

STATE OF NEW YORK  
ERIE COUNTY SUPREME COURT

---

THE PEOPLE OF THE STATE OF  
NEW YORK

v.

**NOTICE OF MOTION**

████████████████████

---

YOUR HONOR:

Please take notice that on at 11:00 a.m. on ██████████, or as soon thereafter as counsel can be heard, the defendant will move this Court, pursuant to CPLR 2221, for an Order (i) granting the defendant's motion for leave to reargue the denial of his motion to withdraw his guilty plea and (ii) granting the underlying motion.

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

DATED: ██████████  
North Tonawanda, NY

Hon. ██████████

██████ 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

v.

**SUPPORTING AFFIRMATION**

---

STATE OF NEW YORK )  
COUNTY OF ██████████ ) ss.  
CITY OF ██████████ )

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

1. Under the auspices of the Assigned Counsel Program of Erie County, I am the attorney for the defendant, ██████████, who was charged in this indictment with predatory sexual assault against a child (Penal Law § 130.96), course of sexual conduct against a child in the first degree (Penal Law § 130.75[1][b]), and endangering the welfare of a child (Penal Law § 260.10[1]).
2. On ██████████, the defendant pleaded guilty to attempted course of sexual conduct against a child in the first degree (Penal Law §§ 110.00, 130.75[1][b]) in full satisfaction of the charges.
3. Thereafter, the defendant filed a motion to withdraw his guilty plea on the ground that it was involuntary because (i) he proclaimed his innocence during the colloquy, (ii) he did not have adequate time with counsel to discuss the import of a statement he made in Family Court concerning the alleged incident, and (iii) the Court failed to advise him, pursuant to CPL 220.50(8), that the conviction would result in the loss of the right to vote during his incarceration.
4. This Court orally denied the defendant's motion.

5. The defendant seeks leave to reargue every aspect of the prior motion, especially the third.
6. A motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion” (CPLR 2221[d][2]).
7. In this case, the Court misapprehended that the CPL 220.50(8) violation requires the motion to withdraw the plea to be granted.
8. At any time before sentence, the Court may permit the defendant to withdraw his guilty plea (CPL 220.60[3]). Although the Court has discretion to grant or deny the motion, involuntary guilty pleas exceed the bounds of this discretion. “Trials courts have a vital responsibility to ensure that a defendant who pleads guilty makes a knowing, voluntary[,] and intelligent choice among alternative courses of action” (*People v. Conceicao*, 26 NY3d 375, 382 [2015], Pigott, J.).
9. Prior to accepting a guilty plea to a felony offense, “the court **must** advise the defendant on the record that conviction will result in loss of the right to vote while the defendant is serving a felony sentence in a correctional facility and that the right to vote will be restored upon the defendant’s release” (CPL 220.50[8], emphasis added).
10. This provision became effective on September 1, 2021, before the defendant’s guilty plea (<https://www.nysenate.gov/legislation/laws/CPL/220.50>).
11. The Court did not advise the defendant of this consequence.
12. The question is whether the failure to comply with CPL 220.50(8) renders the guilty plea involuntary.
13. This question can be answered by looking to the statutory framework. “Statutory words must be read in their context, and words, phrases, and sentences of a statutory section should be interpreted with reference to the scheme of the entire section” (Statutes § 97).

14. Under the preceding subdivision, “prior to accepting a defendant’s plea of guilty to a count or counts of an indictment or a superior court information charging a felony offense, the court must advise the defendant on the record, that if the defendant is not a citizen of the United States, the defendant’s plea of guilty and the court’s acceptance thereof may result in the defendant’s deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States” (CPL 220.50[7]).
15. The language of CPL 220.50(7) and (8) are nearly identical, other than the fact that they address different consequences of a guilty plea. But there is a critical distinction: CPL 220.50(7) provides that “the failure to advise the defendant pursuant to this subdivision shall not be deemed to affect the voluntariness of a plea of guilty or the validity of a conviction.”
16. By contrast, CPL 220.50(8) contains no such proviso, and “where a statute creates provisos or exceptions as to certain matters[,] the inclusion of such provisos or exceptions is generally considered to deny the existence of others not mentioned” (Statutes § 240).
17. The best construction of the statute is that a CPL 220.50(8) violation renders the plea involuntary.

Accordingly, the defendant respectfully requests that the motion for leave to reargue, and the underlying motion, be granted.

---

\_\_\_\_\_