**********

The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.



**********

STATE OF CONNECTICUT *v.* LINDA M. STEVENS
(SC 17320)

Sullivan, C. J., and Norcott, Katz, Palmer and Vertefeuille, Js.*

*Argued February 14—officially released May 2, 2006*

*Margaret Gaffney Radionovas*, senior assistant state's attorney, with whom, on the brief, were *John A. Connolly*, state's attorney, and *David Gulick*, assistant state's attorney, for the appellant (state).

*Richard W. Callahan*, special public defender, with whom was *Jane E. Carroll*, special public defender, for the appellee (defendant).

*Opinion*

KATZ, J. The state appeals from the judgment of the Appellate Court reversing the judgment of conviction of the defendant, Linda M. Stevens, who had appealed to that court challenging the sentence imposed on her by the trial court, in accordance with an agreement pursuant to *State* v. *Garvin*, 242 Conn. 296, 699 A.2d 921 (1997),[1] subsequent to her plea of guilty under the *Alford* doctrine,[2] to the charge of possession of narcotics in violation of General Statutes § 21a-279 (a). On appeal to the Appellate Court, the defendant claimed that the trial court had violated her federal and state due process rights by imposing as one of the conditions of the *Garvin* agreement that, if the defendant were to be arrested prior to her sentencing and the court were to find that there was probable cause for that arrest, the court could enhance her three year sentence under the plea agreement to seven years and not allow her to withdraw her plea. *State* v. *Stevens*, 85 Conn. App. 473, 474, 857 A.2d 972 (2004). The Appellate Court agreed with the defendant that the trial court improperly had enhanced her sentence based on her arrest pending sentencing and remanded the case to the trial court with direction either to grant specific performance of the *Garvin* agreement by imposing a three year sentence or to reject the agreement altogether in conformity with the rules of practice. Id., 480. We thereafter granted the state's petition for certification to appeal, limited to the following issue: ''Did the Appellate Court properly reverse the trial court's judgment sentencing the defendant to seven years?'' *State* v. *Stevens*, 272 Conn. 902, 863 A.2d 695 (2004). We agree with the state that the no arrest condition was valid and that the trial court acted properly, after finding probable cause for the arrest, in imposing the seven year sentence. Accordingly, we reverse the judgment of the Appellate Court.

The Appellate Court's opinion sets forth the following facts and procedural history that are relevant to our resolution of the state's appeal. ''On August 6, 2002, in exchange for a sentence of three years incarceration, the defendant pleaded guilty to a charge of possession of narcotics in violation of § 21a-279 (a).[3] The court advised the defendant that if she was arrested with probable cause subsequent to making her plea, but prior to sentencing, the court could enhance her sentence from the agreed three years to seven years, and she would not be able to withdraw her plea. Two days later, on August 8, 2002, the police arrested the defendant and charged her with several [drug offenses].[4] On October 17, 2002, the defendant appeared for sentencing on the charge of possession of narcotics, to which she had pleaded guilty, under the *Alford* doctrine, on August 6, 2002. Taking note of the defendant's August 8, 2002 arrest, and declaring there to have been probable cause

for that arrest, the court, pursuant to the terms of the August 6, 2002 *Garvin* agreement, sentenced the defendant to seven years incarceration.'' *State* v. *Stevens*, supra, 85 Conn. App. 475.

Thereafter, the defendant appealed from the judgment of conviction to the Appellate Court, claiming that, by adding the no arrest condition to the plea agreement and by using it to enhance her sentence,[5] the trial court had violated the principal tenet of *State* v. *Garvin*, supra, 242 Conn. 314, that a court may impose sentences predicated on the defendant's failure to fulfill a condition of the agreement, but only as long as ''[f]ulfillment of [the] condition [is] within the defendant's control.'' Additionally, the defendant claimed that the trial court had failed to determine the issue of whether the *Garvin* agreement had been breached in accordance with the requirements of procedural due process because the trial court had not held a hearing to determine whether she had breached the agreement by engaging in criminal conduct, not merely by having been arrested. She claimed that she should have been sentenced to the three years pursuant to her plea agreement or that, at the very least, the state should have been required to prove that she had breached the agreement by a preponderance of the evidence. The state contended that, pursuant to the terms of the *Garvin* agreement, the seven year sentence was proper and that the defendant's procedural due process rights had not been violated.

