

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM, PART 4

THE PEOPLE OF THE STATE OF NEW YORK,

v.

NECHEMYA WEBERMAN,

Defendant.

**NOTICE OF MOTION TO
SET ASIDE SENTENCE
PURSUANT TO CPL §440.20**

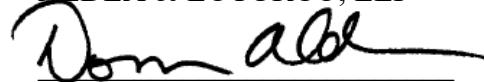
Ind. No. 1589/2011

PLEASE TAKE NOTICE, that upon the annexed affirmation of **DONNA ALDEA**, attorney at Barket Epstein Kearon Aldea & LoTurco, LLP, the Exhibits attached thereto, the annexed Memorandum of Law, and upon all proceedings had in this matter to date, the Defendant, Nechemya Weberman, will move this Court, before the Honorable Matthew J. D'Emic, at the Courthouse located at 320 Jay Street, Brooklyn, New York 11201, on July 8, 2025 , at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order pursuant to C.P.L. §440.20(1), directing that Mr. Weberman's sentence be set aside and resentencing held.

Dated: June 27, 2025
Garden City, New York

Respectfully submitted,

BARKET EPSTEIN KEARON
ALDEA & LOTURCO, LLP



Donna Aldea, Esq.
666 Old Country Road, Suite 700
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To: Clerk of Court, Criminal Term
Supreme Court, Kings County
320 Jay Street
Brooklyn, New York 11201

Hon. Eric Gonzalez
District Attorney, Kings County
350 Jay Street
Brooklyn, New York 11201
Attn: ADA Jill Harris

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM, PART 4

THE PEOPLE OF THE STATE OF NEW YORK,

v.

NECHEMYA WEBERMAN,

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**ATTORNEY AFFIRMATION
IN SUPPORT OF MOTION
TO SET ASIDE SENTENCE
PURSUANT TO CPL §440.20**

Ind. No. 1589/2011

DONNA ALDEA, an attorney duly admitted to practice law in the courts of the State of New York, swears and affirms under the penalty of perjury that the following statements are true, except for those made upon information and belief, which I believe to be true:

1. I am a partner at Barket Epstein Kearon Aldea & LoTurco, LLP, counsel to the Defendant, Nechemya Weberman, and I am familiar with the factual and procedural history of this case.
2. I make this affirmation in support of Mr. Weberman's motion, pursuant to C.P.L. §440.20(1), to set aside his sentence and to order a resentencing.
3. This affirmation is based upon an inspection of the records and proceedings in this case, the attached Exhibits, and upon information derived from legal authorities and public records.

A. Procedural History

4. On December 7, 2012, a jury returned a verdict of guilty against Mr. Weberman for Course of Sexual Conduct against a Child in the First Degree (N.Y. Penal Law § 130.75[1][b]), Criminal Sexual Act in the Second Degree (N.Y. Penal Law § 130.45[1]) (12 counts), Criminal Sexual Act in the Third Degree (N.Y. Penal Law § 130.40[2]) (2 counts), Sexual Abuse in the Second Degree (N.Y. Penal Law § 130.60[2]) (18 counts), Sexual Abuse in the Third Degree (N.Y. Penal Law § 130.55) (25 counts), and Endangering the Welfare of a Child (N.Y. Penal Law §

260.10[1]), based on allegations that he sexually abused a child over the course of a three-year period, when she was between the ages of 12 and 15 years old. Strategically drafted by prosecutors working in the office of District Attorney Charles Hynes to maximize Mr. Weberman's sentencing exposure by allowing for consecutive sentencing, the indictment separated out multiple individual acts that are typically charged under a single count of course of conduct.

