THE ASSIGNED COUNSEL PLAN OF THE CITY OF NEW YORK

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Appellate Division, First and Second Judicial Departments

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ASSISTANCE OF COUNSEL AT SENTENCING PROCEEDINGS

IT’S NOT OVER TIL IT’S OVER: PROVIDING EFFECTIVE

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CONTINUING LEGAL EDUCATION
Determine your client's sentencing range

1.
When a foreign statute can be violated in ways that constitute both a


Exemptions of Sex Offenders of State of NY, 8 N.Y.2d 417, 751 (2007).

Thus, a statute-to-statute comparison reveals differences in the elements such


Factors

Law § 10.06 (criminal violation of order entered).
[Felonies

Injury to such peace officer, police officer, fireman, paramedic or recrimination."

New York Penal Law § 120.05(7) provides that: "A person is guilty of assault in the second degree when, having been convicted of a crime, and while confined in a correctional facility, a personYOUR CLAIM WAS PREVIOUSLY CHARGED IN NEW JERSEY WITH BREAKING INTO A HOME, TAKING A
is unlikely have an out-of-sequence class due to offense.

The predicate will be out of sequence, not uncommon to see a definition which

Community Superintendents be restructured, so it's important to look at A-C, 17 N.Y.S. 2d 979 (1961) Order in the custody of the "Department of Correction and

The provision governing class B restructured accordingly, which generally refers to the list of


In 2004, 2005, and 2006, the Legislature passed three prison law reform acts.

DRM: Reformation

To distinguish a predicate offense,

unanimous conviction of a predicate conviction constitutes a sentence that will not work

vote to say that a PRL restructured inside the defendant for purposes of

17 N.Y.S. 2d 979 (1961) (in) Order in the custody of the "Department of Correction and

Secretary General.

People v. Williams 93 A.D. 3d 608 (1st Dep't 2012) (same).

People v. Butler 88 A.D. 3d 470 (1st Dep't 2012) ("same.

requirements for restructuring as a persistent violent felony offender.


sentencing judge is sentenced post-release supervision at sentencing.

People v. Spanier 10 N.Y. 3d 447 (2008). has led the restructured of

b. PRS Reformation

people v. Williams 138 A.D. 3d 298 (1st Dep't 2016) ("same.

people v. Williams 192 N.Y.S. 2d 1 (1st Dep't, Oct. 18, 2012)

A sentence as the word is used in the statute is the sentence imposed at

section of predicate sentence. ("same.

people v. Williams 138 A.D. 3d 298 (1st Dep't 2016) ("same.

People v. Williams 192 N.Y.S. 2d 1 (1st Dep't, Oct. 18, 2012)

Thus, to serve as the basis for predicate sentence, a sentence must have been

Penal Law § 70.08 (persistent violent felony offender),

Penal Law § 70.07 (second violent felony offender);

Penal Law § 70.07 (second violent felony offender); ("same.

Penal Law § 70.07 (second violent felony offender); ("same.

Penal Law § 70.06 (c) (ii) (sentence upon such prior conviction must have been

The Sentence

Out of Sequence Predicates

2.
3. Out of Time Predicates

The Stature

Except as provided in subparagraph (a) of this paragraph, sentence must have been imposed more than 1 year before expiration of the period of time to which it was fixed. Paragraphs (a) and (b) of this paragraph, sentence must have been imposed more than 1 year before expiration of the period of time to which it was fixed.
Concurrence vs. Concurrent Sentences

[Text continues]

N.Y.2d 582 (1972);
See People v. Thompson, 60 N.Y.2d 313 (1983);
People v. Coleman 30
of a negotiated plea. See People v. Thompson, 60 N.Y.2d 313 (1983);
People v. Coleman 30
Division is not required from reducing a sentence just because the sentence was imposed as part
of a negotiated plea. See People v. Thompson, 60 N.Y.2d 313 (1983).
The Appellate Division is not required from reducing a sentence just because the sentence was imposed as part
of a negotiated plea. See People v. Thompson, 60 N.Y.2d 313 (1983).

2. If You Fail to Persuade the Sentencing Judge, There’s Another Shot On Appeal

Sentencing is a critical stage of the proceedings at which a defendant is entitled to
an effective sentencing pitch that has numerous potential to impact the
first and foremost, an effective sentencing pitch benefits the client immediately.

