

At a regular term of Justice Court held in the  
Town of \_\_\_\_\_, \_\_\_\_\_ County,  
New York, on \_\_\_\_\_

there was

PRESENT: Hon. \_\_\_\_\_

STATE OF NEW YORK COUNTY OF \_\_\_\_\_  
JUSTICE COURT \_\_\_\_\_

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PEOPLE OF THE STATE OF NEW YORK,

-vs-

ORDER

\_\_\_\_\_ dob \_\_\_\_\_  
Defendant.

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The petition of \_\_\_\_\_, sworn to February 27, 2018, in support of the motion to vacate judgment and withdraw plea pursuant to 440.10(1)(h) CPL, having been received by this Court, and the petitioner having appeared through counsel, \_\_\_\_\_ County Public Defender, \_\_\_\_\_, on the 2 day of March, 2018, and the \_\_\_\_\_ County District Attorney, having consented to the relief requested, and the Court having heard the argument of counsel, and due deliberation having been had thereon, it is

- 1) ORDERED, ADJUDGED AND DECREED that the conviction of said petitioner defendant, \_\_\_\_\_, on the 3 day of February, 2016, for Menacing in violation of Section 120.14(1) of the Penal Law of the State of New York, for an incident allegedly occurring on or about December 18, 2015 be and hereby is vacated because the defendant was not provided the effective assistance of counsel at the time of the plea and the conviction was consequently sustained in violation of the Constitution of the United States and of the State of New York. This Constitutional deficiency is the sole and exclusive ground upon which this conviction is vacated. And it is further
  
- 2) ORDERED, ADJUDGED AND DECREED that the conviction of said petitioner defendant, \_\_\_\_\_, on the 3 day of February, 2016, for Menacing in violation of

Section 120.14(1) of the Penal Law of the State of New York, for an incident allegedly occurring on or about December 18, 2015 be and hereby is expunged from the criminal history of said petitioner, and it is further

- 3) ORDERED, ADJUDGED AND DECREED that the charge of Menacing in violation of Section 120.14(1) of the Penal Law of the State of New York, for an incident allegedly occurring on or about December 18, 2015 be and hereby is dismissed, and it is further
  
- 4) ORDERED, ADJUDGED AND DECREED that the defendant, \_\_\_\_\_ be and hereby is Convicted of Criminal Possession of a Weapon 4th degree, to wit a chain saw, in violation of Section 265.01(1) of the Penal Law of the State of New York, for conduct allegedly occurring on or about December 18, 2015, and he is sentenced to time already served (approximately 35 days) and a conditional discharge, nunc pro tunc.
  
- 5) ORDERED, ADJUDGED AND DECREED that this order granting vacatur, and accepting the entry of a new plea of guilty was based exclusively on 1) the motion to vacate, 2) the affidavit of the defendant in support and 3) the oral consent to this motion by the \_\_\_\_\_ county District Attorney. No plea colloquy or other information was relied upon.

DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE \_\_\_\_\_

Justice, Town of \_\_\_\_\_