5. On January 22, 2013, Mr. Weberman was sentenced. Although his charges still could have been legally run concurrently, carrying a minimum aggregate sentence of 5 years' incarceration,¹ the prosecution requested that he be sentenced to "the maximum allowable incarceration" with sentences on all counts run consecutively (Sent. 34). Despite having no criminal history whatsoever, Mr. Weberman – who was then 54 years old, a father of 10 children and a grandfather of 19 children – was sentenced to an aggregate prison term of 103 years.² A copy of the sentencing transcript is attached as **Exhibit 1**. By operation of law, the sentence was reduced to 50 years' imprisonment. *See* N.Y. Penal Law §70.30(1)(c), (e)(vi).

6. Prior to sentencing, Mr. Weberman submitted a letter to the court in mitigation of sentence. Attached to that letter were more than four dozen letters from Mr. Weberman's family, friends, and supporters discussing Mr. Weberman's positive impact on their lives. A copy of counsel's letter in mitigation of sentence, dated January 17, 2013, is attached as **Exhibit 2**. Copies of the letters in support are attached as **Exhibit 3**.

¹ Indeed, Mr. Weberman recalls that at his arraignment, the presiding judge suggested that the court could impose a five-year sentence if Mr. Weberman pled guilty to the charges.

² The sentence was comprised of: (1) a determinate 25-year sentence for the first-degree course of sexual conduct conviction; (2) 12 consecutive 6-year terms for the second-degree criminal sexual act convictions; (3) 2 consecutive 3-year terms for the third-degree criminal sexual act convictions; (4) 19 concurrent 1-year terms for the second-degree sexual abuse and endangering counts; and (5) 25 concurrent 3-month terms for the third-degree sexual abuse counts. The court ran the 25-year, 6-year, and 3-year sentences consecutively to each other as well, resulting in a total sentence of 103 years' imprisonment (Sentencing Tr. at 46).

7. Mr. Weberman appealed his conviction to the Appellate Division, Second Department. On December 9, 2015, the Second Department vacated two of the second-degree sexual abuse convictions, vacated the sentences thereon and dismissed those counts, and otherwise affirmed. *People v. Weberman*, 134 A.D.3d 862 (2d Dept. 2015). On July 7, 2016, the New York Court of Appeals denied Mr. Weberman's application for leave to appeal. *See People v. Weberman*, 27 N.Y.3d 1156 (2016).

8. On or about September 28, 2017, Mr. Weberman moved, pursuant to C.P.L. §440.10, to vacate his conviction on the grounds that: (a) his trial counsel was ineffective; (b) the prosecutor engaged in misconduct; (c) there was newly-discovered evidence; and (d) he was actually innocent.

9. Following oral argument on the motion, the court denied Mr. Weberman's CPL §440.10 motion by Decision and Order dated February 22, 2019. By order dated October 11, 2019, the Second Department denied Mr. Weberman's motion for leave to appeal the denial of the CPL §440.10 motion. *See People v. Weberman*, 2019 N.Y. Slip Op. 81710(U), 2019 WL 5091251 (2d Dept. Oct. 11, 2019).

10. On or about October 15, 2019, Mr. Weberman filed in the Second Department a motion for a writ of error *coram nobis*, or alternatively, seeking to renew or reargue his direct appeal, on the grounds that Weberman's appellate counsel was conflicted by virtue of having represented Weberman at trial and on appeal, and has thus failed to raise valid ineffective assistance of counsel claims and a meritorious, but unpreserved, duplicity claim on appeal.

11. By Decision and Order dated May 27, 2020, the Second Department denied the *coram nobis* motion. *See People v. Weberman*, 183 A.D.3d 921, 122 N.Y.S.3d 563 (2d Dept. 2020). By separate order on May 27, 2020, the Second Department denied Weberman's application to

reargue his direct appeal. *People v. Weberman*, 2020 N.Y. Slip Op. 66591(U), 2020 WL 2755505 (2d Dept. May 27, 2020).

12. On August 14, 2020, the New York Court of Appeals denied Weberman's application seeking leave to appeal the denial of *coram nobis* relief. *People v. Weberman*, 35 N.Y.3d 1071 (2020).

