MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

April 22, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Dale, David v. Timothy B. Howard, Erie County Sheriff, and Frank A. Sedita, III, Erie County District Attorney*
Document Received:	Verified Petition
Name of Claimant:	David Dale 11581 Walden Avenue 130350 Fox 103 Alden, New York 14004
Claimant's attorney:	Claimant is proceeding *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

David Dale
11581 Walden Avenue
Alden New York 14004
Fox 103
130350

April 10, 2013

Ellis W. Bozzolo
Supreme Court Chief Clerk
25 Delaware Avenue
Buffalo NY 14202

Dear Sirs:

Enclosed please find Notice of Petition, Petition, Application for Index Number, Application to proceed as poor person, and RJI. Please file same and assign to a Justice for hearing. As you know, pursuant to CPLR 1102, there is no fee for the Petition because it is based on ~~CPL~~ PL 70.30.

Please contact me if there are any questions.

Very truly yours,

s/ David Dale

David Dale

C: Frank Sedita
Timothy Howard

State of New York
Supreme Court: County of Erie

In the Matter the Application of David Dale,
Petitioner

v.

Notice of Petition
Index No.

Timothy B. Howard, Erie County Sheriff, and
Frank A. Sedita, III, Erie County District Attorney,
Respondents

PLEASE TAKE NOTICE that upon the annexed Petition of David Dale, the Petitioner, herein duly sworn to the 10th day of April, 2013, Petitioner will apply to this Court on the 1st day of May, 2013 at a place and time designated by the assigned judge, or as soon thereafter as counsel can be heard, for an Order granting the relief requested in the annexed Petition, and for such other relief as this Court deems just.

PLEASE TAKE FURTHER NOTICE that you must serve a verified answer, any supporting affidavits, all orders, letters or other documents by the sentencing Court or between Respondents and the Sentencing Court and a certified transcript of any record of any proceedings at least five days before this application is scheduled to be heard.

Dated: April 10, 2013

S/ David Dale

David Dale
Petitioner
11581 Walden Ave.
Alden New York 14004

State of New York
Supreme Court: County of Erie

In the Matter the Application of David Dale,
Petitioner

v.

Petition
Index No.

Timothy B. Howard, Erie County Sheriff, and
Frank A. Sedita, III, Erie County District Attorney,
Respondents

David Dale being duly sworn deposes and says that:

1. He is the Petitioner in the above captioned proceeding and makes this Petition in support of my CPLR Article 78 Petition.

2. I was wrongfully incarcerated by coercive Justice Christopher J. Burns (hereinafter Burns) on October 3, 2012.

3. On or about October 5, 2013, Respondent Howard delivered a calculation of Petitioner's time regarding his incarceration.

4. Respondent Howard's calculation shows that Petitioner's minimum release date would be May 31, 2013.

5. CPL 70.30 (3) requires a sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to commencement of such sentence.

6. Prior to Petitioner's sentencing, Respondent Sedita discovered that Petitioner had not been properly processed on the arrest date.

7. Pursuant to Respondent Sedita's request, the Court directed on or about June 5, 2012 that Petitioner appear at Respondent Sedita's offices and submit to again be processed in order to obtain a pre-sentence report.

8. Petitioner refused to appear on the basis that Petitioner had directed his then attorney to make motion to withdraw his plea based upon the plea having been coerced by the actions and conduct of Burns.

9. Thus, the new processing would be unnecessary, since upon withdrawal of the coerced plea, no pre-sentence report would be needed.

10. Upon Petitioner's refusal, Burns ordered Petitioner to appear and be processed, or be held in contempt.

11. Without the Court's order and threat of contempt, Petitioner would not have appeared at Respondent Sedita's offices.

12. Consequently, Petitioner was placed in constructive custody by Burns' order and should be credited with the all days from the time of Burns' order to the date Petitioner appeared and was again processed.

13. According to Respondent Howard's calculation, Petitioner has not received credit to his sentence for any of the days he was in constructive custody by Burns' order.

14. Therefore, Petitioner should be credited all the additional days he was in constructive custody, and his sentence diminished by that amount of time pursuant to C.P.L. 70.30 (3).

15. In addition, General Construction Law 19 defines a calendar day includes the time from midnight to midnight.

16. Thus, Petitioner requires that Respondent Howard release him at one minute after midnight on his minimum release date since the order of commitment expires at midnight of the preceding day.

17. In the event, Respondent Howard refuses to release Petitioner at said 12:01, Respondent Howard must be ordered to release Petitioner prior to said time.

Wherefore, Petitioner requests this Court for the following relief :

A. An order properly calculating his sentence pursuant to C.P.L. 70.30 (3).

B. An order directing Respondent Howard to release Petitioner on or before 12:01, or one minute after midnight on his release date.

C. Such other and further relief as this Court deems just.

Date: April 10, 2013

David Dale
11581 Walden Avenue
Alden NY 14004

Sworn to before me this
10 day of April 2013

SHEILA M. CURRY
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION No. 01CU6250832
QUALIFIED IN ERIE COUNTY
My Commission Expires 10-31-15

VERIFICATION

STATE OF NEW YORK) SS:
COUNTY OF ERIE)

David Dale, being duly sworn, states that he is the Petitioner in this matter and that the foregoing verified Petition is true, upon information and belief; that the grounds for the belief as to all matters are based on his personal knowledge, and/or a review of the previous legal filings in this matter and/or Petitioner's legal file.

David Dale
Petitioner

Subscribed and sworn to before me
this 10th day of April, 2013

SHEILA M. CURRY
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION No. 01CU6250833
QUALIFIED IN ERIE COUNTY
My Commission Expires 10-31-15