Why?

II. CREATING A SYMPATHETIC SENTENCING PITCH
The defendant was acquitted.

297 (PC, Dep't 1, 2000); 777, 18 A.D.2d 278, 297, 1 N.Y.2d 491, 491, 182 N.Y.S.2d 777 (1958), reversed 297, 1 N.Y.2d 491, 491, 182 N.Y.S.2d 777.

Factors such as:

1. Your client's prior criminal history
2. Appropriate sentencing ranges, including ranges relating to terms of PPS
3. Research the law applicable to your case

Letter but don't know where to start?

Especially well designed letters on the law provide a number of examples to those who might want to write a

Useful additional support through appropriate pre-sentence or community involvement's keep

during the period of the case, encourage him to use that time productively to gather and

members, teachers, employers, etc.

I. Start Early - even before a guilty verdict is reached or plea is entered, from the outset

Sentence planning that can be done without adequate preparation. The following

There are an infinite variety of ways to effectively advocate on a client's behalf during a

Practice Tip: Because the sentencing minutes and pre-sentence report have a long

H. How to Create an Effective Sentencing Pitch

By the judge, will not necessarily follow the client to prison.
5. **Erase accuracy** — make sure that the numbers and pre-sentencing report are accurate.

4. **Prepare your client** — speak to your client about the sentencing process. Prepare your client before the sentencing.

This is within the judge's discretion to hear.

The sentencing court is able to articulate some factual basis in known or

punitive factors in sentencing, sentencing as a significant factor in the

application of the minimum sentence. The New York State Sentencing Council

and the New York State Sentencing Guidelines, the

part of the defendant's role in the commission of the criminal

process. The defendant's role in the commission of the

sentence.

Judge imposes more severe sentence when a defendant be held on a

Proceeding. The defendant's role in the commission of the

sentence.


more neutral

In determining an order to show cause, whether the court should appoint a new counsel to the defendant, a motion or makes statements

Where current counsel actively counteracts the defendant's motion or makes statements

A.D. 3d 116 (1st Dep't, 2004).

The motion. See People v. Vega, 88 A.D. 3d 1022 (2d Dep't, 2011); People v. Cardi, 42 A.D. 2d 445 (1st Dep't, 1977). Neither, A.D. 2d 931 (4th Dep't, 2002); People v. Casiano, 24 A.D. 2d 299 (1st Dep't, 2002); People v. Caballero, 294 A.D. 2d 226 (1st Dep't, 1997).

As in current defense counsel, she is not required to support or argue on behalf of her

[1989].


If the court plans to hold a separate hearing on the defendant's motion, the court should

Relieve current counsel and appoint a new one for the purposes of the motion.

If the court, for instance, must assess the merits of the motion, it must also decide whether to

Relieve current counsel and appoint a new one for the purposes of the motion. It sees People v. Against, 17 N.Y. 847 (1948).

The court must also decide whether the court should appoint a new counsel to assist the defendant.

A presence and misconduct to which the guilty plea based on information for the

(2011).

Of such a motion, the defendant should be allowed reasonable opportunity to present

§ 220.60(3). The motion need not be in writing or notice to the people.

The motion need not be in writing or no notice to the people.

A. WHERE DO WHEN THE CLIENT COMPLAINS ABOUT YOU AT SENTENCING

I. THE LAW

6. Follow up – make sure that all relevant documents make their way into the court file.

The law of appeals. Make sure that all relevant documents make their way into the court file.

If the court plans to hold a separate hearing on the defendant's motion, the court should

A. WHERE DO WHEN THE CLIENT COMPLAINS ABOUT YOU AT SENTENCING

I. THE LAW

6. Follow up – make sure that all relevant documents make their way into the court file.
so does not prejudice the rights of the client.

(a) A lawyer may exercise professional judgment to waive or fail to assert a right or

* * *

1. Scope of Representation and Allocation of Authority Between Client and Lawyer

As permitted or required by these Rules:

(1) To seek the objectives of the client through reasonably available means.

(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that

reasonable necessity for the representation.

2. Compentence

(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skills, thoroughness and preparation.

