AT ROCKVILLE G.A. 19  
 WARDEN, STATE PRISON : JANUARY, 23 2019

MOTION TO WITHDRAW APPEARANCE

In that, when Zingaro and Cretella was appointed most of these assigned counsel matters, there were three associates solely dedicated to working on habeas matters;

In that these associates have since left the firm and our last remaining associate attorney, Daniel M. Baker, has accepted a position with the Public Defender's Office effective 2/1/2019;

In that, Eugene J. Zingaro, partner, is the last remaining attorney in our firm approved with the Chief Public Defender's office to work on assigned counsel appointments;

In that, with Attorney Zingaro's private caseload as well as remaining assigned counsel cases in other jurisdictions he will not have the ability to dedicate the time necessary to handle these files;

In that Rockville Superior Court is over an hour each way from our office location and Attorney's Zingaro home;

In that Attorney Zingaro has been in discussions with Alix Walmsley, head of Assigned Counsel, regarding reassignment of the cases we can no longer adequately manage;

In that, we requested that another attorney be approved to work on these files; or even to conduct out of court discovery related work and prison visits; this request was denied;

In that, Attorney Zingaro was advised not to submit any more names for consideration;

In that, Alix Walmsley has asked that we file withdrawals and have them ruled upon prior to her office re-assigning them;

Wherefore, it is respectfully requested our appearance be withdrawn on the above referenced matter and new assigned counsel be appointed by the Chief Public Defender's office.

419037  
 Eugene J. Zingaro  
 Zingaro & Cretella, LLC  
 1087 Broad Street  
 Bridgeport, CT 06604  
 Juris Number: 419037

STATE OF CONNECTICUT  
 SUPERIOR COURT  
 G.A. 19  
 2019 JAN 24 A 10:42

107.00  
 MFPWA  
 43

**ORDER**

The foregoing motion is:

**GRANTED/DENIED**

\_\_\_\_\_  
**JUDGE**

**CERTIFICATON**

This is to certify that a copy of the foregoing was sent to:

**KELLY A MASI (420492)  
CSAO-CIVIL LITIGATION  
300 CORPORATE PLACE  
ROCKY HILL, CT 06067**

**MARLON SYMS #165217  
Osborn CI  
335 Bilton Road, POB 100  
Somers, CT 06071**

**419037**  
\_\_\_\_\_  
**Eugene J. Zingaro, Esq.**

**MITTIMUS** JD-CR-38 Rev. 4-07  
 C.G.S. §§ 18-23, 18-63, 18-65, 18-65a, 18-73, 18-76,  
 18-82, 54-2a, 54-64b, 54-92a, 54-96b, 54-97, 54-98  
 Pr. Bk. Sec. 43-17 to 43-20, 44-10, 44-10A

JUDGMENT  CONTINUANCE  
 FAILURE TO MEET CONDITIONS  
 OF RELEASE UNDER 54-2a

**TO: Any Proper Officer**

**INSTRUCTIONS TO CLERK**  
 Prepare a separate Mittimus for each file.  
**TO OFFICER**  
 Original to receiving facility; return copy to court.

STATE OF CONNECTICUT  
**SUPERIOR COURT**  
 www.jud.ct.gov



DATE OF DISPOSITION  
**6/24/09**  
 DATE SENTENCE TO BEGIN  
 (If different)

DOCKET NO. <b>HHD CR08-620092-T</b>		NAME OF DEFENDANT <b>SYMS, Marlon</b>		DATE OF BIRTH <b>1/24/70</b>
NAME AND LOCATION OF RECEIVING FACILITY <b>Walker</b>		INMATE NO. (If available)	NAME AND LOCATION OF COURT <b>Part A, 101 Lafayette ST., Hartford, CT 06106</b>	
<input checked="" type="checkbox"/> CRIME(S) CONVICTED	1ST COUNT - STATUTE NO. <b>53a-134(a)(4)</b>	DATE OF OFFENSE <b>4/2/08</b>	2ND COUNT - STATUTE NO. <b>53a-48/53a-134(a)(4)</b>	DATE OF OFFENSE <b>4/2/08</b>
<input type="checkbox"/> CRIME(S) CHARGED	3RD COUNT - STATUTE NO.	DATE OF OFFENSE	4TH COUNT - STATUTE NO.	DATE OF OFFENSE
	5TH COUNT - STATUTE NO.	DATE OF OFFENSE	6TH COUNT - STATUTE NO.	DATE OF OFFENSE