13. On August 10, 2020, Mr. Weberman filed a federal habeas petition in the United States District Court for the Eastern District of New York, which is currently pending. *Weberman v. Collado*, No. 20 Civ. 3584 (Cogan, J.) (E.D.N.Y. petition filed Aug. 10, 2020). In that petition, Mr. Weberman asserted claims of ineffective assistance of trial and appellate counsel; due process and fair trial violations based on prosecutorial misconduct and the Court's evidentiary rulings, and legal insufficiency.

14. By order dated April 21, 2025, the United States District Court ordered the government to submit a two-column chart which "lists counts 3 -87 of the indictment (including the date or date range of the alleged offense)," and provides "a record page citation(s) to the victim's testimony which [the government] contends constituted a sufficient basis for the jury to convict on that count." (*Weberman v. Collado*, No. 20 Civ. 3584 (BMC) [Cogan, J.] [Order dated April 21, 2025]).

15. The government subsequently requested, and was granted, an extension to file the proof ordered by the District Court.

16. Defendant is currently incarcerated pursuant to the judgment of conviction.

17. Attached as **Exhibit 4** is a letter from Dr. Jason Unger, M.D., dated December 10, 2024, a board-certified specialist in pulmonary and critical care medicine, providing an assessment

of Mr. Weberman's health, including several "significant and permanent" health conditions that place him at an increased risk of "morbidity and mortality."

18. Attached as **Exhibit 5** is a letter from Kings County District Attorney Eric Gonzalez, dated August 23, 2021, in support of commutation or reduction of Mr. Weberman's sentence.³

19. Attached as **Exhibit 6** are recent letters from Mr. Weberman's family and community in support of commutation or reduction of Mr. Weberman's sentence.⁴

20. For the reasons set forth in the accompanying memorandum of law, the sentence should be set aside and a new sentencing proceeding held.

21. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that Mr. Weberman's sentence be set aside, and a resentencing ordered.

Dated: June 27, 2025
Garden City, New York

Respectfully submitted,



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³ This letter was filed in support of a clemency application made to former Governor Cuomo. It is relevant here for the District Attorney's frank acknowledgment of the excessiveness of the sentence imposed.

⁴ These letters were filed in support of a clemency application made to Governor Hochul. They are relevant here to show that even now, over a decade after his sentence and incarceration, Mr. Weberman still has substantial familial and community support.

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**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
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Ind. No. 1589/2011

ARGUMENT

**MR. WEBERMAN’S SENTENCE MUST BE SET ASIDE AND
RESENTENCING ORDERED BECAUSE THE SENTENCE
IS CRUEL AND UNUSUAL**

A. Applicable Legal Standard

A criminal trial court may set aside a sentence where the sentence is “unauthorized, illegally imposed or otherwise invalid as a matter of law.” C.P.L. §440.20(1). Where a sentence is set aside, “the court must resentence the defendant in accordance with the law.” *Id.* §440.20(4).

A resentencing pursuant to CPL §440.20 is authorized on the grounds that a sentence violates the federal and New York state constitutional prohibitions against cruel and unusual punishments. *See, e.g., People v. Lora*, 71 Misc. 3d 221 (Sup. Ct. N.Y. Cty. 2021); *see also* N.Y. Const., art. I, §5; U.S. Const., 8th Amdt.; *People v. Broadie*, 37 N.Y.2d 100, 110 (1975). A sentence constitutes cruel and unusual punishment not only where the sentence is facially invalid under state law, but also where it is invalid “as applied” to a particular defendant. *See People v. Brathwaite*, 263 A.D.2d 89, 92 (2d Dept. 2000) (citing *People v. Thompson*, 83 N.Y.2d 477, 479 [1994]). Moreover, a sentence is cruel and unusual where it is “‘cruelly excessive, that is, grossly disproportionate to the crime for which [it is] exacted’” *Id.* (quoting *Thompson*, 83 N.Y.2d at 479).

In assessing whether a sentence is disproportionate to the crime, courts focus on, among other factors, “the gravity of the offense in comparison to the same or similar crimes in this State and other jurisdictions, as well as the character of the offender and the gravity of the threat that he poses to society.” *Id.* (citing *Thompson*, 83 N.Y.2d at 480).

