

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

v.

████████████████████

Defendant.

NOTICE OF MOTION

████████████████████
████████████████████

Please take notice that on ██████████, at 2:00 p.m. or as soon thereafter 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).

DATED: September 6, 2022
Buffalo, NY

/s/ _____
████████████████████
██
██
████████████████████

TO: Hon. ██████████

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

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK

SUPPORTING AFFIDAVIT

v.

██████████

████████████████████
██████████ ██████████

Defendant.

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

██████████, an attorney licensed to practice law in the courts of this State, under penalties of perjury pursuant to CPLR 2106(a), affirms the following statements to be true.

1. I am counsel to the defendant ██████████, who is charged in ██████████ Court with grand larceny in the third and fourth degrees (Penal Law §§ 155.35[1], 155.30[4]).
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 the defendant's criminal history as provided by the New York State Department of Criminal Justice Services.
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]). Although 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]), that does not appear to be the case. Although the defendant has three prior felony convictions, a conviction is only a predicate for persistent felony offender purposes only if “a sentence to a term of imprisonment in excess of one year, or a sentence to death, was imposed therefor” (Penal Law § 70.10[1][b]). It appears that only one of the defendant’s prior felonies meets this criteria, so he does not have the two predicate felonies required for persistent felony offender status (Penal Law § 70.10[1][a]).
8. 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.

/s/ _____
[REDACTED]

HON. [REDACTED], Presiding.

At a term of the Erie County Supreme
Court held on [REDACTED].

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK

v.

ORDER

[REDACTED],

[REDACTED]
[REDACTED]

Defendant.

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

HON. [REDACTED]

GRANTED: This [REDACTED] of September,

[REDACTED]
