

THE PEOPLE OF THE STATE OF NEW YORK

- against -

**ORDER TO SHOW CAUSE**

\_\_\_\_\_

Defendant.

Indict. No.:

Index No.:

PLEASE TAKE NOTICE that upon the annexed Affirmation of BEAU A. MELITA, ESQ., and the papers annexed thereto:

Let the People of the State of New York through the Albany County Office of the District Attorney show cause before this Court, located at 6 Lodge Street, Albany, New York, 12207 on the 27<sup>th</sup> day of March, 2020, at 9:00 o'clock in the forenoon, why an order should not be made and entered resentencing the Defendant time served in lieu of the jail component of the sentence imposed on January 13, 2020; and,

Granting such other and further relieve as the Court deems just and proper; **SUFFICIENT CAUSE THEREFORE APPEARING**, it is hereby:

**ORDERED** that service of a copy of this order to show cause and the papers upon which it is made upon the Albany County Office of the District Attorney shall occur on or before the \_\_\_<sup>th</sup> day of March, 2020, and it is further

**ORDERED** that this motion shall be returnable before this Court on the \_\_\_<sup>th</sup> day of March, 2020.

Dated: \_\_\_\_\_  
Albany, New York

\_\_\_\_\_  
Justice of the Supreme Court of New York  
Albany County Judicial Center  
6 Lodge St.  
Albany, NY 12207

THE PEOPLE OF THE STATE OF NEW YORK

- against -

**AFFIRMATION IN SUPPORT OF  
ORDER TO SHOW CAUSE**

\_\_\_\_\_

Defendant.

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BEAU A. MELITA, ESQ., being duly licensed to practice law in the State of New York affirms under penalty of perjury:

1. I am an Assistant Public Defender for the County of Albany and I am the attorney for this Defendant.
2. I make this Affirmation in support of the relief requested in the attached Order to Show Cause. This Affirmation is made upon information and belief, the basis for such belief are the allegations of the accusatory instruments in question, the reasonable inferences which can be drawn from said instruments, examination of the various papers filed in connection with this proceeding, examination of the discovery previously provided by the prosecution, as well as the ongoing investigation of this matter by members of the Albany County Public Defender's Office.
3. As a preliminary matter, resentencing has been deemed an essential proceeding pursuant to applicable Office of Court Administration dictates.
4. On \_\_\_\_\_, the Defendant was sentenced on his plea of guilty to \_\_\_\_\_.

5. He was sentenced to \_\_\_\_\_ local jail to be followed by ten years of probation, and \_\_\_\_\_.
6. According to the jail, Mr. \_\_\_\_\_'s projected release date is \_\_\_\_\_.
7. Mr. \_\_\_\_\_ has no other criminal convictions. The incident underlying this entailed \_\_\_\_\_. Based on these facts, the Defense submits that Mr. \_\_\_\_\_ is a danger to neither the Victim, nor the community.
8. Generally, a court that has imposed a legal sentence of imprisonment may not be changed the sentence once it has commenced. N.Y. Crim. Proc. Law § 430.10.
9. However, a court may resentence a Defendant when the Defendant receives a sentence other than what was agreed-upon at the time of the plea, or if it finds that the sentence is cruel and unusual under the circumstances. N.Y. Const. art. I § 5; U.S. Const. amend. VIII; People v. Broadie, 37 N.Y.2d 100, 111 (1975) (noting that cruel and unusual punishment is a flexible concept); Rhodes v. Chapman, 452 U.S. 337, 374 (1981) (noting that certain conditions of confinement short of outright torture can be considered cruel and unusual).
10. A cruel and unusual sentence is an illegal sentence which does not fall within the resentencing bar of N.Y. Crim. Proc. Law § 430.10.
11. The ongoing Corona Virus Pandemic has created serious public health issues, especially in confined areas such as local jails where social distancing is not possible. The Albany County Jail has also had two employees, one nurse and one corrections officer, who have been diagnosed with the virus and may have contaminated an unknown amount of others at the jail.

12. This looming threat could have serious health implications for all inmates and staff at the jail, particularly vulnerable groups such as the elderly or immune compromised.
13. As a result of risks that Corona Virus will carve a deadly path through jails, counties and states have begun releasing thousands of inmates. New Jersey alone freed hundreds of people this week.
14. Albany County Sherriff Craig Apple has stated, "If someone gets sick in my jail, we're in a lot of trouble." Both Sherriff Apple and Albany County District Attorney David Soares have called for release of some inmates to lower the risk of COVID-19 infection.
15. Absent extraordinary cases, namely those that involve an imminent risk to public safety, it does not advance public safety to continue to incarcerate persons in local jails.
16. The Defense submits that the interest of the Defendant and society in preventing the further spread of this virus weighs in favor of granting an early release in this case.
17. At the time that the Defendant entered his guilty plea and agreed to a \_\_\_\_\_ jail sentence, he was not aware that he be confined in an area in which his health, and even life, would be placed in serious jeopardy. Mr. \_\_\_\_\_ did not agree to a sentence with these substantially more harsh conditions at the time of his plea, and therefore, the imposed sentence now violates the plea agreement.

18. Further, the present conditions of confinement constitute an illegal, cruel, and unusual sentence.

19. In light of these unique, unprecedented circumstances, and given the minimal amount of time owed on the present sentence, the Defendant respectfully requests that the Court resentence the Defendant to time served in lieu of \_\_\_\_\_ local jail incarceration.

No prior request has been made for the relief sought here.

WHEREFORE, the Defense respectfully requests an Order of this Court granting the relief requested herein and such other and further relief to the Defendant as the Court feels just and proper.

Dated: April 23, 2020  
Albany, New York

HON. STEPHEN W. HERRICK  
Albany County Public Defender

By: \_\_\_\_\_  
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