B. Mr. Weberman’s sentence is disproportionate to those imposed for comparative crimes in this State.

The Court’s 103-year sentence in this case—which was reduced to 50 years by operation of law—is disproportionate to other sentences imposed for similar crimes. Indeed, the Kings County District Attorney has himself recognized that the sentence imposed here was “excessive, disproportionate and inconsistent with the sentences of similarly situated defendants” (Exhibit 10).

Writing in support of commutation of Mr. Weberman’s sentence, District Attorney Gonzalez noted that Weberman had been “singled out for unusually harsh punishment because his was a high-profile case” (*Id.*).

This is starkly apparent from a review of sentences in factually similar cases. In *People v. Frary*, 29 A.D.3d 1223 (3d Dept. 2006), for example, a defendant convicted after trial of first-degree course of sexual conduct was sentenced to a determinate 12-year prison term. The victim in *Frary*, a young boy who was less than 13 years old at the time of the abuse, testified at trial that he stayed overnight in the defendant’s bedroom “two weekends per month” for a 10-month period, and that “oral and anal sex occurred between them ‘just about every time.’” *Id.* at 1224. Similarly, in *People v. Hayes*, 104 A.D.3d 1050 (3d Dept. 2013), the defendant was sentenced to 12-year prison term following a jury trial at which he was convicted of four counts of first-degree sexual abuse, twelve counts of second-degree course of sexual conduct against a child, twelve counts of second-degree sexual abuse, four counts of third-degree sexual abuse, and child endangerment. Likewise, in *People v. Martinez*, 26 N.Y.3d 196 (2015), a defendant convicted by a jury of first-

degree rape and first-degree criminal course of sexual conduct against a child received an indeterminate prison sentence of 10 to 20 years. In that case, the defendant raped and sexually abused his neighbor's six-year-old daughter repeatedly for over a year, and told the victim that, "if you tell anyone, I will kill your parents." *Id.* at 198.

Even within Kings County, the sentences for factually similar offenses have been significantly shorter. In *People v. Neustadt*, Kings Cty. Ind. 03345/2019 (Chun, J.), for example, the defendant was sentenced to a 10-year determinate prison term upon a jury verdict convicting him of first-degree course of sexual conduct against a child based on allegations that multiple times a week over the course of a 5 year period, he repeatedly engaged in sexual conduct, including sexual intercourse, oral sexual conduct, and at least one act of anal sexual conduct, with his stepdaughter, who was between eight and thirteen years old.

While the indictment in Mr. Weberman's case was strategically drafted by prosecutors under then-District Attorney Charles Hynes to maximize the number of charges and to allow for consecutive sentences, the actual conduct alleged against Weberman – that he repeatedly engaged in sexual acts with a girl over the course of a three year period, when she was between the ages of 12 and 15 years old – is comparable to, if not less than, the severity and frequency of the conduct charged in the cases above. Indeed, had his sentences been run concurrently, as would have been typical, his minimum sentence would have been five years' incarceration – which very likely would have been the sentence imposed had Weberman pled guilty to the indictment instead of proceeding to trial. While, certainly, a somewhat harsher sentence may be justified following a trial, the sentence of 103 years imposed here – amounting to an unprecedented trial penalty of 98-years' incarceration – is egregiously disproportionate. Thus, this factor clearly supports a finding of a disproportionate sentence.

C. Mr. Weberman’s sentence is disproportionate due to his age and health conditions, which leave him at a heightened risk of serious illness or death from infections prevalent in the State’s prisons.

The 50-year prison sentence is also invalid as applied to Mr. Weberman due to his age and health conditions, which leave him at heightened risk for serious illness or death. Mr. Weberman, who is 66 years old, has been incarcerated for more than 12 years at Shawangunk Correctional Facility (“Shawangunk CF”). He served a portion of this sentence in the midst of the virulent, and often fatal, COVID pandemic. And, along with the rest of New York’s prison population, he is in closed quarters and at heightened risk for contracting influenza, RSV, Tuberculosis, or other infectious diseases, which substantially increase the risk of serious illness, or even death, for particularly vulnerable inmates like Weberman.

