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February 2022

### Art. 78 Discovery Motion/Opposition - FUSL000095 (2020-07-10)

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VIA ECF

July 10, 2020

Honorable Peter M. Forman  
Dutchess County Supreme Court  
10 Market Street, Third Floor  
Poughkeepsie, New York 12601

Re: [REDACTED] v. Board of Parole, Index No [REDACTED]

Dear Judge Forman,

Please accept this letter in lieu of a more formal motion for either unsealing, or refusing to seal, State’s Exhibit 1, the Pre-Sentence Report, so that it may be reviewed by [REDACTED] current counsel. The state appears to cite the PSR for the proposition that, three decades ago, [REDACTED] was remorseless and nonchalant during his pre-sentence interview and lied about not having a drug problem. Had we been counsel at the original sentencing (which would have been difficult because Rhiya had not been born), we would have had the right to review the PSR. CPL § 390.50. Because the document is now being cited in the current litigation, we should have the opportunity to know what it states. We would be willing to review either a hard copy or an electronic one, then return or delete after review, and certify under oath that this has been done. We have done this in the past in other litigation.

We also request unsealing of Part II of the Parole Report, which the State attaches as Exhibit 3 and asserts is filed under seal. Unlike the PSR, this document is not cited or referenced anywhere in the State’s papers, and thus, we do not know for what reason it has been brought into this case. Given the fact that the Court will have it available for review, however, we request an opportunity to do the same.

The process the State has used with respect to submitting documents to the Court *in camera* is deeply flawed. There is no “right” to *in camera* review; such review is available by permission of the Court, usually with notice and an opportunity to be heard by the opposing side. Similarly, it is the Court, not the parties, that places documents under seal. Although the parties may request *permission* to file under seal, simply “filing under seal” is not something recognized by the law.

Respectfully submitted,



Ronald L. Kuby  
Rhidaya "Rhiya" Trivedi

*Attorneys for* [REDACTED]