JUDGMENT MITTIMUS

Whereas by a judgment of said court, said defendant was convicted of the above crime(s) and sentenced to imprisonment as follows:

COUNTS AND TERMS (If execution of portion of sentence is suspended, show only time to be served.)						TOTAL EFFECTIVE SENTENCE
First	Second	Third	Fourth	Fifth	Sixth	
14 Years	14 Years					14 Years

SPECIFY HERE ANY PERTINENT CONDITIONS, IF SENTENCES ARE CONSECUTIVE AND IF PROBATION WAS ORDERED.  
**PSI attached**  
**DNA Notice**  
**Counts are followed by 6 Years Special Parole, counts are concurrent to each other and consecutive to present sentence**  
**See attached special parole conditions**

(If a person under the age of 21 receives a reformatory sentence in accordance with section 18-65a or 18-73 of the General Statutes, in no event shall the term be longer than either the maximum term of imprisonment for the crime(s) committed or for a term of more than five (5) years.)

And said defendant pay to the State of Connecticut the amount of fines now unpaid as shown below and be committed to the above facility in default of payment of said fines. (A defendant may not be incarcerated for failing to pay fees or costs.)

COUNTS AND FINES (Show only unpaid portion of fines)						TOTAL UNPAID BALANCE
First	Second	Third	Fourth	Fifth	Sixth	
						\$0.00

The Defendant is entitled to sentence credit of \_\_\_\_\_  
 The foregoing credit includes \_\_\_\_\_ days of credit for pretrial confinement at a police or courthouse lockup.

TRANSFER OR CONTINUANCE

Whereas it is ordered that said case be continued and/or transferred for future proceedings before said court.

Defendant to appear by interactive audiovisual device. (As permitted by Practice Book §§ 44-10 and 44-10A.)

TO BE HELD AT (Name and address of court) \_\_\_\_\_

J.D. ON (Date) \_\_\_\_\_ SURETY BOND AMOUNT \_\_\_\_\_  
 G.A. \_\_\_\_\_

ORDER

BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to deliver said defendant to the custody of the Commissioner of Correction and/or the Warden or Administrator at the above facility and said Commissioner and/or Warden or Administrator is hereby commanded to receive and keep said defendant for the period fixed by said order or judgment of the court or until legally discharged, provided that when a defendant has been sentenced to a term of imprisonment and ordered to pay a fine, if the fine has not been paid by the time the sentence has been served, the defendant may not continue to be incarcerated unless the judicial authority has found that the defendant is able to pay the fine and that the defendant's nonpayment is wilful.

SIGNED (Assistant Clerk) \_\_\_\_\_ By Order of the Court \_\_\_\_\_ ON (Date) \_\_\_\_\_

RECEIVING FACILITY TIME STAMP

ACKNOWLEDGMENT OF DELIVERY OF DEFENDANT  
 I delivered said defendant into the custody of the Commissioner of Correction and/or his agent and left this mittimus with him.

NAME AND LOCATION OF RECEIVING FACILITY \_\_\_\_\_

TITLE OF DELIVERING OFFICER \_\_\_\_\_ SIGNATURE OF DELIVERING OFFICER \_\_\_\_\_ SIGNATURE OF RECEIVING OFFICER \_\_\_\_\_

# PETITION FOR WRIT OF HABEAS CORPUS

Notice – Starting October 1, 2006, A petition that challenges a conviction, confinement or other deprivation of liberty that is a result of conviction of a crime, must be filed at the Superior Court, 20 Park Street, P.O Box 980, Rockville, CT 06066. File the original and two copies with the court clerk.

If the petition raises claims based on anything *other than* a criminal conviction (such as adjudications not guilty by reason of insanity or as a juvenile) , the petition and two copies must be filed in the Judicial District where the petitioner is confined or held.

