

**UNITED STATES OF AMERICA:  
THE STATE OF NEW YORK:  
COUNTY OF CATTARAUGUS:  
CATTARAUGUS COUNTY COURT:**

**THE PEOPLE OF THE STATE OF  
NEW YORK,**

**- against -**

**CHRISTOPHER J KOCHAN, pro se**

**NOTICE OF  
MOTION  
Indictment 16-116**

---

PLEASE TAKE NOTICE that based upon the annexed pleading for adjournment of sentencing Christopher J Kochan

All Rights Reserved

Christopher Kochan  
PO Box 21  
Little Valley, New York  
716-938-9658

Copies to: Cattaraugus County District Attorney's Office; Cattaraugus County Court

11  
11

CATTARAUGUS COUNTY CLERK

2017 AUG 18 P 3:41

FILED

**UNITED STATES OF AMERICA:  
THE STATE OF NEW YORK:  
COUNTY OF CATTARAUGUS:  
CATTARAUGUS COUNTY COURT:**

**THE PEOPLE OF THE STATE OF  
NEW YORK,**

**- against -**

**CHRISTOPHER J KOCHAN**

**REQUEST FOR  
ADJOURNMENT  
Indictment 16-116**

**REQUEST FOR ADJOURNMENT AND DEMAND FOR COPY OF PRE-  
SENTENCING REPORT**

On August 11, 2017, on or around 8:10 AM, Defendant was told by Theresa Grove of the Cattaraugus County Department of Probation that the pre sentencing report would be ready about, or around August 21, 2017. Monday being the 21st day of August, 2017 which means by law the Probation Sentencing Report has to be made available to Defendant no later than Friday 18, 2017. Defendant is alleged to be sentenced on August 21, 2017. Furthermore, since Defendant is only allowed to 'visit' the court clerk's office on Tuesdays and Thursday's (Exhibit 0001) it would make it impossible to obtain a copy before sentencing. This would be in violation of Defendants CPL 390.50(2)(a) rights the same date as the sentencing. Further defendant inquired as to why the PSI was being completed at the last minute due to the fact that Defendant's alleged verdict was on June 8, 2017 and she said that was standard. However Defendant has talked to many individuals and it appears that PSI's involving local individuals are almost always completed within thirty days of verdict being rendered. More than twenty years ago the legislature codified a defendant's right to obtain a copy of the pre-sentence report in CPL 390.50(2)(a), which provides:

*“Pre-sentence report; disclosure, victim access to impact statements; general principles. (a) Not less than one court day prior to sentencing, unless such time requirement is waived by the parties, the pre-sentence report or memorandum shall be made available by the court for examination and for copying by the defendant’s attorney, the defendant himself, if he has no attorney, and the prosecutor.”*

The statutory requirement that a copy of the pre-sentence report be provided to defense counsel has been addressed by both state and federal courts, finding the terms of CPL §390.50(2)(a) to be mandatory, not discretionary. *Hili v. Sciarotta*, 140 F.3d 210 (2nd Cir. 1998); *People v. Butler*, 54 A.D.2d 56 (4th Dept. 1976). Failure to follow the statutory safeguards to insure that the defense has a copy of the pre-sentence report may result in appellate review and subsequent resentencing.

According to the New York State Association of Criminal Defense Lawyers, at a CLE program, *“Everything You Ever Wanted to Know About the New York State Department of Correctional Services,”*, then Deputy Commissioner and Counsel, and currently the Acting Commissioner of DOCCS:

*“The single most important document is the pre-sentence report. It is of enormous importance not only in making security and classification decisions, but also in terms of making program assignments. This report follows the inmate throughout his incarceration. A computer generated summary of the pre - sentence report is also entered into the Department’s computer for each inmate. Hence, if a pre - sentence report contains inaccurate information, it behooves the affected party to make the appropriate motion to correct the report before the defendant enters the prison system.”*

A Defendant has the right to ask the Court to make corrections on the face of the probation report and/or to have the report sent back to the Probation Department for correction of all errors. [Cohen and Neely, eds., Supreme Court of the State of New York Appellate Division, First Department, Criminal Trial Advocacy (7th ed. 1992) p. 724 [“If successful in efforts to

correct report, ask court for direction to Probation to retype report and for revised version only to be sent to Corrections.”].

