

STATE OF NEW YORK  
COUNTY OF NIAGARA ::COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

NOTICE OF  
MOTION

vs.

Indictment [REDACTED]

[REDACTED]

Defendant.

---

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of [REDACTED], counsel for the defendant, that a motion will be made at this Court, [REDACTED] to be heard on February [REDACTED] at 2:00 p.m., for an Order vacating the plea of guilty entered in the above-referenced case on [REDACTED], on the grounds it was not knowingly, intelligently and voluntarily entered, in addition to such other or further relief as to this Court may seem just and equitable.

Buffalo, New York

[REDACTED]

Very truly yours,

[REDACTED]

To: [REDACTED].  
Niagara County District Attorney's Office  
175 Hawley Street  
Lockport, NY 14095

STATE OF NEW YORK  
COUNTY OF NIAGARA ::COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

**AFFIRMATION**

vs.

Indictment No.:

████████████████████

██████████

Defendant.

---

STATE OF NEW YORK     )  
COUNTY OF ERIE        ) ss.:

████████████████████ hereby affirms:

1. I am an attorney duly licensed in the State of New York.
2. I represent the above-referenced defendant.
3. I make this affirmation in support of a motion to withdraw the guilty plea to both counts in the indictment entered in the above-referenced case on  
██████████
4. The facts alleged in this affirmation are upon information and belief, the source of said information and the basis of said belief being my review of the previous pleadings and proceedings in this matter; conversations with the defendant; review of the stenographic transcript of the proceedings; and review of extensive mental health records.

## PROCEDURAL AND FACTUAL HISTORY

5. On [REDACTED], the defendant entered a plea of guilty to all indicted charges, one count of Murder in the Second Degree (P.L. §125.25(1)) and one count of Conspiracy in the Second Degree (P.L. §105.15). The stenographic transcript of the plea colloquy is attached hereto as *Exhibit A*.
6. The plea was taken virtually via "Teams." No inquiry was made directly to Defendant regarding a waiver of in-person proceedings. *See Exhibit A, page 2)*
7. Upon information and belief this matter was scheduled for plea on or about [REDACTED]. That date had to be adjourned due to Defendant's mental health.
8. On [REDACTED], Ms. [REDACTED] requested new counsel and I was assigned.
9. The Court signed subpoenas for a review of the mental health records of defendant and granted time to review and submit motions.
10. Argument on this motion is scheduled [REDACTED] p.m.
11. Records obtained from the Niagara County Correctional Facility, excerpts of which are attached hereto as *Exhibit B*, indicate the defendant's long history of mental health issues, particularly being on medication and multiple suicide attempts. When she first entered the Niagara County facility on [REDACTED], Ms. [REDACTED] reported that she had multiple

- personalities, disclosed her childhood trauma of being raped at age 6, was anxious and fearful, and verbally indicated she was suicidal. *See Exhibit B*
12. The facility found her to have Post Traumatic Stress Disorder and possible diagnoses of unspecified Schizophrenia and prominent cluster B traits. A search indicates “cluster B traits” are known as impulsive, self-destructive, and emotional behavior.
  13. On [REDACTED], at the time of intake, Ms. [REDACTED] was prescribed Zoloft, Lithium, and Visaril.
  14. On [REDACTED], following an outburst in Court, Ms. [REDACTED]’s mental health records show her inconsistency in taking medication. Specifically, the writing from that date says: “Notable that she has consistently been sporadically noncompliant with her medication regime .... Continue to express poor insight into need for medication compliance.” *See Exhibit B*
  15. Records show on [REDACTED], at 8:48 p.m., Ms. [REDACTED] refused all meds and vitals from nursing staff. She denied suicidal idealization but was placed on “psychiatric observation.” *See Exhibit B*
  16. On June 4, 2021, Ms. [REDACTED] attempted suicide. She was provided a razor during her scheduled shower time and cut her wrist. A suicide notes and items to hang herself were located in her cell. The staff noted her demeanor was different than normal and determined a “pysch assessment” was necessary. Her thoughts were clearly illogical as she