Inmate No.: 165217  
 Name of Inmate: Marlon S. Syms

FOR SUBMISSION TO SUPERIOR COURT AT:

Rockville Vernon

vs. Warden Location Cheshire CT  
900 Highland Ave. Cheshire CT.

Address: 20 PARK ST. Box 980  
Rockville, CT 06066

1. Details of conviction(s) and sentence(s) now being served:

1a.	Date of Arrest: <u>2/6/91</u>	
1b.	Location of Court: <u>Hartford Superior, 101 Lafayette St., Htfd, CT.</u>	
1c.	Sentencing Judge: <u>Corrigan</u>	
1d.	Date(s) of sentencing: <u>10/21/1991</u>	
1e.	Sentence(s) (specify individual counts): <u>Kidnapping 1st degree, 20yrs; Consp. Kidnapping 1st degree, 20yrs; Robbery 1st, 20yrs; Consp. Robbery 1st, 20yrs; Burglary 2nd, 10yrs</u> Concurrent or Consecutive: <u>CONCURRENT</u> Total effective sentence: <u>20yrs.</u>	
1f.	I <input type="checkbox"/> Plead guilty. Date of plea: _____ (or) I <input checked="" type="checkbox"/> was convicted by: a jury <input checked="" type="checkbox"/> a judge <input type="checkbox"/>	
1g.	Total time in jail before sentencing: <u>267</u> (days)	
1h.	My lawyer was: <input checked="" type="checkbox"/> A Public Defender or Special Public Defender <input type="checkbox"/> Privately retained (paid to represent you): Name(s) of your lawyer(s): <u>Margaret P. Levy</u>	

STATE OF CONNECTICUT  
 SUPERIOR COURT  
 D.A. 19  
 2011 NOV 28 A 9: 38

2. Did you apply for sentence review?  Yes  No

If yes, what result?: Withdrew

Inmate No.: 165217

3. Did you appeal your conviction?  Yes  No

3a. What issues did you appeal?: Jury instruction

3b. Did you appeal the issue you claim in this petition and, if not, why?:

NO. unrelated

3c. Result of your appeal: Affirmed

3d. The lawyer for my appeal was:  A Public Defender or Special Public Defender  
 Privately retained (paid to represent you)

Name of Appellate Attorney: SUSAN ZITSER; Douglas Nash

4. Have you filed any other habeas corpus petitions?  Yes  No

4a. In what court?: Rockville Vernon Superior Court

4b. List the docket or case numbers: CV0005959985; CV990588679S

4c. Have you raised the issue in this petition in any of the old petitions?: NO

4d. If not, why not?: these issues came afterwards

#### NOTICE

*It is not enough to make general allegations using constitutional terms such as "due process" or "cruel and unusual punishment", in fact these terms need not be used at all. You must state your claim clearly, simply and directly in language you can understand. It is not necessary to cite cases. Failure to back up your claim with understandable factual allegations could mean that a judge will deny your petition before you ever get to court. In other words, what you state here must show the judge that you really have a problem. Also, since this petition must be sworn to under oath, any false statement in it could result in a conviction for false statement (C.G.S. 53a-157).*

*This form is intended to assist you in giving enough information to the court or your attorney. You may prepare your own petition if you wish, but you must be as detailed about your claim as is this form or your petition could be returned to you.*

I have read the above notice

Marlon S. Syms

Signature of Petitioner

5. This petition claims that my conviction is illegal because:

5a. Guilty plea not voluntary:
5b. Plea bargain with prosecutor not followed by Judge:
5c. My sentence is not being calculated according to my understanding when I pleaded guilty.
5d. Sentencing illegal:
5e. Trial irregularity:
5f. My attorney did not represent me properly: <input checked="" type="checkbox"/> <i>See Attached</i>
5g. Illegal arrest, search, or advice of rights:
5h. Mental state at plea or trial was:
5i. Other (specify):

5j. State all facts and details to support your claim (use additional pages if necessary):

<i>See Attached</i>

6. This petition claims that my incarceration/sentence is illegal because:

6a. Department of Correction has not correctly credited my pre-sentence incarceration. Total days credited is _____ days; I think the total should be _____ days.
6b. Department of Correction has not correctly credited my statutory good time. Total days credited is _____ days; I think the total should be _____ days.
6c. I have been given a parole eligibility date that is illegal because:
6d. Other (be specific):
6e. State all facts and details regarding your claim:

