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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

October 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:	*Wilson, Tommy v. Thomas Diina, Superintendent, Erie County Correctional Facility, Brian Fischer, Commissioner, NYS Department of Corrections & Community Supervision*
Document Received:	Order of Justice Feroleto
Name of Claimant:	Tommy Wilson #11B2253 Willard Drug Treatment Campus 7116 County Road 132 P.O. Box 303 Willard, New York 14588
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

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Enc.

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AT a Special Term of Supreme Court,
held in and for the County of Erie and
State of New York, in the City of Buffalo,
on the 20th day of September 2013.

PRESENT: **HON. PAULA L. FEROLETO**
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PEOPLE OF THE STATE OF NEW YORK
ex rel. **TOMMY WILSON**, #6842, #(11-B-2253)

ORI# NY 014015J

ORDER

Petitioner,

-vs-

THOMAS DIINA, SUPERINTENDENT,
ERIE COUNTY CORRECTIONAL FACILITY,
BRIAN FISCHER, COMMISSIONER, NYS
DEPARTMENT OF CORRECTIONS &
COMMUNITY SUPERVISION,

Respondents.

Index No.
I-2013-2629

Upon reading and filing the annexed petition for a writ of habeas corpus, filed by the above-named petitioner, verified the 24th day of June, 2013, together with supporting documents, and it appearing that the allegations in the petition, if taken as true, would not entitle the petitioner to release as a matter of law (CPLR Section 7003 (a); *see People ex rel Douglas v. Vincent, 50 NY2d 901, 903)*, and it further appearing that petitioner should pursue

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any remedy he might have by way of a petition pursuant to Article 78 of the Civil Practice Law and Rules, it is

ORDERED that the said petition for a writ of habeas corpus be and is hereby denied; and it is further

ORDERED that the petition be and is hereby converted to a petition for relief pursuant to Article 78 of the CPLR; and it is further

ORDERED that the respondents named above Show Cause at a Special Term of this Court on **NOVEMBER 12, 2013** before the **HON. CHRISTOPHER J. BURNS,** Supreme Court Justice, in Part 19 at 25 Delaware Avenue, Buffalo, New York, why judgment should not be made granting the relief demanded in the petition and why such other and further relief as may seem just and proper to the court should not be allowed; and it is further

ORDERED that Thomas Diina, Superintendent of the Erie County Correctional Facility in Alden, New York where petitioner is now confined will produce the body of **TOMMY WILSON** only if the court submits a letter to the superintendent ordering the production of the petitioner; and it is further

ORDERED that the petitioner's application for reduced filing fee pursuant to CPLR 1101(f) is granted since the petitioner has insufficient means to pay the full filing fee; and it is further

ORDERED that the petitioner will be permitted to pay a reduced filing fee of fifteen dollars ($15.00) to proceed with this action. This fee shall be assessed against the

petitioner as an outstanding obligation and collected by the facility in which the petitioner is lodged; and it is further

ORDERED that the petitioner is not required to make an initial payment of a portion of the reduced filing fee and any interim or final judgment or order entered in this matter shall be filed by the county clerk whether or not any portion of said reduced filing fee has been paid; and it is further

ORDERED that in the event the petitioner should receive an unfavorable decision, said petitioner is hereby granted poor person relief pursuant to Article 11 of the Civil Practice Law and Rules for the limited purpose of filing a Notice of Appeal in the Erie County Clerk's Office without paying the fee required by CPLR 8022(a); and it is further

ORDERED that a waiver of fees for service by publication, for stenographic transcripts, or for any other cost or fee related to this proceeding in this Court, shall only be granted upon a separate application to the Court, on notice to the County Attorney of Erie County, pursuant to CPLR 1101, showing the need therefor; and it is further

ORDERED that service of a signed and executed copy of this Order to Show Cause, the petition and any supporting papers, by ordinary First Class mail, upon the named respondents, Thomas Diina and Brian Fischer, on or before **October 15, 2013** be deemed adequate. In addition, the petitioner, on or before said date, shall similarly serve the Attorney General at the Buffalo Regional Office, Main Place Towers, 350 Main Street, Suite 300, Buffalo, New York 14202; and the Erie County Attorney, 95 Franklin Street, Room 1634, Buffalo, New York 14202; and it is further

ORDERED that it shall be the responsibility of the party seeking an extension of time to serve papers or seeking an adjournment of this matter to make such request for an extension of time or an adjournment to Supreme Court Justice Burns, and any party receiving an adjournment shall notify the other party or parties of said adjourned date; and it is further

ORDERED that it is the petitioner's responsibility to:

(a) Serve a signed and executed copy of this Order to Show Cause, the petition and any supporting papers as authorized above or by personal service. The reduction of the filing fee herein does not authorize court personnel to provide photo-reproduction services, nor service of papers on behalf of a *pro se* litigant, as these services are not statutorily authorized under a grant of poor person relief (CPLR 1102).

(b) Submit the original proof of service to the chambers of the Hon. Christopher J. Burns, 25 Delaware Avenue-Fifth Floor, Buffalo, New York 14202 at least eight (8) days prior to the return date; and it is further

ORDERED that a copy of any answer or response shall be served upon the petitioner not less than five (5) days before the return date. The original of any such answer or response is to be delivered to the chambers of Justice Burns not less than three (3) days prior to said return date.

DATED: Buffalo, New York
September 20, 2013

HON. PAULA L. FEROLETO
Justice of the Supreme Court

GRANTED: GRANTED

SEP 20 2013

BY Michelle Carter
MICHELLE CARTER
COURT CLERK