**STATE OF MICHIGAN**

**IN THE** \_\_\_\_ **COUNTY CIRCUIT COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. \_\_\_\_\_\_\_\_\_\_

v.

Hon. Judge \_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_,

Defendant.

PROSECUTOR (P XXXXX) ATTORNEY (P XXXXX)

Prosecuting Attorney Attorney for Defendant

Address Address

City, State ZIP City, State ZIP

PHONE PHONE

**EMERGENCY Motion for Resentencing**

NOW Comes Defendant \_\_\_\_\_\_\_\_\_\_, by and through \_\_\_\_\_\_\_\_\_\_, and respectfully moves this Court for resentencing due to unique features of his case and the impact of the COVID-19 pandemic. In support, counsel states:

1. Conviction by plea: On \_\_\_\_, Mr./Ms. \_\_\_\_\_\_\_\_\_\_ pled guilty to \_\_\_\_\_\_\_\_\_\_, in violation of MCL \_\_\_\_\_\_\_\_\_\_. Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s guidelines range was \_\_\_\_\_\_. On \_\_\_\_, Mr./Ms. \_\_\_\_\_\_\_\_\_\_ was sentenced to \_\_\_\_\_\_\_\_\_\_ in the Michigan Department of Corrections. Mr./Ms. \_\_\_\_\_\_\_\_\_\_ is currently incarcerated at \_\_\_\_\_\_\_\_\_\_. **Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s earliest release date is \_\_\_\_\_\_\_\_\_\_.**
2. Conviction by trial: On \_\_\_\_, Mr./Ms. \_\_\_\_\_\_\_\_\_\_ was convicted after trial of \_\_\_\_\_\_\_\_\_\_, in violation of MCL \_\_\_\_\_\_\_\_\_\_. Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s guidelines range was \_\_\_\_\_\_. On \_\_\_\_, Mr./Ms. \_\_\_\_\_\_\_\_\_\_ was sentenced to \_\_\_\_\_\_\_\_\_\_ in the Michigan Department of Corrections. Mr./Ms. \_\_\_\_\_\_\_\_\_\_ is currently incarcerated at \_\_\_\_\_\_\_\_\_\_. **Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s earliest release date is \_\_\_\_\_\_\_\_\_\_.**
3. <<Include any subsequent procedural history here, and identify any pending motions/appeals.>>
4. Due to the impact of the COVID-19 pandemic and because this case presents certain specific mitigating factors, Mr./Ms. \_\_\_\_\_\_\_\_ now requests that \_\_\_ be resentenced to a term of \_\_\_\_\_\_\_\_\_\_.
5. <<Optional>> If Mr./Ms. \_\_\_\_\_\_\_\_ is resentenced and if Mr./Ms. \_\_\_\_\_\_\_\_ is released, \_\_\_ anticipates <<explain where client will go>>. Mr./Ms. \_\_\_\_\_\_\_\_ has a supportive family and will have a stable home environment <<explain as necessary>>. Mr./Ms. \_\_\_\_\_\_\_\_ is needed at home to care for family members <<explain as necessary; identify family members and explain care needed>>.
6. **This Court has authority to resentence Mr./Ms. \_\_\_\_\_\_\_\_\_\_**
7. Trial courts are ordinarily prohibited from reviewing a sentence for proportionality due to information not offered at the time of initial sentencing. *People v Wybrecht*, 222 Mich App 160 (1997). But as information about COVID-19 was not available at the time of sentencing, it represents newly discovered evidence that should be considered by this Court. Indeed, at the time this Court sentenced Mr./Ms. \_\_\_\_\_\_\_\_\_\_, the COVID-19 pandemic did not yet exist. Now, in light of the COVID-19 pandemic, Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s continued incarceration in the Michigan Department of Corrections (MDOC) has the potential to become a death sentence. Const 1963, art 4, § 46 (abolishing death sentencing).
8. MCR 2.613(A) provides that a court may modify a judgment due to an error where the refusal to take action would be inconsistent with “substantial justice.” As our Supreme Court has repeatedly stated, “it is difficult to imagine something ‘more inconsistent with substantial justice’ than requiring a defendant to serve a sentence that is based upon inaccurate information.” *People v* *Francisco,*474 Mich 82, 91 FN 6; see also *People v Jackson,*487 Mich 783, 800; 790 NW2d 340 (2010).
9. For example, under ordinary circumstances, a defendant is entitled to resentencing when his sentence is predicated upon an inappropriately inflated guidelines range or other inaccurate information. *Francisco*, 474 Mich at 91-92;  *People v Lucker*, 504 Mich 938 (2019) (defendant entitled to resentencing where the sentencing judge relied upon inaccurate information regarding the number of prior convictions).
