**STATE OF MICHIGAN**

 **IN THE SAGINAW COUNTY CIRCUIT COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

 **Lower Court No.** \_\_\_\_\_\_\_\_\_

 Plaintiff-Appellee

 **Honorable \_\_\_\_\_\_\_\_\_\_\_\_**

-vs-

 Defendant-Appellant.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

 **MOTION TO MODIFY TERMS OF PROBATION**

 **NOW COMES**\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and through his attorneys, and moves this Honorable Court to modify the terms of his probation and states the following in support:

 1. On \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_ pled guilty/no contest to (or was found guilty of) \_\_\_\_\_\_\_\_\_\_\_, before the Honorable \_\_\_\_\_\_\_\_\_in the \_\_\_\_\_\_\_\_ County Circuit Court.

 2. On \_\_\_\_\_\_\_\_\_, Mr. \_\_\_\_\_\_\_\_ was sentenced to \_\_\_\_ years probation, with \_\_\_\_\_ months in the \_\_\_\_\_\_\_ County Jail. (Judgment of Sentence, Appendix A).

 3. \_\_\_\_\_\_\_\_ now moves this Court to modify the terms of his probation to permit an early release from jail. According to MCL 771.2(5), the “court may amend the order [of probation] in form or substance at any time.” Defendant requests a reduction of the jail sentence, not a reduction of the probationary term (an early termination of probation would require a 28-day notice period under MCL 771.2(2)).

 4. As the Court knows, Governor Whitmer declared a State of Emergency in response to COVID-19 on March 10, 2020. Individuals incarcerated in \_\_\_\_\_\_\_ County Jail are a vulnerable population and are in particular danger should the virus spread within the jail. There are far fewer opportunities for the necessary social distancing and the \_\_\_\_\_ County Jail does not permit hand sanitizers (IF TRUE?)

 5. On March 15, 2020, the Michigan Supreme Court issued Administrative Order No. 2020-1, urging all state courts to “take any . . . reasonable measures to avoid exposing participants in court proceedings, court employees, and the general public to the COVID-19 crisis.” The order further instructs courts “to take into careful consideration public health factors arising out of the present state of emergency . . . b) in determining any conditions of probation.”[[1]](#footnote-1)

***If applicable***

6. Mr. \_\_\_\_\_\_\_ is particularly vulnerable due to advanced age / health condition (DESCRIBE AGE AND/OR CONDITION).

7. An early release from jail would be consistent with the four goals of sentencing (punishment, deterrence, protection of society and rehabilitation). Mr. \_\_\_\_\_\_\_\_ would not pose a danger to the public based on the nature of the crime and his prior record, as described below. Moreover, he will have served \_\_\_ months of his \_\_\_ month sentence. A reduction of the jail term is not inconsistent with the goals of punishment, deterrence and rehabilitation for the following reasons:

a. The offense was not serious in nature or not the most serious violation of the statute (DESCRIBE WHY. Perhaps no victim, victim not harmed, little loss or damage, property returned) OR the offender’s role was minor (DESCRIBE WHY. Defendant not primary actor or played passive role or induced by others?).

b. Moreover, there were some mitigating circumstances surrounding the offense (DESCRIBE THEM. Perhaps diminished mental capacity due to substance abuse or mental illness. Perhaps duress or coercion).

b. Mr. \_\_\_\_\_ is a first-time offender OR has a prior record that is old or not serious/assaultive (DESCRIBE PRIOR RECORD AND WHY DEFENDANT IS NOT A DANGER TO PUBLIC. INCLUDE DEFENDANT’S **AGE**, IF RELEVANT).

c. The sentencing guidelines range would have supported a lower sentence. (INPUT GUIDELINES RANGE). Intermediate sanction cells and straddle cells do not require any jail time. This was true when the guidelines were mandatory, see MCL 769.34(4)(a) & (c)(2) (“An intermediate sanction may include a jail term . . . “ and “an intermediate sanction that may include a term of imprisonment”)” and is certainly true now that the guidelines are advisory. *People v Lockridge*, 498 Mich 358 (2015).

d. Mr. \_\_\_\_\_ cooperated with the police or was cooperative at arrest and during questioning.

e. Mr. \_\_\_\_ expressed remorse at sentencing and is still remorseful.

f. Mr. \_\_\_\_\_’s behavior while in jail has been good or exemplary (CONFIRM WITH JAIL AND NOTE WHO YOU SPOKE WITH IN THE BODY OF THIS MOTION).

g. Mr. \_\_\_\_ has taken part in substance abuse or other classes while in the jail (CONFIRM WITH JAIL OR ATTACH DOCUMENTATION).

h. Mr. \_\_\_\_ has a supportive family and will have a stable home environment if released (EXPLAIN). OR

i. Mr. \_\_\_ is needed at home to care for family members (IDENTIFY WHICH FAMILY MEMBERS AND THE CARE NEEDED).

j. [OTHER MISCELLANEOUS REASONS such as youth, good employment history, previously on tether with no violations, etc.]

Under these unprecedented circumstances, Mr. \_\_\_\_\_\_ would request an early release from the jail to serve the remainder of his probationary sentence.

 **WHEREFORE**, Mr. \_\_\_\_\_\_\_\_\_\_ respectfully requests that this Honorable Court grant his motion to modify the terms of his probation to remove or reduce the jail sentence.

 Respectfully submitted,

 BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. See Administrative Order No. 2020-01 (March 15, 2020), *available at* <https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf>. [↑](#footnote-ref-1)