

STATE OF NEW YORK  
ERIE COUNTY (SUPREME) COURT

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THE PEOPLE OF THE STATE OF  
NEW YORK

v.

**NOTICE OF MOTION**

Town Court Docket No.

DEFENDANT

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YOUR HONOR:

Please take notice that at a term of Erie County (Supreme) Court held at 2:00 p.m. on \_\_\_\_\_, 2023, or as counsel can be heard, the defendant will move this Court for an order releasing the defendant on his own recognizance or, in the alternative, on non-monetary conditions, pursuant to CPL 510.10(1).

\_\_\_\_\_, 2023

\_\_\_\_\_  
ATTORNEY, ESQ.  
Attorney at Law

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TO:

Hon. \_\_\_\_\_

Erie County District Attorney  
25 Delaware Ave.  
Buffalo, NY 14202

STATE OF NEW YORK  
ERIE COUNTY (SUPREME) COURT

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THE PEOPLE OF THE STATE OF  
NEW YORK

v.

DEFENDANT

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**SUPPORTING AFFIRMATION**

Town Court Docket No.

STATE OF NEW YORK            )  
COUNTY OF ERIE            )     ss.  
CITY OF BUFFALO            )

ATTORNEY, ESQ., an attorney licensed to practice law in this State, affirms the truth of the following statements under penalties of perjury.

1. For the purpose of this motion, I am counsel to the defendant, who is charged in \_\_\_\_\_ Town Court with \_\_\_\_\_ (Penal Law § \_\_\_\_\_).
2. I make this affidavit in support of my motion for an order releasing the defendant on his own recognizance or, in the alternative, on non-monetary conditions. This affidavit is made upon information and belief, the source of which is my review of the charging papers, the relevant legal authority, and communications with the Erie County District Attorney's Office.
3. "When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall, in accordance with this title, by a securing order release the principal on the principal's own recognizance, release the principal under non-monetary conditions, or, where authorized, fix bail or commit the principal to the custody of the sheriff" (CPL 510.10[1]).
4. A court is authorized to fix bail or commit a defendant to the custody of the sheriff **only** if he or she is charged with a qualifying offense (CPL 510.10[4]).

5. In this case, the local criminal court was unable to order recognizance or bail because “it appear[ed] that the defendant has two previous felony convictions” and is currently charged with a felony (CPL 530.20[2][a][ii]).
6. However, this Court has the authority to do so.
7. The defendant is not charged with a qualifying offense (CPL 510.10[4]).
8. The defendant has three pending cases alleging harm to identifiable persons, and an otherwise non-qualifying felony or class A misdemeanor “involving harm to an identifiable person or property, or any charge of criminal possession of a firearm” becomes bail-eligible if it arose “while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm” (CPL 510.10[4][t]).
9. However, the felony complaint in this case alleges conduct that was committed on June 8, 2022. The felony complaints in both of the other cases was filed between June 29, 2022 and August 2, 2022 (all of the relevant paperwork is attached to the e-mail that was sent with this motion).
10. Upon information and belief, the defendant has two prior felony convictions, and an otherwise non-qualifying felony becomes bail-eligible “where the defendant qualifies for sentencing on such charge as a persistent felony offender pursuant to section 70.10 of the penal law” (CPL 510.10[4][s]).
11. We are not in possession of the defendant’s criminal history. However, upon information and belief, the defendant is not eligible for persistent felony offender status, which requires that “a sentence to a term of imprisonment in excess of one year, or a sentence to death, was imposed” for two felony convictions (Penal Law § 70.10[1][b][i]). Additionally, “two or more convictions of crimes that were committed prior to the time

the defendant was imprisoned under sentence for any of such convictions shall be deemed to be only one conviction” (Penal Law § 70.10[1][c]).

12. I waive the defendant’s appearance at any appearance on this motion.

Accordingly, the defendant must be released on his own recognizance or, in the alternative, non-monetary conditions.

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ATTORNEY, ESQ.

HON. \_\_\_\_\_, Presiding.

At a term of the Erie County (Supreme) Court  
held on \_\_\_\_\_, 2023.

STATE OF NEW YORK  
ERIE COUNTY (SUPREME) COURT

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THE PEOPLE OF THE STATE OF  
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**ORDER**

Town Court Docket No.

After reading the affidavit of DAVID HERATY, and any argument in opposition, it is hereby  
ORDERED that the defendant be released on his own recognizance.

\_\_\_\_\_  
HON.