

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE
OF NEW YORK

ORDER TO SHOW CAUSE

v.

████████████████████

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

To: ██████████ Erie County District Attorney (ECDA).

ORDERED that the Erie County District Attorney's Office show cause before the Hon. ██████████, located at Erie County Supreme Court, ██████████ Buffalo, New York on ██████████ to show cause why an order should not be issued as follows:

1. Granting a stay of the re-sentence imposed by Hon. ██████████ on February 9, 2023 in ██████████.
2. Releasing the defendant on his own recognizance.

ORDERED that service of a copy of this order, together with the papers upon which it is granted, be made personally upon the Erie County District Attorney's Office, on or before February 10, 2023, which shall be deemed sufficient service.

Hon. ██████████

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE
OF NEW YORK

SUPPORTING AFFIRMATION

v.

██████████

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

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

██████████, an attorney licensed to practice in the courts of this State,
affirms the truth of the following statements under penalties of perjury.

1. I am counsel to the defendant, who was re-sentenced to ten days imprisonment in ██████████ Town Court (Wanat, J.) on a violation of conditional discharge on ██████████.
2. I make this affirmation in support of my application for an order to show cause and stay of sentence. This affirmation is made upon information and belief, the source of which is information provided by the attorney who was present for the re-sentencing.
3. The notice of appeal was filed and served on ██████████.
4. Upon application of a defendant who has taken an appeal to an intermediate appellate court from a judgment or sentence of a criminal court, the appropriate judge may issue an order both (a) “staying or suspending the

execution of the judgment pending the determination of the appeal” and (b) “either releasing the defendant on his own recognizance or fixing bail” (CPL 460.50[1]).

5. The defendant is likely to succeed on the merits of the appeal.
6. When a defendant is alleged to have violated the conditions of a conditional discharge, the court may make a final determination “pursuant to a hearing held in accordance with the provisions of the criminal procedure law” (Penal Law § 65.15[2]).
7. Among the rules for the hearing is that “upon request, the court must grant a reasonable adjournment to the defendant to enable him to prepare for the hearing” (CPL 410.70[2]).
8. To the best recollection of the attorney, it appears that he requested an adjournment, but it was not granted, and the court proceeded with sentencing.
9. If this procedural violation did take place, the re-sentence will have to be vacated on appeal.
10. The defendant also anticipates raising a meritorious claim of a harsh and excessive sentence, given what appears to be a minimal criminal history, work status, and efforts to comply with counseling.
11. If the stay is not granted, the defendant will be irreparably prejudiced, as he will have served the entire sentence by the time the appeal has been perfected.

12. The client should be released on his own recognizance during the pendency of the stay.

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