

INSTRUCTIONS FOR FILLING OUT FORM AFFIDAVIT:

On the separately enclosed form affidavit, please fill in the following information. If you are not sure about the answer to a question, write "I don't know."

A. BIOGRAPHICAL INFORMATION:

Fill in your

- Name
- Date of birth
- Indictment number for the crime of conviction for which you are currently seeking resentencing
- County of Conviction: If your conviction was in a county other than one of the five NYC boroughs, instead of filling out this form, you should stop here and write to the following address for more information:

Cynthia Feathers
NYS Office of Indigent Legal Services
Alfred E. Smith Building
80 S. Swan Street, Suite 1147
Albany, NY 12210

B. ELIGIBILITY FOR RESENTENCING: To be assigned an attorney, the first thing you will need to show is that you meet the initial qualifications for resentencing. Please only answer the questions in the affidavit about the crimes for which you are seeking resentencing, which must be crimes of conviction for which you are presently incarcerated.

1. Are you currently in prison? Check yes or no. Indicate your facility. If you are not in prison, you are not currently eligible.

2. Are you serving a sentence of 8 years or more? Check yes or no. Write your sentence length. If you are serving less than an 8-year determinate ("flat") or 8-year minimum term, then you are not eligible.

3. Were you sentenced as a second violent felony offender? As a persistent violent felony offender? If you were *adjudicated a predicate violent felony offender*, meaning the court had a proceeding after which it determined you had a violent predicate, then you are ineligible. If in doubt, write "I don't know."

4. What crime(s) were you convicted of? For the checklist of specific crimes, check yes or no for each. If you checked yes to any of the crimes, you are not eligible. Please note that for 4(a), second-degree murder, you are only ineligible if you were convicted of being over 18 years old and killing someone who was under 14 years old while engaging in a sex crime against that child. For all other types of second-degree murder, you are still eligible to apply. If you are unsure, write "I don't know." Then, list the crimes of

conviction for which you are presently incarcerated.

5. Was the crime committed before August 12, 2019? Check yes or no. To be eligible for *resentencing*, the crime(s) for which you are currently seeking resentencing must have been committed prior to August 12, 2019.

6. At the time of the crime, were you the victim of domestic violence, meaning you were subjected to substantial physical, sexual or psychological abuse? The DVSJA states that, to be resentenced, you had to be a victim of domestic abuse when the crimes occurred. However, this does not necessarily mean that at the precise moment of the crime you were being abused or were coerced into committing the crime. It is possible that someone who was suffering from the *effects* of abuse at the time of the crime would be eligible for resentencing. Answer the question to the best of your ability. (Please keep in mind that if you are found eligible to make a motion for resentencing, you and your attorney will have to provide support for your statement that you were the victim of domestic violence.) If you answer “no,” you are not eligible under the DVSJA.

7. Who abused you? To be resentenced, the person who abused you must have been a member of the same family or household as you. The options provided are types of people who are considered to be in the same family or household. Check yes or no for each of the options. You can check all the options that apply. If the person who abused you does not fit into any of the listed categories, but you think he or she was in the same family or household as you, check “yes” next to 7(g).

8. Was the abuse a significant contributing factor to the alleged criminal behavior? Check “yes” if you believe there is a relationship between the domestic violence that you suffered and your actions in the case for which you are currently incarcerated. Otherwise, check “no.”

C. QUALIFICATIONS FOR ASSIGNMENT OF COUNSEL: To have an attorney assigned to represent you for free, you will have to show that you cannot afford to pay for a lawyer.

9. Can you afford an attorney to assist you with your motion for resentencing? Check yes or no.

10. How much money do you earn per week, if any? Indicate a number, or \$0 if no money.

11. What is the total amount of money in your commissary account and bank account, if you have one? If you have any bank accounts in or out of prison, fill in a number for how much money you have in those accounts.

12. What is the total value of personal property and real property you own? This

applies only to property you *own*, not rent. Give your best estimate. If none or very little, indicate that.

13. Do you collect any of the following? Indicate whether you collect any of the listed types of assistance by checking “yes” or “no.” While you are in prison, the answer is likely “no.”

14. Do you have other sources of income? Check “yes” or “no.” If you check “yes,” please explain the income.

15. Who represented you in trial court? Check which type of attorney you had when you appeared in court during your trial/plea and sentencing. The options are a public defender, “18-b” counsel (a private lawyer you did not have to pay), or private counsel (whom you or your family paid). If you had private counsel, explain who paid for that attorney and why you can’t pay a private attorney now, if that is the case.

16. During the proceedings in trial court, were you incarcerated or not? Check whether before your conviction, you were held in jail (“incarcerated”), released without bail (“on your own recognizance”), or whether you got out on bail. If you were bailed out, indicate how much the bail was and who paid it and why this money can’t be used now to hire a private attorney for your resentencing petition, if that is the case.

Once you have completed the affidavit, **have it notarized.**

NYC COURT ADDRESS LIST

New York County (Manhattan):

Supreme Court, New York County
CAP Unit
100 Centre Street, Room 1007, 10th Floor
New York, NY 10013

Bronx County:

Supreme Court, Bronx County
265 E. 161st Street
Bronx, NY 10451
Attn: Hon. Robert E. Torres

Kings County (Brooklyn)

Kings County Supreme Court, Criminal Term
Motions Department
320 Jay Street
Brooklyn, NY 11201

Queens County:

Hon. Joseph A. Zayas
Administrative Judge
Queens County Supreme Court, Criminal Term
125-01 Queens Boulevard
Kew Gardens, NY 11415

Richmond County (Staten Island)

Richmond County Supreme Court, Criminal Term
Motions Department
26 Central Avenue
Staten Island, New York 10301