## Answer to Habeas Corpus Question 5J:

For the following reason I present these claim of Ineffective Assistance of Trial and Habeas Corpus Attorney's:

1. Trial Attorney Margaret Levy, did not act as reasonably Competent Attorney, by failing to conduct her own independent pre-trial investigation. She caused a breakdown in the adversarial process. Attorney Levy did not interview the victim to access his version of facts and to learn the identity of anonymous person the victim adamantly claimed gave him petitioners name, which was key information leading to petitioners arrest; Nor did counsel explore alternatives legal avenues to proffer the information. Pretrial investigation into the factors of my case was vital to preparing a defence strategy which Attorney Levy fell short of. The things she would have discovered from a pretrial investigation possibly would have rendered a different result.

2. Trial Attorney Levy, failed to request the court for a continuance to have "Tone Loc" whose real name is Anthony Thompson, whose identity was disclosed during cross examination of the victim called as defence witness. Anthony Thompson was the anonymous person to supply my name to the Victim, Anthony Thompson's testimony would have revealed I was framed and part of a ploy to divert the criminal investigation away from the actual perpetrators.

### Habeas Corpus Attorney:

3. Attorney Brian Russell, did not file Motion of Discovery prior to Habeas Hearing which any reasonable competent Attorney would have, in order to learn the states case and position; because he did not he was not prepared; he was not aware of or able to thoroughly cross examine states witness, Dr. Blanchetta.

4. Attorney Russell was deficient in that he did not investigate or utilize investigative services to develop, explore, and locate potential witnesses in order to adequately tender and represent petitioners actual innocence claim; Clearly demonstrating a total absence of diligent and conscientious advocacy.

5. Attorney Russells failure to investigate and Amend petitioners issue of misidentification, and proffer ID Expert to Corroberate petitioners evidence to Actual innocence claim; where out of court photo Array was suggestive; petitioners arrest was product of misidentification, and the victim during the pretrial in court line up ID'ed someone other than the petitioner, was unreasonable. Not only would petitioners claim have benefitted from ID Expert, but for Mr. Russell error not to investigate and Amend this issue, it is the info. there from that would have shown a sufficient likelihood of producing a different outcome.

6. Attorney Russell was ineffective for failing to proffer an Expert witness, in the field of petitioners injuries, to Corroberate evidence of Sustained injuries petitioner recieved prior to when the crime was committed; that could prove petitioner did not participate in the crime.

7. Attorney Russells failure to object to respondents witness and present Expert witness for the petitioner; allowed the respondents witness, Dr. Blancette, (Who is not an Expert in the field of petitioners injuries) testimony to go unrebutted or uncontested, which the court found credible and heavily relied and based its findings and decision on. Had Attorney Russell questioned Dr. Blancettes credentials, and Proffered Expert witness in the field of petitioners injury; given Alibi testimony and evidence concerning petitioners injuries and condition the day of said crime; expert testimony would have proven Dr. Blancettes testimony unqualified and inaccurate, while providing invaluable clear and convincing corroborated proof, that petitioner while injured, would not been able to commit alleged offence in the manner charged, ~~and~~ the victim could not have <sup>not</sup> clearly taking notice of petitioners altered movements due to injury; Further satisfying Petitioners claim of Actual innocence; that no reasonable fact finder would have been able to find him guilty of the crime.

8. The petitioners two Counts of Kidnapping should be reviewed and Vacated in view of Lurtsema decision. It will be seen that the Charges of Kidnapping was not committed by intended meaning of law as set forth in the Lurtsema ~~decision~~ <sup>decision</sup>.

Inmate No.:

Do not answer question 7 on the same petition with any claim under question 5 and/or question 6. Please use a separate petition to raise any claim under Question 7. Answering Question 7 on the same petition with any other claim may result in its being returned to you and/or substantial delay.