The Appellate Court reversed the judgment, concluding that the sentence must be vacated and the case remanded to the trial court.[6] *State* v. *Stevens*, supra, 85 Conn. App. 480. The court determined that, under *Garvin* and our rules of practice, because fulfillment of the no arrest condition was not exclusively within the defendant's control, as would be, for example, a condition requiring that a defendant appear for sentencing, it was improper for the trial court to impose that requirement as a condition of the plea agreement.[7] Id., 477–78. The Appellate Court further reasoned that, by imposing the seven year sentence, the trial court actually was rejecting the defendant's guilty plea and therefore was required under Practice Book § 39-10; see footnote 7 of this opinion; to afford the defendant an opportunity to withdraw her plea. *State* v. *Stevens*, supra, 479. The court concluded that to do otherwise would deprive the defendant of a liberty interest without due process. Id., 477. This certified appeal followed.

On appeal to this court, the state claims that the Appellate Court acted improperly because the trial court reasonably had sentenced the defendant in accordance with the terms of the *Garvin* agreement and in accordance with the defendant's rights to due process.[8] The state also contends that, even if the Appellate Court properly invalidated the no arrest condition,

it should not have extended to the trial court the option of either rejecting the plea agreement or sentencing the defendant to the lesser three year sentence under the agreement. Instead, if this court determines that the condition is improper, the state contends that it should be afforded the choice to rescind the plea agreement or accede to the lesser sentence. We agree with the state that the no arrest condition was valid and that the trial court acted properly in imposing the seven year sentence.

''A *Garvin* agreement is a conditional plea agreement that has two possible binding outcomes, one that results from the defendant's compliance with the conditions of the plea agreement and one that is triggered by his violation of a condition of the agreement.'' *State* v. *Wheatland*, 93 Conn. App. 232, 235 n.3, 888 A.2d 1098 (2006). ''The validity of plea bargains depends on contract principles.'' *State* v. *Garvin*, supra, 242 Conn. 314. Thus, ''[p]rinciples of contract law and special due process concerns for fairness govern our interpretation of plea agreements.'' *Spence* v. *Superintendent*, 219 F.3d 162, 167–68 (2d Cir. 2000). When the contract language relied on by the trial court is definitive, the interpretation of the contract is a matter of law and our review is plenary. *Schoonmaker* v. *Lawrence Brunoli, Inc.*, 265 Conn. 210, 227, 828 A.2d 64 (2003).

In *Garvin*, the trial court had warned the defendant at the time he entered his guilty pleas that it would not be bound by the agreed upon sentence if the defendant failed to appear for sentencing. *State* v. *Garvin*, supra, 242 Conn. 300. When the defendant failed to appear and subsequently was apprehended, the court refused to allow him to withdraw his pleas and imposed a sentence greater than what had been set forth in the plea agreement. Id., 300–301. Although the condition of the plea agreement in *Garvin* was that the defendant appear for sentencing, that case does not suggest that a failure to appear is the only condition that may be imposed on the agreement. Indeed, in *State* v. *Trotman*, 68 Conn. App. 437, 445, 791 A.2d 700 (2002), the Appellate Court, in reliance on *Garvin*, upheld the finding of the trial court that the defendant had breached her plea agreement when she produced urine samples that tested positive for opiates. Because the defendant had been warned clearly by the trial court and was aware of and understood her obligation not to produce positive urine samples, the trial court properly had imposed a sentence of incarceration instead of the agreed upon suspended sentence. Id. Similarly, in *State* v. *Small*, 78 Conn. App. 14, 22, 826 A.2d 211 (2003), the Appellate Court determined that the trial court properly had imposed as a condition of the defendant's *Garvin* agreement that he have no contact with the victims of his offenses when it warned him that if, based upon a finding of probable cause, he had violated that condition, it would sentence him to the longer term of incar-

ceration attendant to a violation of the agreement.

In the present case, the state claims that the conditions that the defendant not be arrested while awaiting her sentencing and that she appear for that sentencing were an integral part of the plea agreement. We have examined the plea agreement by evaluating the court's explanation to the defendant of these conditions and conclude that both were part of the *Garvin* plea agreement between the parties.[9] The record clearly shows that, if the defendant had wanted to take advantage of the three year sentence upon her return to court, she would have had to have avoided any arrests for which probable cause could be determined. Her failure either to avoid such an arrest or to return for sentencing would expose her to a seven year term of incarceration. Rather than express any confusion about these conditions, the defendant acknowledged the requirements and accepted them. In light of the clear and unambiguous terms of the plea agreement, we conclude, on the basis of our plenary review of that agreement, that the defendant's arrest, supported by probable cause, violated one of the two conditions that singly would constitute a breach of that agreement.

