

STATE OF MAINE

SUPERIOR COURT, ss.  
COUNTY OF Oxford, ss.

DOCKET NO.: \_\_\_\_\_

Joseph Denbow,  
Petitioner (*Print full name as it appears on Criminal Judgment*)  
Date of Birth: 10/4/1965

**PETITION FOR  
POST-CONVICTION REVIEW**

v.

STATE OF MAINE

I seek a review of the following Criminal Judgment(s) or court proceeding(s) that occurred after I was sentenced in my case.

**A. TRIAL COURT INFORMATION**

- My case was filed in the following court:  
☒ Superior Court/Unified Criminal Docket in Oxford (County)  
☐ District Court in \_\_\_\_\_ (Town or City)
- The Docket Number of my case is: OXFCD-CR-2018-00300, OXFCD-CR-2018-00600
- The date of the Criminal Judgment in my case is: 5/8/2019
- The presiding Judge or Justice in my case was: \_\_\_\_\_
- This is a list of the crime(s) for which I was charged in my case and my plea to each charge:  
(*For example: Charge = Theft; and Plea = Not Guilty*):

Charge(s)	Plea(s)
<u>Aggravated forgery (B)</u>	<u>Guilty</u>
<u>Operate after habitual offender revocation, prior (C)</u>	<u>Guilty</u>
<u>Operate after habitual offender revocation, 2 prior (C)</u>	<u>Guilty</u>

- I was convicted of the following charges and given the following sentence(s) in my case:

Charge(s)	Sentence(s)
(For example: Charge = Theft; and Sentence = 6 years; all but 18 months suspended; 2 years probation):	
<u>Aggravated forgery</u>	<u>10 years, all but 2 years suspended and 2 years probation</u>
<u>Operate after habitual offender revocation</u>	<u>2 years</u>
<u>Operate after habitual offender revocation</u>	<u>2 years</u>

- I was convicted of these charge(s) following:  
☒ My plea(s) of Guilty  
☐ A Jury Trial  
☐ A Non-Jury (Bench) Trial
- [Answer the following only if you had a Jury Trial or a Bench Trial]  
☐ I testified at the trial  
☐ I did not testify at the trial

9. At the time of the trial or plea(s) in my case:  
☒ I was represented by Attorney Attorney Maurice Porter, Esq.  
☐ I was not represented by an attorney.
10. Are you asking the court to assign an attorney to represent you in this Post-Conviction Review?  
☐ Yes  
☒ No

*(If you answered "Yes" to question 10, then (a) you must fill out a Motion for Determination of Indigency and Assignment of Counsel [Form No. CR-031]; (b) if you are in jail/prison you must also obtain a certificate from that jail/prison as to the amount of money or securities on deposit to your credit in any account in that institution; and (c) file both documents with this petition)*

**B. RESTRAINT OR IMPEDIMENT (15 M.R.S. § 2124)**

*"Restraint or Impediment" refers to how the Criminal Judgment you are challenging presently affects your life or will affect your life in the future.*

***Check only the box(es) that apply to you.***

- ☒ 1. The Criminal Judgment I am challenging is causing me a **PRESENT DIRECT RESTRAINT OR OTHER IMPEDIMENT** because:
- ☒ I am incarcerated at (name of jail/prison) Mountain View Facility in Charleston, Maine
  - ☐ I am on probation, parole, or other conditional release
  - ☐ I was sentenced to an unconditional discharge
  - ☐ The jail/prison sentence that I received was completely satisfied at the time the sentence was imposed by the court because of credit for time that I had already earned
  - ☐ My sentence to jail/prison, probation, parole or other conditional release must be served in the future because I am presently on bail while my appeal of this Criminal Judgment is pending
  - ☐ My sentence to jail/prison, probation, parole or other conditional release must be served in the future because I must serve another sentence first
  - ☐ I was Ordered to pay a fine or restitution in my case, but I have not fully paid that fine or restitution
  - ☐ The Criminal Judgment is a juvenile disposition, which restrains or impedes me in the following way: \_\_\_\_\_
  - ☐ I am committed to the Maine Department of Health and Human Services because I was found not criminally responsible by reason of insanity. **I understand that I cannot use this petition for post-conviction review to ask to be released or discharged from an institutional inpatient residence and be allowed to live in a permanent residence in the community**
- ☐ 2. The Criminal Judgment is causing me a **FUTURE RESTRAINT OR OTHER IMPEDIMENT** because I am presently serving a jail/prison sentence resulting from another case and, after that, I will be committed to the Maine Department of Health and Human Services as a result of being found not criminally responsible by reason of insanity in the Criminal Judgment that I am challenging. **I understand that I cannot use this petition for post-conviction review to ask to be released or discharged from an institutional inpatient residence and be allowed to live in a permanent residence in the community.**