7. This petition claims that my incarceration/sentence is illegal because:

7a. Prison hearing on: discipline \_\_\_ ; parole \_\_\_ ; other (specify) \_\_\_ being denied or is improper because:

7b. The conditions here are inhumane or dangerous to me because:

7c. The medical \_\_\_ ; drug/ alcohol \_\_\_ ; dental \_\_\_ ; mental health treatment program \_\_\_ here is:

7d. A corrections officer \_\_\_ ; inmate \_\_\_ ; other person (specify) \_\_\_\_\_, named \_\_\_\_\_ has done the following:

7e. Other (be specific or use this space to complete above answers if needed):

7f. State all facts and details regarding your claim:

I am asking the court to:

1.  Let me withdraw my guilty plea

2.  Order new trial or release me

3.  Correct the institutional condition complained of

4.  Correct my sentence \_\_\_ ; sentence calculation \_\_\_ by: \_\_\_\_\_

5. Other (specify) :

**REQUEST FOR APPOINTMENT OF COUNSEL**

(Counsel will not be appointed for claims under question 2011 NOV 28 9:39)

I do  (do not ) want an attorney to represent me in this claim.

11/2/11  
Date signed

[Signature]  
Signature of Petitioner

STATE OF CONNECTICUT  
SUPERIOR COURT  
G.A. 19

State of Connecticut, County of New Haven, being duly sworn, states that the above information is true to the best of his or her knowledge.

11-2-11  
Date Notarized

[Signature]  
Notary Public

Danya Baker  
NOTARY PUBLIC  
My Commission Expires 1/31/2012

**APPLICATION FOR WAIVER OF FEES**

I, Marklon Sims, the petitioner herein, am without funds and am unable to pay court fees and costs or to engage an attorney. I have \$ \_\_\_\_\_ in my prison account and total assets valued at \$ 00.00. I ask the court to waive fees and cost having to do with this petition.

[Signature]  
Signature of Petitioner

State of Connecticut, County of New Haven, being duly sworn, states that the above information is true to the best of his or her knowledge.

Nov. 2 2011  
Date Notarized

[Signature]  
Notary Public

Danya Baker  
NOTARY PUBLIC  
My Commission Expires 1/31/2012

1 NO: CV12-4004490 : SUPERIOR COURT  
2 MARLON SYMS : JUDICIAL DISTRICT  
3 : OF TOLLAND  
4 v. : AT ROCKVILLE, CONNECTICUT  
5 WARDEN : SEPTEMBER 14, 2012

6  
7 H A B E A S

8 BEFORE THE HONORABLE ELLIOT N. SOLOMON, JUDGE  
9

10  
11 A P P E A R A N C E S :

12 Representing the Petitioner:

13 MARLON SYMS  
14 Self-Represented Party

15  
16 Representing the Respondent:

17 ATTORNEY KELLY A. MASI  
18 Assistant State's Attorney  
19 300 Corporate Place  
20 Rocky Hill, Connecticut 06067

21 Reported By:  
22 Rebecca J. Livingstone  
23 Transcribed By:  
24 Rebecca J. Livingstone  
25 Certified Court Reporter  
26 20 Park Street  
27 Rockville, Connecticut 06066

1 THE COURT: Let's take up the Syms matter  
2 first. I assume there's nobody here on behalf of  
3 the warden; is that correct.

4 THE CLERK: Judge, it's actually Kelly Masi.  
5 She's on trial. I spoke to her yesterday. She  
6 indicated that she didn't really have much input  
7 other than the fact that he was discharged from his  
8 sentence.

9 THE COURT: Okay. Mr. Syms, is that you on  
10 the other end of the video here?

11 MR. SYMS: Yes, it is.

12 THE COURT: Okay. Let the record reflect that  
13 I can see you as well. You're here today by means  
14 of video conference because you filed A habeas  
15 corpus petition with respect to a prior conviction,  
16 specifically, a conviction that occurred it appears  
17 in February of 1991, and the matter was referred to  
18 the Office of the Chief Public Defender. They have  
19 sent it back indicating that you've been fully  
20 discharged from the sentence that was imposed on  
21 that conviction, and, therefore, they do not  
22 want -- and I suspect you've been notified of  
23 this -- they do not want to be appointed in  
24 connection with the matter because the matter  
25 should be dismissed.