- attempted to remove the bandages on her arms and had to be threatened to be tied down if she continued.
17. The facility continued to categorize Ms. [REDACTED] suicide risk level as severe on [REDACTED] and [REDACTED]. Notes from [REDACTED], indicate suicidal ideations.
  18. Upon information and belief, no psychiatric evaluation was reviewed by the Court or counsel prior to moving forward on pleading guilty to a life sentence and waiving her right to appeal.
  19. The record demonstrates all parties were aware of psychiatric issues, but additional questioning and/or verification of the stability of Defendant's mental health was not done.
  20. Ms. [REDACTED] prior counsel did not see her in person from the time of the suicide attempt to the time of plea. Communication between the two was telephonic.
  21. The Court again acknowledged concern regarding the mental health of Ms. [REDACTED] during the plea. (*See Exhibit A, page 12, line 14-21*).
  22. Without any qualifications of what Mr. [REDACTED] had reviewed or understood of the present mental health conditions of Ms. [REDACTED] the Court accepted his assertion, "She understands what she is doing."
  23. Additionally, Ms. [REDACTED] indicated she did not understand the terms of the plea to the conspiracy count. The Court asked numerous questions

- regarding her conduct with [REDACTED]. (See Exhibit A, pages 16-17, lines 17 to 21).
24. Regarding the allocation to the plea of guilty to conspiracy, Ms. [REDACTED] specifically told the Court:
- a. "... [REDACTED] didn't have any involvement in it, so she .... I did everything, there was no story made up, it was nothing, she had nothing to do with it." (See Exhibit A, pages 17-18).
  - b. "I didn't coerce the story with anyone, I did it by myself." (See Exhibit A, page 18).
25. After this statement, under oath, the Court stopped the proceeding and a private call between counsel and Ms. [REDACTED] occurred. (See Exhibit A, Page 19)
26. After a call with counsel, the Court went back on the record, but failed to re-address any of the previous issues to confirm Ms. [REDACTED] understood the nature of her plea. Instead, the statute to which she was pleading guilty to was read and accepted. (See Exhibit A, page 20, line 9).
27. The Court accepted the plea of guilty to both counts and scheduled the matter for sentencing.

#### LEGAL ARGUMENT

28. Defendant moves to withdraw her plea pursuant to § 220.60(3). CPL 220.60 (3) states:

“At any time before the imposition of sentence, the court in its discretion may permit a defendant who has entered a plea of guilty to the entire indictment or to part of the indictment, or a plea of not responsible by reason of mental disease or defect, to withdraw such plea, and in such event the entire indictment, as it existed at the time of such plea, is restored.”

29. Defendant requests said plea be withdrawn as it was not taken knowingly, intelligently, and voluntarily. There are three separate grounds for this withdrawal;
  - a. The plea was conducted virtually without an explicit waiver from Defendant to proceed in that manner;
  - b. Ms. ██████ was suffering from a host of documented mental health issues and did not understand the consequences of said plea;
  - c. The record demonstrates Ms. ██████ did not understand the terms of the conspiracy charge and guilty plea thereto and a denial of that crime was clear on the record.
30. The cumulative effect of these errors renders the plea invalid. As such, Defendant should be given the opportunity to withdraw the plea.
31. A review of record during the plea colloquy demonstrates the Court was aware Ms. ██████ suffered from serious mental health issues and these issues were not adequately addressed at the time of the plea.
32. The attached records from the Niagara County Correctional Facility support Ms. ██████ attempted to commit suicide eleven days prior to accepting a plea; had to discontinue a court appearance due to behavior

- less than a month prior to the plea; no persons physically saw or engaged with her since that time; and no request for records or a C.P.L. Article 730 analysis was made. Yet, a plea to life sentence was accepted.
33. The basis of her ability to accept this plea was a conclusory statement of an attorney and inquiry of a mentally unstable Defendant via "Teams."
  34. Clearly, someone who is mentally unstable or has a history of psychiatric illness should not be the only source of verification of mental stability to accept a plea to life in prison.
  35. Even if the Court were to overlook her ability to make rational decisions based upon the mental health issues, suicide attempts, and sporadic medication ingestion, it is clear from the colloquy she did not understand and properly plead guilty to the charge of conspiracy.
  36. When asked about the factual basis for a conspiracy, she denied having involvement with any others. Accordingly, the Court indicated she could not accept a plea under those circumstances.
  37. After the brief recess, instead of additional inquiry to see if the answers changed under oath, legal terms in opposition to the Defendant's answers just placed on the record were used to obtain a guilty plea and move the proceeding along.
  38. As such, the only facts sworn to under oath on the record show a denial of any conspiracy.

39. Based on the foregoing, the defendant should be permitted to withdraw her plea of guilty because she did not enter said plea knowingly, voluntarily, and intelligently.

WHEREFORE, the defendant respectfully requests an Order vacating the guilty plea, in addition to granting such other or further relief as to this Court may seem just and equitable.

Affirmed this [REDACTED]

---

[REDACTED]