The trial court's decision to enhance the defendant's sentence necessarily was predicated on two subsidiary determinations: that the agreement in fact was breached and that the breached condition bore sufficient indicia of reliability. The first consideration rests on the notion that a defendant must not be sentenced on the basis of "improper factors or erroneous information . . . ." *State* v. *Patterson*, 236 Conn. 561, 565–66, 674 A.2d 416 (1996). The standard of review regarding this inquiry is whether, on the basis of the evidence, the trial court's finding of a breach of the agreement was clearly erroneous. *State* v. *Trotman*, supra, 68 Conn. App. 441. In the present case, the Appellate Court did not conclude that the trial court improperly had found that the condition had been violated, but, rather, that the trial court improperly had found that the defendant's violation of the no arrest condition of the agreement was a proper consideration for enhancing her sentence. According to the Appellate Court, because the no arrest condition was not within the defendant's control, the trial court had violated her due process rights by enhancing her sentence based upon her failure to comply with that condition. Although the Appellate Court did not expressly label its consideration as reflecting on reliability, by treating the incident of arrest as inherently suspect as a factor, the court did in essence focus on whether the information the trial court relied upon had some minimum indicia of reliability in accordance with our well settled case law. See S*tate* v. *Eric M.*, 271 Conn. 641, 650, 858 A.2d 767 (2004) ("It is a fundamental sentencing principle that a sentencing judge may appropriately conduct an inquiry broad in scope, and largely unlimited either as to the kind of information he may

consider or the source from which it may come. . . . Nevertheless, [t]he trial court's discretion . . . is not completely unfettered. As a matter of due process, information may be considered as a basis for a sentence only if it has some minimal indicium of reliability. . . . As long as the sentencing judge has a reasonable, persuasive basis for relying on the information which he uses to fashion his ultimate sentence, an appellate court should not interfere with his discretion." [Citations omitted; internal quotation marks omitted.]). In essence, the Appellate Court's determination that the condition did not bear that minimum indicia of reliability was founded upon its generalized concern that arrests are not based necessarily on the defendant's conduct such that they can, as a matter of law, be a reliable sentencing consideration. In that court's view, "being arrested, similar to being struck by lightning, can be the result of being in the wrong place at the wrong time." *State* v. *Stevens*, supra, 85 Conn. App. 478.

If that factor alone were sufficient to find a condition of a *Garvin* agreement invalid, however, other plea conditions that our courts have found to be proper also would be unreliable. For example, a defendant could fail to appear because he was in an accident, or a defendant inadvertently could have come into contact with the alleged victims from whom he had been warned to stay away at some neutral site. Thus, the mere fact that some circumstance could arise wherein the breach condition was established through no fault of the defendant does not render that condition unreliable as a matter of law. Indeed, the defendant concedes that, without a *Garvin* agreement, a presentence arrest is a legitimate basis for enhancing a sentence, but nonetheless claims that it is not a legitimate condition of a *Garvin* agreement. We cannot reconcile the notion, however, that a presentence arrest is sufficiently reliable for sentencing purposes absent a plea agreement, but not sufficiently reliable for imposing it as a binding condition of such an agreement.

We need not decide whether in every case the fact of an arrest is entitled to be met with a presumption of regularity. First, we note that, in this case, the trial court found probable cause to support the arrest, and we conclude as a matter of law that the facts upon which the trial court relied supported that determination. The police report that the trial court considered indicates that, at the time of her arrest on possession of narcotics and marijuana charges; see footnote 4 of this opinion; the defendant was sitting at a kitchen table bagging crack cocaine, five bags of cocaine were on the table, and the defendant had a marijuana cigarette on her person. See *State* v. *Nesmith*, 220 Conn. 628, 634 n.9, 600 A.2d 780 (1991) (explaining that physical dominion or control, not ownership, required to support drug possession charge). Therefore, under the facts of this case, the information upon which the court relied was

relevant and served as a reliable indicator for sentencing purposes.

Second, although we agree that due process requires that the defendant be given the opportunity to contest the evidence upon which the trial court relies for sentencing purposes; *State* v. *Huey*, 199 Conn. 121, 132, 505 A.2d 1242 (1986) (*Healey, J.*, concurring); Practice Book §§ 43-10 (1) and 43-16; the defendant in the present case does not dispute the fact of the arrest or the existence of probable cause for that arrest, nor does the record reflect that she challenged the veracity of the state's allegations regarding her criminal behavior.[10] Thus, in the absence of a dispute as to the validity of the arrest, giving effect to the breach of the no arrest condition does not violate due process. See *People* v. *Outley*, 80 N.Y.2d 702, 713, 610 N.E.2d 356, 594 N.Y.S.2d 683 (1993) ("If . . . proof that [the] defendant actually committed the postplea offense which led to the arrest is not necessary, what lesser showing does due process require in order for the court to impose the enhanced sentence? Obviously, the mere fact of the arrest, without more, is not enough. A no-arrest condition could certainly not be held to have been breached by arrests which are malicious or merely baseless . . . . When an issue is raised concerning the validity of the postplea charge or there is a denial of any involvement in the underlying crime, the court must conduct an inquiry at which the defendant has an opportunity to show that the arrest is without foundation . . . . The nature and extent of the inquiry . . . is within the court's discretion . . . . The inquiry must be of sufficient depth, however, so that the court can be satisfied—not of [the] defendant's guilt of the new criminal charge but of the existence of a legitimate basis for the arrest on that charge." [Citations omitted.]). Under the facts of the present case, therefore, we conclude that the defendant's arrest, supported by probable cause, in violation of her *Garvin* agreement, was a proper basis for the enhanced sentence.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion SULLIVAN, C. J., and PALMER and VERTEFEUILLE, Js., concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] "A *Garvin* agreement is a conditional plea agreement that has two possible binding outcomes, one that results from the defendant's compliance with the conditions of the plea agreement and one that is triggered by the defendant's violation of a condition of the agreement. See *State* v. *Garvin*, [supra, 242 Conn. 299–302]." *State* v. *Stevens*, 85 Conn. App. 473, 474 n.2, 857 A.2d 972 (2004).