☐ 3. The Criminal Judgment is causing me a **PRESENT INDIRECT RESTRAINT OR OTHER IMPEDIMENT** because:

- ☐ After I was convicted of the crime(s) in the Criminal Judgment that I am challenging, I was convicted of a new crime and sentenced to jail/prison; **AND**  
I received a longer sentence for the new crime than what I otherwise would have received because of the Criminal Judgment I am challenging, **AND**  
Both the crime(s) in the Criminal Judgment I am challenging and the new crime are punishable by a sentence of a year or more in prison (*Class A, B or C crimes*)
- ☐ After I was convicted of the crime(s) in the Criminal Judgment that I am challenging, I was convicted of a new crime and sentenced to jail/prison; **AND**  
By law, the new crime for which I am serving a sentence required proof that I was convicted of the crime(s) in the Criminal Judgment that I am challenging, **AND**  
The crime(s) in the Criminal Judgment that I am challenging is punishable by one year or more in prison (*Class A, B or C crime*), and the new crime for which I have been convicted is either
- ☐ Punishable by one year or more in prison (*Class A, B or C crime*), or
- ☐ Was committed in another state or federal jurisdiction and is categorized as a felony or an infamous crime
- ☐ The Criminal Judgment I am challenging is based on my plea of guilty or nolo contendere, which was accepted by the trial court on or after March 31, 2010; **AND**  
I was represented by an attorney at the time of my plea in that case; **AND**  
I was not a citizen of the United States; **AND**  
As a result of my plea, I am subject to the following pending deportation proceeding under federal immigration law
- ☐ Place of deportation proceeding \_\_\_\_\_
- ☐ Date of deportation proceeding \_\_\_\_\_

**C. GROUNDS FOR RELIEF** (15 M.R.S. § 2125). The Criminal Judgment I am challenging or the sentence I received is unlawful or unlawfully imposed, or the impediment to me that resulted from the court proceeding after I was sentenced is unlawful, as a result of the following error(s) or ground(s) for relief in my case. [**CAUTION: If you fail to set forth any grounds for relief in your Petition, you may be prevented from presenting them at a later date**]

1. Ground One: Violation of Maine Constitution, Article I, section 9, the proportionality guarantee, requiring that "punishments shall be proportioned to the offense."  
Supporting FACTS: Mr. Denbow's high risk of death from COVID-19 renders his prison sentence unconstitutionally excessive punishment for his non-violent offenses. At 54, Mr. Denbow is in remission from cancer and suffers from chronic asthma and COPD--placing him at high risk of serious illness and death from COVID-19 if and when he becomes infected in prison. When comparing the "gravity" of Mr. Denbow's offense to his high risk of death in prison before he is released in August 2020, this sentence is unconstitutionally disproportionate to his offense.
2. Ground Two: Violation of U.S. Constitution Amend. 8, Maine Constitution, Article 1, section 9, prohibiting "cruel and unusual punishment"  
Supporting FACTS: The legislature has not made Mr. Denbow's non-violent offenses punishable by death or serious physical harm, nor could the Court have predicted the unprecedented mortal threat of the COVID-19 epidemic at the time it sentenced Mr. Denbow. Given the impossibility of physical distancing in prison, Mr. Denbow's remaining prison sentence exposes Mr. Denbow to an unsafe, life threatening condition in violation of the prohibition against cruel and unusual punishment.

3. Ground Three: \_\_\_\_\_

Supporting FACTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Ground Four: \_\_\_\_\_

Supporting FACTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**D. WAIVER OF GROUNDS FOR RELIEF (15 M.R.S. § 2128)**

*Please answer the following questions:*

1. Did you appeal the Criminal Judgment or the post-judgment proceedings you are challenging in this Petition to the Maine Supreme Judicial Court or any other court?

☐ Yes

☒ No

2. If you answered “Yes” to question 1, did you raise the same errors or grounds for relief in your appeal that you are now raising in this Petition?

☐ Yes

☐ No

3. If you answered “No” to question 2, please explain why you did not raise the same errors or grounds for relief in your appeal? At the time Mr. Denbow had the opportunity to appeal his sentence, he could not have predicted that the sentence would place him at elevated risk of contracting a deadly virus in an unprecedented pandemic.

4. Have you previously filed a petition for post-conviction review regarding the Criminal Judgment or post-sentencing proceedings that you are challenging in this Petition?

☐ Yes

☒ No

5. If you answered “Yes” to question 4, did you raise any of the same errors or grounds for relief in your previous petition that you have raised in this Petition?

