

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK
ex rel. [REDACTED]

Petitioner,

v.

ORDER TO SHOW CAUSE
(PETITION FOR WRIT OF
HABEAS CORPUS)

JOHN GARCIA,
Sheriff of Erie County,

Cheektowaga Town Court
Docket No [REDACTED]

Respondent.

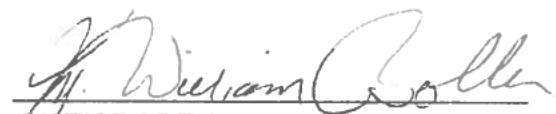
On the petition made on behalf of [REDACTED] verified on [REDACTED] 2023, for the issuance of a writ of habeas corpus pursuant to CPLR 7010(a), it is hereby ORDERED that (i) respondent, and/or the Erie County District Attorney's Office, show cause before Hon. HON. M. WILLIAM BOLLER at [REDACTED] on [REDACTED] 2023, why petitioner should not be discharged, as requested in the petition; (ii) a copy of this order, together with the petition on which it was granted, be personally served on the Erie County District Attorney's Office and Erie County Attorney's Office on or before [REDACTED] 2023, and that such be deemed sufficient service; (iii) a copy of any response to the petition be served on the Assigned Counsel Program of Erie County on or before [REDACTED] 2023; and (iv) the filing fee be waived due to petitioner's indigence.

DATED: [REDACTED]
Buffalo, New York

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ERIE COUNTY CLERK
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ERIE COUNTY
DEPARTMENT OF LAW


JUSTICE OF THE SUPREME COURT

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

RECEIVED
[REDACTED]

THE PEOPLE OF THE STATE OF NEW YORK
ex rel. [REDACTED]

ERIE COUNTY
DEPARTMENT OF LAW

Petitioner,

v.

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

JOHN GARCIA,
Sheriff of Erie County,

Cheektowaga Town Court
Docket No. [REDACTED]

Respondent.

1. Under the auspices of the Assigned Counsel Program of Erie County, along with [REDACTED], ESQ., I am the attorney for petitioner in this proceeding.
2. I bring this petition for a writ of habeas corpus on petitioner's behalf. The factual allegations in this petition are made upon personal knowledge, the sources of which is my participation in court proceedings in Erie County Supreme Court on [REDACTED] 2023 and in Cheektowaga Town Court on [REDACTED] 2023, and my review of securing orders issued by Hon. John Wanat on [REDACTED] 2023 and [REDACTED] 2023.
3. Venue and jurisdiction are based on the fact that petitioner is currently incarcerated at the Erie County Holding Center, located in the county of Erie, State of New York, under the custody of the Erie County Sheriff, since [REDACTED], 2023.
4. Under the above-captioned docket number, petitioner pleaded guilty to criminal possession of a controlled substance in the seventh degree (Penal Law § 220.03). The matter was transferred to drug court. Petitioner was not successful and did not return to court, so a bench warrant was issued.

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5. Petitioner was arrested on the bench warrant and returned to court. After an initial remand, Judge Wanat issued a securing order fixing bail at \$5,000 and adjourning the matter for sentencing on [REDACTED] 2023 (attached, Exhibit A).
6. Petitioner posted bail and was released from custody.
7. On [REDACTED], 2023, petitioner voluntarily appeared for sentencing. Judge Wanat ordered a pre-sentence investigation, revoked the securing order, and issued a new securing order remanding petitioner to the custody of the Sheriff (attached, Exhibit B).
8. On [REDACTED], 2023, petitioner brought a petition for a writ of habeas corpus, which allows "a person illegally imprisoned or otherwise restrained in his liberty within the state [to] petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance. A judge authorized to issue writs of habeas corpus having evidence, in a judicial proceeding before him, that any person is so detained shall, on his own initiative, issue a writ of habeas corpus for the relief of that person" (CPLR 7002[a]).
9. The basis for the original petition was that Judge Wanat had revoked a securing order without good cause, in violation of CPL 530.60(1), and without holding a hearing, in violation of CPL 530.60(2)(c).
10. On [REDACTED] 2023, Hon. M. William Boller ordered Judge Wanat to conduct a hearing into his basis for revoking the securing order.
11. On [REDACTED] 2023, Mr. [REDACTED] and I appeared with petitioner for the hearing in Cheektowaga Town Court.
12. Judge Wanat announced that his reason for the revocation and remand was his own decision to order a pre-sentence investigation (PSI) on [REDACTED], 2023.

13. Whenever a defendant is at liberty as a result of an order of recognizance, release under non-monetary conditions, or bail, the court, "for good cause shown," may revoke the securing order (CPL 530.60[1]).
14. Judge Wanat's own decision to order a PSI – one that he could have ordered on the previous court date – was not a legitimate reason to revoke the [REDACTED] 2023 securing order. The purpose of bail is to ensure the principal's return to court, and the only relevant change in circumstances between the two securing orders was petitioner's voluntary return to court.
15. This Court is authorized to issue a writ of habeas corpus (CPLR 7002[b][1]). Where, as here, "the person is illegally detained[,] a final judgment shall be directed discharging him forthwith" (CPLR 71010[a]). Petitioner seeks a writ vacating the illegal remand, reinstating the posted bail, and ordering his immediate discharge from custody.
16. With counsel assigned due to petitioner's indigence, he also requests that the Court waive any fee associated with filing this petition.

WHEREFORE, petitioner requests the issuance of the writ of habeas corpus and any further relief this Court deems proper.

DATED: [REDACTED] 2023
Buffalo, New York

VERIFICATION

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

I, [REDACTED] an attorney licensed to practice in the courts of this State, affirm under penalties of perjury that I am counsel for petitioner in this proceeding, and I have read this petition for a writ of habeas corpus, and that it is true of my own knowledge, except to those matters which are alleged upon information and belief, and those matters I believe to be true.

[REDACTED]