[2] "Under *North Carolina* v. *Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), a criminal defendant is not required to admit his guilt, but consents to being punished as if he were guilty to avoid the risk of proceeding to trial. . . . A guilty plea under the *Alford* doctrine is a judicial oxymoron in that the defendant does not admit guilt but acknowledges that the state's evidence against him is so strong that he is prepared to accept the entry

of a guilty plea nevertheless.'' (Internal quotation marks omitted.) *State* v. *Faraday*, 268 Conn. 174, 204–205, 842 A.2d 567 (2004).

[3] The state initially had charged the defendant with possession of narcotics, possession of less than four ounces of marijuana and use of drug paraphernalia. Thereafter, the state entered a nolle prosequi as to the charges of possession of less than four ounces of marijuana and use of drug paraphernalia.

[4] The August 8, 2002 police incident and offense report submitted to the court reflects that the defendant was charged with possession of one-half gram or more of cocaine in freebase form with intent to sell in violation of General Statutes § 21a-278 (a), illegal possession of narcotics in a school zone in violation of § 21a-279 (d), and possession of marijuana in violation of § 21a-279 (c).

[5] The defendant's appeal challenged only the imposition of the enhanced sentence and did not seek either to withdraw her plea or to vacate her plea agreement.

[6] Although the defendant had failed to raise her claim before the trial court, the Appellate Court concluded that the defendant had satisfied all four prongs of *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), and, therefore, was entitled to appellate review and relief.

[7] Specifically, the Appellate Court cited to Practice Book §§ 39-9 and 39-10. Practice Book § 39-9 provides in relevant part: ''If the case is continued for sentencing, the judicial authority shall inform the defendant that a different sentence from that embodied in the plea agreement may be imposed on the receipt of new information . . . but that if such a sentence is imposed, the defendant will be allowed to withdraw his or her plea in accordance with Sections 39-26 through 39-28.''

Practice Book § 39-10 provides: ''If the judicial authority rejects the plea agreement, it shall inform the parties of this fact; advise the defendant personally in open court or, on a showing of good cause, in camera that the judicial authority is not bound by the plea agreement; afford the defendant the opportunity then to withdraw the plea, if given; and advise the defendant that if he or she persists in a guilty plea or plea of nolo contendere, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.''

[8] The state does not dispute the defendant's contention that she is entitled to review of her unpreserved claim under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), but asserts that she cannot demonstrate under the third prong of *Golding* that the trial court's imposition of the seven year sentence clearly violated her right to due process. We agree with the defendant that she is entitled to review, but, for the reasons set forth later in this opinion, we agree with the state as to the merits of this issue.

[9] The following colloquy took place between the trial court and the defendant:

''The Court: Now when you come back [for sentencing], you're going to get three years in jail. If I want to give you more than three years, then you can take [your] plea back. However, if you don't show up on the day of sentencing or you pick up a new arrest and I read the police report and there's probable cause, then I can give you the full seven years and you cannot take your plea back. Do you understand that, ma'am?

''The Defendant: Yes, Your Honor.

''The Court: Do you agree with that?

''The Defendant: Yes.''

[10] Indeed, the record reflects that, at the sentencing hearing, the defendant's only response to the trial court's inquiry as to whether she wanted to say anything was the following statement: ''There ain't a problem with smoking and everything—incarcerated now upon my—it's clearing and I know all the mistakes that I made and I just need one more chance . . . .'' Defense counsel argued to the trial court only that the defendant did not reside at the address where the drugs were seized; the trial court noted, however, that the bond sheet reflected that the defendant had given that address when she posted bond, a fact that defense counsel did not dispute.