☐ Yes

☐ No

6. If you answered “No” to question 5, please explain why you could not have raised those same errors or grounds for relief in your earlier petition? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**E. EXHAUSTION OF REMEDIES (15 M.R.S. § 2126)**

*Please answer the following questions:*

1. Did you file any motions in the trial court challenging the Criminal Judgment or the post-judgment proceedings you are challenging in this Petition? (*For example: motion for acquittal; motion for a new trial; etc.*)  
☐ Yes  
☒ No
2. If you answered “Yes” to question 1, what were the motions; what was the result of each motion; and what was the date of each result? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Did you appeal the Criminal Judgment or the post-judgment proceedings you are challenging in this Petition to the Maine Supreme Judicial Court or any other court?  
☐ Yes  
☒ No
4. If you answered “Yes” to question 3, what was the decision of the appellate court and the date of that decision? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Did you apply to the Maine Supreme Judicial Court for permission to appeal your sentence in the Criminal Judgment you are challenging in this Petition?  
☐ Yes  
☒ No
6. If you answered “Yes” to question 5, what was the decision of the Maine Supreme Judicial Court and the date of that decision? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Did you file a petition for clemency (pardon) to the Governor of Maine related to the Maine the Criminal Judgment you are challenging in this Petition?  
☐ Yes  
☒ No
8. If you answered “Yes” to question 7, what was the Governor’s decision and the date of that decision? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Did you file a petition for a Writ of Habeas Corpus in the United States District Court related to the Criminal Judgment you are challenging in this Petition?  
☐ Yes  
☒ No

10. If you answered “Yes” to question 9, answer each of the following questions:
- Date your petition for a Writ of Habeas Corpus was filed: \_\_\_\_\_
  - The U.S. District Court’s decision: \_\_\_\_\_
  - Date of U.S. District Court’s decision: \_\_\_\_\_
  - U.S. District Court’s Docket Number: \_\_\_\_\_
  - If you appealed the decision of the U.S. District Court to the First Circuit Court of Appeals, what was the decision and date of the decision of that appellate court: \_\_\_\_\_  
\_\_\_\_\_
11. Did you seek any administrative remedies regarding the Criminal Judgment you are challenging in this Petition?
- ☒ Yes  
☐ No
12. If you answered “Yes” to question 11, what was the name of the administrative agency, what was the agency’s decision and the date of that decision? Mr. Denbow requested release from the Department of Corrections through the Supervised Community Confinement Program.  
\_\_\_\_\_
13. What other remedies did you seek related to the Criminal Judgment you are challenging in this Petition? N/A  
\_\_\_\_\_

**F. TIME FOR FILING (15 M.R.S. § 2128-B).**

*Please provide any dates for the following that apply regarding, the Criminal Judgment or post-sentencing proceeding that you are challenging in this Petition.*

- Please check and complete all the following that apply:  
☒ Date of the Criminal Judgment or post-sentencing proceeding: May 8, 2019 (sentencing)  
☐ Date your appeal was decided: \_\_\_\_\_  
☐ Date that a new law supporting one or more of your grounds for relief went into effect: \_\_\_\_\_  
☒ Date that you learned about new facts supporting one or more of your grounds for relief: March 15, 2020, the date that Governor Mills declared a state of emergency because of COVID-19  
☐ Date of any final administrative action: \_\_\_\_\_
- If you checked any of the boxes in 1, is this petition being brought more than one year after the most recent date listed by you?  
☐ Yes  
☒ No
- If you answered “Yes” to question 2, please state why your petition was not brought within the required one-year period: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. If you are subject to a pending deportation proceeding under federal immigration law, please check and complete the following:

(a) Date that you discovered that deportation proceedings have been started against you:

\_\_\_\_\_

(b) Was your petition for post-conviction review brought more than 60-days after this date?

☐ Yes

☐ No

(c) If you answered "Yes" to 4(b), please state why your petition was not brought within the required 60-day period: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## G. CONCLUSION

Wherefore, I pray that the court grant me the following relief:

Declare that Mr. Denbow's remaining sentence of imprisonment until August 28, 2020 is  
unconstitutional and order immediate release so Mr. Denbow can safely quarantine  
at home and protect himself from exposure to the deadly COVID-19 virus.

Date: 4/13/2020

Signature /s/ Emma E. Bond on behalf of Petitioner Joseph Denbow  
Print name Emma Bond, Maine Bar No. 05211  
Address P.O. Box 7860  
Portland, Maine 04112

## H. OATH OR AFFIRMATION

See attached Emergency Motion for Bail and Leave to File  
Unsworn Petition

The Petitioner, \_\_\_\_\_, being first duly sworn, deposes (affirms) and says that he/she is the Petitioner named in the foregoing Petition; that he/she has read the same; that all matters set forth are true, except such matters as are alleged on information and belief; and, as to those matters, he/she believes them to be true.

Date: \_\_\_\_\_

Signature \_\_\_\_\_  
Print name \_\_\_\_\_

Subscribed and sworn to (affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_.

(Month)

(Year)

\_\_\_\_\_  
(Notary Public) (Attorney)