26 My clerk, who is sitting over in the spectator  
27 area, recently -- or just told me a moment ago that

1 the attorney for the warden is not going to be here  
 2 because she also indicates that you've been  
 3 discharged from your sentence, and what I mean by  
 4 discharged, I know that you're currently in a  
 5 correctional facility, but the sentence that was  
 6 imposed on you in connection with the matter which  
 7 is the subject of the habeas, has been fully  
 8 served. So she says that is the case, that the  
 9 public defenders are correct; it's been fully  
 10 served, and, therefore, she doesn't need to be  
 11 here. She feels the matter should be dismissed.

12 I set this matter up for today on an order to  
 13 show cause why it shouldn't be dismissed because  
 14 your sentence has been fully served. Do you  
 15 disagree that your sentence has been fully served?

16 MR. SYMS: No, I don't disagree that the  
 17 sentence has been fully served.

18 THE COURT: So are you disagreeing that the  
 19 matter should be dismissed?

20 MR. SYMS: Yes, I am.

21 THE COURT: Why?

22 MR. SYMS: I have some things written down.  
 23 May I read them?

24 THE COURT: Yes. Absolutely.

25 MR. SYMS: I am asserting my legal right under  
 26 the law to challenge my conviction and correct a  
 27 miscarriage of justice involving said conviction,

1           which, according to Sibron versus State of  
2           New York, 392 U.S. page 40, cannot be foreclosed on  
3           because the service of the sentence has expired,  
4           especially where one continues to suffer collateral  
5           legal consequences from that conviction.

6           Like it to Sibron, I, too, am subject to all  
7           of the collateral penalties of which Sibron was  
8           liable. My current sentence was higher, a direct  
9           consequence of mentioning conviction. Again,  
10          asserting Sibron versus State of New York, my  
11          constitutional and legal rights to present  
12          exculpatory evidence to prove actual innocence of  
13          wrongful conviction should not be foreclosed on due  
14          to the expiration of the sentence of that  
15          conviction. And consideration should not only be  
16          linked to the imposition of collateral legal  
17          consequences, but should also factor in the  
18          seriousness of wrongful conviction.

19          I did not file the petition before the  
20          expiration of my sentence due to erroneous  
21          information from appointed habeas counsel Brian  
22          Russell that my release from prison concludes my  
23          opportunities to challenge my conviction, which was  
24          a few weeks before my release.

25          In State versus Luurtsema, SC18383, a case  
26          that was decided in 2010 after my sentence had  
27          expired, stated legal precedence for retroactive

1 use to collateral attack a conviction, having like  
2 issues, as is the case involving the conviction I  
3 am endeavoring to challenge.

4 For these reasons, I should be protected by  
5 and entitled to the laws and their rights to  
6 challenge my conviction, prove my innocence, and to  
7 correct the miscarriages of justice, which is the  
8 substance of the pending habeas petition in  
9 question that should not be dismissed, but rather  
10 entitled to adjudication by this Court.

11 As an alternative argument, if it's decided I  
12 am barred from challenging the conviction of this  
13 case due to the expiration of the sentence, I ask  
14 this Court to protect me from double standard and  
15 send me back to the state court for resentencing on  
16 the current sentence I am now serving that was  
17 enhanced because of the prior conviction and direct  
18 the Court to resentence me without relying on that  
19 conviction for the same reason I am unable to  
20 challenge it due to the expiration of that  
21 sentence.

22 THE COURT: What is the legal the collateral  
23 consequence that you're talking about?

24 MR. SYMS: The legal collateral consequence,  
25 one being that my sentence was enhanced.

26 THE COURT: What do you mean enhanced?

27 MR. SYMS: With this current sentence.

1 THE COURT: What do you mean enhanced? What  
2 do you mean enhanced?

3 MR. SYMS: It wasn't enhanced. My sentence  
4 was higher on this sentence considering the past  
5 conviction.

6 THE COURT: So in other words, you had a  
7 record, and the judge considered your record, and  
8 one of the convictions that he considered was this  
9 conviction here.