10. In this case, at the time of Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s sentencing, this Court was not aware of the COVID-19 virus, how it would spread, and how it might affect Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s actual sentence. As such, this Court’s sentencing was based on incomplete information, and Mr./Ms. \_\_\_\_\_\_\_\_\_\_ can be resentenced as a result.
11. **The impact of the COVID-19 pandemic warrants resentencing.**
12. Mr./Ms. \_\_\_\_\_\_\_\_\_\_ requests resentencing, as \_\_\_ continued incarceration does not best protect society. Of course, protection of society has long been considered one of the four primary goals of punishment. See e.g., *People v Snow*, 386 Mich 586, 592 (1972), citing *Williams v New York*, 337 US 241 (1949); see also Administrative Order No. 2020-1 (2020) (urging trial courts to “take reasonable steps to protect the public” due to the COVID-19 pandemic).
13. COVID-19 has now spread to Michigan’s prisons. *First Michigan Prisoner Tests Positive for Coronavirus*, Detroit Free Press (March 23, 2020). As of March 23, three MDOC employees have also tested positive for COVID-19. *Id.* Given the way the virus has so quickly spread around the world, the country, and the state, it is reasonable to expect the same within the MDOC.
14. On March 23, 2020, Governor Whitmer issued a broad “stay-at-home” order in order to try to curtail the spread of COVID-19. Executive Order 2020-21 (March 23, 2020). Under Executive Order 20-21, “all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.” *Id*. This restriction will be impossible to accomplish in a prison, which was not designed or built for such limitations.
15. When individuals cannot fully isolate themselves, the Federal Government, the State of Michigan, and all public health authorities urge – and in many instances, mandate – “social distancing,” to save lives and slow the spread of COVID-19. According to the Centers for Disease Control and Prevention (CDC), social distancing “means remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible.” See [www.CDC.gov](http://www.CDC.gov). But social distancing is impossible to accomplish in a prison, which was not designed or built to provide individual prisoners this amount of individual space.
16. <<Optional>> To save lives and slow the spread of COVID-19, the CDC also recommends that those over age 60 and those with chronic health conditions – such as heart disease, diabetes, and lung disease – take special precautions and isolate themselves as much as possible. Mr./Ms. \_\_\_\_\_\_\_\_\_\_ is \_\_\_ years old, and suffers from \_\_\_\_\_\_\_\_\_\_. <<Amplify this section with any known facts about age, chronic health conditions.>>
17. Given these unique and emergency considerations, Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s resentencing would help to protect society by reducing the prison population and allowing \_\_ to practice the social distancing that has been nationally mandated.
18. **Mitigating Factors Specific to this Case Warrant Resentencing.**
19. This Court should also take into consideration the following positive attributes that prove Mr./Ms. \_\_\_\_\_\_\_\_\_\_is worthy of resentencing. <<Fill in below as necessary.>>
20. **Responsibility and remorse:**
21. **Nature of the offense:**
22. **Mitigating circumstances at the time of the offense:**
23. **Sentence of Mr./Ms. \_\_\_\_\_\_\_\_\_\_’s co-defendant:**
24. **Prior record:**
25. **Positive prison conduct:**
26. **Supportive friends and family:**
27. For these reasons, Mr./Ms. \_\_\_\_\_\_\_\_\_\_ is an excellent candidate for resentencing.

WHEREFORE, undersigned counsel respectfully requests that this Court resentence Mr./Ms. \_\_\_\_\_\_\_\_\_\_ to a term of \_\_\_\_\_\_\_\_\_\_.

Respectfully submitted,

**Attorney Name**

Address

City, Michigan XXXXX

Dated: \_\_\_\_\_\_\_\_\_\_, 2020

Administrative Order No. 2020-2 (2020) (limiting court activity to “essential functions” and directing the use of social distancing);