The Eleventh Rule

64 (2d Cir. 2002), People v. Sanchez, 58 F.3d 38 (2d Cir. 1995).

However, there is Second Circuit law that is contrary. See People v. Mitchell, 92 F. 3d 1577, 162.

People v. Change 92 F. 3d 1577, 162. People v. Change 92 F. 3d 1577, 162.

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People v. Change 92 F. 3d 1577, 162. People v. Change 92 F. 3d 1577, 162.
successor counsel, if any; proprietary information about the case.

d. You shall make your file available to successor counsel, if any, and may give
counsel.

defendant's claim on a hearing, if ordered, where the defendant is represented by other
counsel. You should not give any other information to the court or prosecutor to repay the
motion on July 5th.

If the judge asks you to explain something in response to the defendant's complaint,
the court's position.

Judge to require you and assistant other counsel. Do not volunteer any information which undercuts
a. Should the client complain about you on the record at sentencing, immediately ask the

3. Practical Points

required by these Rules.

disclosure of the client unless the client gives informed consent, except as permitted or

(a) A lawyer shall not use information relating to representation of a client to the

* * *

RULE 1.8: Current Client: Specific Conflict of Interest Rules

... association of wrongful conduct;

... (i) to defend the lawyer or the lawyer's employees and associates against an
reasonably believe necessary:

... (q) A lawyer may reveal or use conditional information to the extent that the lawyer

* * *

(q) the disclosure is permitted by Paragraph (c)

RULE 1.6: Confidentiality of Information

... or a third person unless:

... or such information to the disadvantage of a client or for the advantage of the lawyer

... (a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule,
By an appeal waiver sentence, you will have preserved this record for a plenary review. Said issue is not covered.

None of the above might get the judge to give your claim the originality provided

performance.

available to render the claim whole, then present the appeal departures and ask for specific

make such an application. If the claim does not win this phase back, or if phase 4 is no longer

c. If the claimant wants his phase back in light of the court's intended appeal departures,

identifications. If appropriate, ask for an extraordinary hearing.

and facts you have in support of your position. Write any documents you have in support for

installation showing that in some way two circumstances have materially changed, present an

has fallen short in some way of the circumstances have materially changed, present an

b. Unless the claimant agrees, the record is otherwise absolutely clear that the defendant

has changed—since the time of the promise—so as to justify an appeal departures.

have the court phase on the record in each instance. In most cases, the claimant has done—or what

a. Should the sentence count indicate that it is not going to keep its sentence promise,

2. Practical Pointers.

the plea bargaining process and refuse to enter into such agreements.

appropriately decisive to impose enhanced sentences, defendants and their lawyers would lose faith in

the defendant to withdraw the plea. People v. Schiavone, 35 N.Y.2d 22, 240 N.E.2d 272 (Ct. App. 1974),


referred the defendant instead material breach a condition of the plea promise. People v.


under Schiavone and WELLS COUNCIL, therefor, a "sufficient inquiry is necessary wherever the

sentence is triable and accurate."

the process. ... the sentencing court must assume initial that the information upon which bases the

due process." ... the sentencing court must assume initial that the information upon which bases the

applicable review. ... the sentencing court must assume initial that the information upon which bases the

"significance of utilizing the sentencing court's knowledge of the defendant's circumstances, the court must do so to avoid

or circumstances relied upon for the proposed enhancement. The court shall, if possible the information

cannot or will not make a proposed sentence. It should "specific on the record" the information

in People v. Schiavone, 35 N.Y.2d 22, 240 (1974), the court held that where a court

B. What to Do When the Court Wants to Break Its Sentencing Promise
ABA Standards for Criminal Justice, Defense Function, 4-8.2: 

(a) Defense counsel should take whatever steps are necessary to protect the defendant's right of appeal. The decision whether to appeal must be the defendant's own choice.

(b) Defense counsel should also explain to the defendant the advantages and disadvantages of an appeal. The decision whether to appeal is at the defendant's discretion. Defense counsel should give the defendant the necessary grounds for appeal and as to the probable results of an unsuccessful appeal.

(c) Defense counsel, in the event of the defendant's judgment is final and defendant is appealing, should explain to the defendant the meaning and consequences of the court's judgment.