Defendant hereby demands a copy of the pre sentencing report on or before Friday 18, 2017, before sentencing and to be allowed to review and file a memorandum if required.

Inaccuracies as to the client’s criminal history, level of involvement in the crime, remorse, mitigating factors, and other matters may be detected. Any inaccuracies and misinformation can then be addressed in a defense pre-sentence memorandum and/or at the time of sentencing as supervision within the Cattaraugus County Probation Department are presently being sued for substantially similar issues.

Further Defendant has filed a Motion to Renew Recusal, Motion to Renew Special Prosecutor and CPL 330.30 Motion which requires the people to respond and the court to review. Further Defendant was just made aware he was allowed to file whenever he wished, previously believing that he was only allowed to do so pursuant to Chief Court Clerk Verna Dry mandate (Exhibit 00001).

Defendant does not waive his right to review the pre sentencing report himself in any manner whatsoever and be allowed to have it rewritten [People v. Stella, 188 A.D.2d 318 (1 st Dept. 1998)].

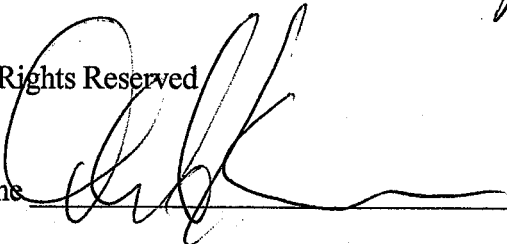
Due to these issues Defendant a adjournment is in order to provide time to challenge an inaccurate portion of the pre-sentence report either by submitting a Defendant’s Pre-sentence Memorandum (CPL § 380.30(4) CPL § 400.10) or by conference or hearing [People v.

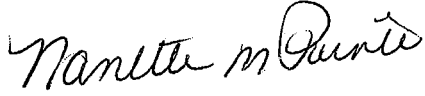
Martinez, 185 A.D.2d 191 (1st Dept. 1992); People v. Ranieri, 43 A.D.2d 1012 (4th Dept. 1974)].

Executed on the 18<sup>th</sup> day of August, 2017

All Rights Reserved

Name

  
Christopher Kochan  
PO Box 21  
Little Valley, New York, 14755

  
NANETTE M. PAINTER  
Notary Public - State of New York  
Registration #01PA5034885  
Qualified in Cattaraugus County  
My Commission Expires Oct. 24, 2018

CATTARAUGUS COUNTY SUPREME & COUNTY COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 379-6636  
FAX: (716) 938-6413

HON. RONALD D. PLOETZ  
HON. JEREMIAH J. MORIARTY, III

VERNA R. DRY, CHIEF CLERK  
JANE ST. JOHN, DEPUTY CHIEF CLERK

June 8, 2017

Chris Kochan  
PO Box 21  
Little Valley, NY 14755

Dear Mr. Kochan:

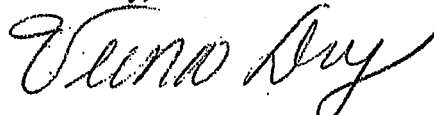
On August 8, 2016 Shawn Kerby wrote to you (copy of letter attached) that I am "permitted to establish reasonable rules regarding inspection" of court files. She further wrote, "Inspection is permitted within the parameters of normal business hours of the clerk's office, in a manner least disruptive to the ability of the clerks to carry out their duties for the court."

You've been here multiple times since that date, and it has sometimes been disruptive to the clerks' other duties or you've had to wait for security to be available to escort you. In an effort to establish reasonable parameters that best accommodate you, court personnel, and security, please schedule your visits on Tuesdays from 1:30 p.m. to 4 p.m. or Thursdays between 9 a.m. and noon, or 1:30 pm to 4 p.m. Call me at 379-6639 or Jane St. John at 379-6640 before you arrive so we can ensure adequate court and security staffing is available to assist you.

The court will accommodate you by retrieving files and making copies of requested documents however, anything beyond this will need to be submitted in writing. Any procedural and legal questions should be addressed with your attorney, Matthew Albert, who may call me or Jane St John to discuss any case related issues.

As a reminder, photographing, filming, videotaping or audiotaping in the courthouse is not authorized under the rules of the Chief Judge of the Courts. See 22 NYCRR Part 29.

Sincerely,



Verna R. Dry, Chief Clerk

0001