

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART JP2

**COPY**

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER

Docket No. [REDACTED]

-against-

[REDACTED]  
Defendant.

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MELISSA C. JACKSON, J.

The defendant moves to seal his 1984 disorderly conduct conviction pursuant to CPL §160.55. The defendant pled guilty to PL §240.20 [disorderly conduct] on May 25, 1984. The court sentenced the defendant to pay a twenty-five dollar fine or in the alternative spend fifteen days in jail. The defendant failed to pay the fine and ultimately a warrant issued for the defendant's arrest. The defendant was returned on the warrant and was ultimately sentenced to the fifteen day jail alternative.

The court at the original sentencing notated the following on the court papers: "\$25 fine or 15 days seal in 6 months if paid". The defendant argues that the completion of the sentencing is the trigger for the sealing, as the court would have contemplated the defendant completing his sentence (thus terminating the action) one way or the other by payment of the fine or by serving fifteen days in jail. Either way, the defendant argues that the sentence upon completion should be sealed by operation of law unless the interests of justice dictate otherwise.

The People oppose the defendant's motion on the premise that the court's language clearly indicates that the trigger for the sealing is the payment of the fine alone. The People further argue that the language of the court implicitly indicates in some fashion that the conditions imposed on the sealing were in actuality conditions set up as part of a plea bargain.

The defendant's motion for sealing is granted.

The sealing statute, as it read in 1984, required the court to immediately notify the commissioner of the division of criminal justice services upon termination of the action unless the interests of justice dictated otherwise. The court could not, at the time, impose sealing terms in contravention of the mandates of the statute without the express consent or waiver of the defendant. The sentencing judge, in this case, indicated that sealing was only to be conditioned upon the defendant's payment of the fine and only then after six months. There is no justification or discretion in law that permits the court to unilaterally set such conditions. The conditions set by the court here directly impair the defendant's rights to sealing and such impairment must be upon consent. Consequently, any such waiver of a statutory right must be knowing and voluntary. See People v. Williams, 36 N.Y.2d 829 [1975].

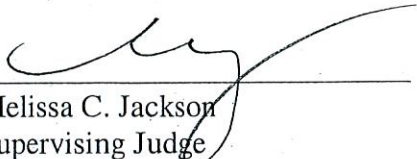
This court will not speculate or presume that the defendant waived any of his statutory rights to sealing (or any of the conditions dictating immediate sealing upon termination of the action) as a pre-condition to a plea bargain absent some clear demonstrative proof that the defendant executed a knowing and voluntary waiver. The notes made by the sentencing judge on the court papers are not clear nor are they sufficient to establish that the defendant waived his right to sealing or that he consented to the sealing conditions imposed as part of a plea bargain. The People offer no transcript or record of the plea proceedings to establish that the sealing conditions were part of the plea bargain. In the absence of a clear indication of waiver, the court must find that the defendant retained all of his statutory rights.

Upon the defendant completing his sentence and the subsequent termination of the action, the court must "immediately notify" such termination to DCJS and the defendant is entitled to have the matter sealed pursuant to the statute - unless the interests of justice dictate

otherwise. See CPL §160.55(1). This action terminated upon the defendant's successful completion of his sentence. The People nor the court previously set forth any exception to sealing the matter in the interests of justice and the court makes no such finding now. The defendant's matter is hereby sealed pursuant to CPL §160.55.

This constitutes the decision and order of the court.

Dated: December 13, 2010  
New York, New York



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Melissa C. Jackson  
Supervising Judge  
New York City Criminal Court  
New York County