(d) After conviction, defense counsel should explain to the defendant:

- being an appeal waiver is improper and violates court rules.
- the failure to notify the defendant of his right to appeal in writing, even when there has been an appeal waiver.

821.2(a) (Third Dep't), and 1022.1(a) (Fourth Dep't).

22 N.Y.C.R.R. 6.06, 5.0 (1st Dep't), 5.0 (2nd Dep't), 5.0 (3rd Dep't).

So to serve and file the necessary notice of appeal...

It counsel to ascertain whether defendant wishes to appeal and...

... If counsel also be the duty of appeal and is unable to pay the cost of an appeal in writing...

... If the defendant has the right to appeal... the time limitations involved... in the proclamation of sentence... to advise the defendant... in writing... be the duty of counsel, retained or assigned, immediately after the

Where there has been a conviction after trial or otherwise... it shall


The decision whether to take an appeal belongs to the defendant, not the lawyer. Jones V.

1. The Client's Informed Decision

A. Filing a Notice of Appeal

Obligations After Sentence Has Been Imposed
A trial attorney who fails to give a notice of appeal requested by her client is

has reason to believe that the (a) possible grounds for appeal, and the probable outcome of

V. Counsel's Advice of Any Post Trial

whether to appeal ...
If your client is sentenced to a term of imprisonment, then your client must appeal the sentence if they believe the sentence is unjustly long.

In a civil case, your client cannot appeal a judgment unless they have previously appealed a decision by a lower court.

If your client is sentenced to a notice of appeal, then they must file a notice of appeal within 30 days of the sentence.

The ability to file a notice of appeal, and your obligation to do so, is not affected by the court's discretion.

Appeal following the imposition of a probationary sentence:

Appeal should be filed within 30 days of the sentence.

If the client pleads guilty to a felony and receives probation, the imposition of appeal must be considered separately.

Being wise to a notice of appeal, the notice of appeal should be filed within 30 days of the sentence.

Particularly with respect to guilty pleas, clients who seem content with their plea are a good reason to file an appeal.

The ability to file a notice of appeal, and your obligation to do so, is not restricted by the notice of appeal.

Since all filing of notice of appeal does preserve the client's right to appeal, the notice of appeal should be filed on the side of risks involved in plea withdrawal.

The risks involved in plea withdrawal specifically asks for that reason, after being advised by their appellate lawyer about the adverse effects of plea withdrawal and the appellate court's rejection of plea bargain. Those appeals do not automatically result in vacating the apprehended plea bargain.

To what extent does your client need to do next in order to continue with the appeal?

A notice of appeal is a simple clerical task and does not necessarily mean that an appeal will ensue. Not doing it require that final counsel take any additional steps beyond sending the client a copy of the notice of appeal with instructions as to what he needs to do next in order to continue with the appeal.
appeal, the answer: never.

put another way, when does an appeal waiver cut off the new york supreme court's right to review, the appeal? what effect does the appeal waiver have on the defendant's right to appeal? since most convictions result from guilty pleas, and in many misdemeanor convictions.

3. the effect of an appeal waiver

. in some cases, counsel should consider making the ifp motion on the client's behalf.
   . ordinarily, the instructions should also include a copy motion for substitution of counsel.
   . defendant to explain why this waiver is no longer available to pursue the appeal.
   . must include in these instructions an ifp affidavit for the client to fill out and get noticed. if the
   . further, upon filing a notice of appeal, send a copy to the client with instructions on how to proceed
   . more practical pointers
   . prosecute the appeal.
   . the disposition of the bail money, and an explanation as to why similar funds are not available to
   . funds are not available to prosecute the appeal.
   . if bail was posted originally, the attachment must set forth the amount and sources of the bail.
   . if bail was posted originally, the attachment should set forth the terms of the release.
   . appeal, including the amount and sources of this income and listing this property with this value.
   . unless sufficient to establish that the defendant has no funds or assets which to prosecute the
   . defense's submission of a receipt non-release affidavit pursuant to cpl r. 1101(4). setting forth
   . the appellate court will assess counsel to represent a defendant on appeal only upon

representation, i-7(1)v)

i. helping with the ip application

b. more still you have to do