10 MR. SYMS: Well, he directly considered this  
11 conviction here.

12 THE COURT: He would have considered your  
13 entire record. How many convictions did you have,  
14 by the way, before the sentence that brings you  
15 here today?

16 MR. SYMS: I have some convictions dated way  
17 back; however, none of them were violent. And  
18 again, the judge first directly implicated this  
19 conviction in word.

20 THE COURT: Yep. All right.

21 MR. SYMS: And date.

22 THE COURT: What other collateral --

23 MR. SYMS: Other collateral consequences would  
24 be me, again, the conviction being held against me  
25 if anything credit-wise, if my credibility has --  
26 if I was to be called to testify in any other  
27 cases, minus such things as, you know, rent an

1 apartment, employment, etc. I will be faced with  
2 clutter consequences due to this conviction.

3 THE COURT: Well, there is a provision that  
4 relates to the issue of collateral consequence, but  
5 unfortunately, sir, the kind of consequences that  
6 you're talking about are not the ones that the law  
7 contemplates.

8 Quite frankly, almost anybody who is in the  
9 situation you're in right now where you served all  
10 of your time, you've been discharged from your  
11 sentence, could come in and make all the same  
12 arguments you're making. It's going to affect me  
13 in my life. It's going to affect me in my  
14 credibility, it's going to affect me in my ability  
15 to rent an apartment, and sadly, most of these  
16 people can even make the argument it affected me  
17 because I was convicted later on of another crime,  
18 and as a result of that, the judge had the  
19 conviction I want to challenge in front of him and  
20 considered that. Most people I get in front of me  
21 would be on discharge or fully completed sentences  
22 and subsequently been convicted elsewhere.

23 So the collateral consequence that you're  
24 talking about is not one which is recognizable  
25 under the law, and I am going, in light of the fact  
26 that there's no disagreement that the sentence has  
27 been fully served and that you've been discharged

1 from the sentence -- I understand why you want to  
2 attack it -- but I'm not going to allow you to  
3 pursue it further, sir. Besides, I note here, even  
4 in your petition, you've previously taken what, two  
5 prior habeases on this case as well, correct? 99  
6 and 05?

7 MR. SYMS: Possibly, yes.

8 THE COURT: All right. I'm going to dismiss  
9 the matter based upon the agreement of all  
10 concerned that you fully discharged the sentence.  
11 I don't think any of the consequences that you're  
12 talking about rise to the level of legally  
13 recognizable collateral consequences. So the  
14 matter is dismissed. All right.

15 I hope the rest of your time goes as easy as  
16 possible on you, sir.

17 MR. SYMS: I have a question.

18 THE COURT: Yes, sir.

19 MR. SYMS: You said there was no legal  
20 grounds, so you said my case is not related -- this  
21 issue is not related to the Sibron issue, that  
22 clearly states that this issue can't be -- I can't  
23 challenge my conviction, and I can't be foreclosed  
24 on?

25 THE COURT: Yes.

26 MR. SYMS: Because I suffer the same  
27 collateral consequences.

1 THE COURT: Because the consequences that you  
2 discussed are not the types of consequences which  
3 our courts recognize as sufficient to allow you to  
4 attack a conviction where the sentence has been  
5 fully discharged.

6 Not every consequence of a conviction is  
7 legally relevant, and the consequences that you've  
8 indicated to me are of concern to you are not  
9 legally sufficient to warrant this Court's allowing  
10 you to pursue a fully discharged sentence. So I'm  
11 not going to let you do it.

12 MR. SYMS: Does this automatically go up for  
13 appeal?

14 THE COURT: No.

15 MR. SYMS: There's no appeal to this?

16 THE COURT: You can appeal it. I don't do  
17 anything about it. I just render my ruling.

18 MR. SYMS: Okay. So what -- how do I go about  
19 the appeal process?

20 THE COURT: That I can't advise you about.  
21 You're going to have to consult with counsel.  
22 Maybe the public defenders will talk to you about  
23 this. I don't know. I mean they're the ones that  
24 sent it back saying there's nothing to talk about  
25 here. Maybe you can convince them that I shouldn't  
26 have dismissed the petition, but I'm dismissing the  
27 petition. I cannot advise you as to the legal

1 process. I'm not allowed to advise anybody as to  
2 the law as a judge, sir. Okay?

3 MR. SYMS: Well, considering that -- can the  
4 record reflect that I was brought here to do this  
5 hearing without a lawyer, although I didn't want  
6 to?

7 THE COURT: Yes.

8 MR. SYMS: Against --

9 THE COURT: The record's going to reflect that  
10 because again, the Office of the Chief Public  
11 Defender is not appointing an attorney. They do  
12 not feel an attorney is warranted in this case, nor  
13 do I. It's a fully discharged sentence. I  
14 understand that. I will indicate to you that some  
15 paperwork, because this is a judgment, paperwork  
16 will be sent to you regarding your appellate rights  
17 and a petition for certification to appeal. You  
18 can review that paperwork and submit it, and then  
19 we will process it. Okay? So you will get more  
20 paperwork on your appellate rights. Okay?

21 MR. SYMS: Thank you.

22 THE COURT: All right. Thank you. You have a  
23 good day, sir.

24 MR. SYMS: You, too, sir.

25 THE COURT: Thank you.

26 (Matter concluded.)

27

1 NO: CV12-4004490 : SUPERIOR COURT  
 2 MARLON SYMS : JUDICIAL DISTRICT  
 3 : OF TOLLAND  
 4 v. : AT ROCKVILLE, CONNECTICUT  
 5 WARDEN : SEPTEMBER 14, 2012

C E R T I F I C A T I O N

13 I hereby certify the foregoing pages/electronic version are  
 14 a true and correct transcription of the stenographic notes of  
 15 the above-referenced case, heard in Superior Court, Judicial  
 16 District of Tolland, Tolland, Connecticut, before the Honorable  
 17 Elliot N. Solomon, Judge, on the 14th day of September, 2012.

19 Dated this 29th day of August, 2013 in Rockville,  
 20 Connecticut.

*Rebecca J. Livingstone*

Rebecca J. Livingstone  
 Certified Court Reporter

## CONNECTICUT STATUTES

**Sec. 52-466. Application for writ of habeas corpus. Service. Return.** (a)(1) An application for a writ of habeas corpus, other than an application pursuant to subdivision (2) of this subsection, shall be made to the superior court, or to a judge thereof, for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of such person's liberty.

(2) An application for a writ of habeas corpus claiming illegal confinement or deprivation of liberty, made by or on behalf of an inmate or prisoner confined in a correctional facility as a result of a conviction of a crime, shall be made to the superior court, or to a judge thereof, for the judicial district of Tolland.

(b) The application shall be verified by the affidavit of the applicant for the writ alleging that he truly believes that the person on whose account the writ is sought is illegally confined or deprived of his liberty.

(c) The writ shall be directed to some proper officer to serve and return, who shall serve the same by putting a true and attested copy of it into the hands of the person who has the custody of the body of the person who is directed to be presented upon the writ. If the officer fails to make immediate return of the writ, with his actions thereon, he shall pay fifty dollars to the person so held in custody.

(d) Any judge of the Superior Court to whom an application for a writ of habeas corpus is made may make the writ returnable before any other judge of the court, the consent of the other judge being first obtained; and the other judge shall thereupon proceed with the matter with the same authority as though the application had been originally presented to him.

(e) If the application is made to a judge, the judge may certify the proceedings into court and the case shall thereupon be entered upon the docket and proceeded with as though the application had originally been made to the court.

(f) A foster parent or an approved adoptive parent shall have standing to make application for a writ of habeas corpus regarding the custody of a child currently or recently in his care for a continuous period of not less than ninety days in the case of a child under three years of age at the time of such application and not less than one hundred eighty days in the case of any other child.

**Sec. 52-470(a). Summary disposal of habeas corpus case. Determination of good cause for trial. Appeal by person convicted of crime.** (a) The court or judge hearing any habeas corpus shall proceed in a summary way to determine the facts and issues of the case, by hearing the testimony and arguments in the case, and shall inquire fully into the cause of imprisonment and thereupon dispose of the case as law and justice require.

## **PRACTICE BOOK SECTIONS**

**Sec. 23-29(1). Dismissal.** The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that: (1) the court lacks jurisdiction.