As discussed in the letter from Dr. Jason Unger, M.D., a board-certified specialist in pulmonary and critical care medicine at Walter Reed National Military Medical Center, Mr. Weberman suffers from a variety of conditions that increase his risk of morbidity and death, including obesity, diabetes, hyperlipidemia, hypertension, lymphedema, and recurrent cellulitis (Exhibit 4).¹ Mr. Weberman’s cellulitis has gotten more severe over the last few years. It now regularly surfaces every few months, and causes swelling, red to purple discoloration, extreme pain, difficulty walking and, during more extreme flare-ups, fevers. Prison infirmary visits due to a cellulitis-induced fever expose Mr. Weberman to contact with other inmates infected with RSV, influenza, tuberculosis, COVID, and other contagious diseases. Moreover, cellulitis is commonly

¹ Cellulitis is a “potentially serious bacterial skin infection” which, if not properly treated, “can spread to your lymph nodes and bloodstream and rapidly become life-threatening.” Mayo Clinic, “Cellulitis” (available at <https://www.mayoclinic.org/diseases-conditions/cellulitis/symptoms-causes/syc-20370762>)

treated with steroids, moderate doses of which have been linked to a higher risks of a serious respiratory infection and greater likelihood of developing complications.²

Mr. Weberman's various conditions—which Dr. Unger considers “debilitating,” “significant and permanent”—have already led to multiple prior hospitalizations during Mr. Weberman's incarceration. They are consistent, Dr. Unger notes, with Metabolic Syndrome, which places him at a higher risk for cardiovascular disease and sudden cardiac death (*Id.*). Moreover, based on Mr. Weberman's age, these “multiple chronic comorbidities” place Mr. Weberman at risk of contracting multiple communicable illnesses such as COVID, influenza, tuberculosis, and RSV, and of having “a severe and potentially fatal outcome” from infection (*Id.*) Every infection he experiences while incarcerated presents a significant risk of serious illness or death.

Accordingly, based on Mr. Weberman's age, gender, obesity, and medical conditions, a sentence which keeps him incarcerated in a state prison until 2055—his current release date is in October of that year—leaves him at an unacceptable risk of death from infection. Mr. Weberman's age, medical conditions and obesity are a triple threat that nearly guarantee life-threatening complications should he contract a communicable respiratory infection. His sentence should therefore be vacated, and a resentencing ordered. *See, e.g., People v. Horsey*, 2020 N.Y. Slip Op. 32745 (Sup. Ct., Albany Cty. 2020) (defendant's 25-year sentence vacated on consent “based on the confluence of his serious health issues, his imprisonment for over 20 years, and the actual impact of COVID-19 on inmates” at state correctional facility).

² See articles available at:

<https://www.endocrine.org/news-and-advocacy/news-room/2020/individuals-taking-class-of-steroid-medications-at-high-risk-for-covid>;

<https://rheumatology.medicinematters.com/covid-19/corticosteroids/corticosteroid-use-risk-factor-hospitalization/17991732>.

D. Mr. Weberman's sentence is disproportionate in view of his character and the lack of any threat release would pose to society.

Mr. Weberman's sentence should also be vacated because of personal history and characteristics and lack of threat to society. At the time he was charged, Mr. Weberman was 54 years old and married to Chaya Weberman, his wife of over 40 years and with whom he shares ten children. He had no prior criminal history. After receiving a bachelor's degree from Yeshiva University, he went on to become a spiritual counselor to over 200 individuals. He often made referrals to those who needed professional mental health counseling and encouraged and connected individuals with charitable organizations. Mr. Weberman served as an Office Manager for the United Jewish Organization and coordinated help, housing, and guidance to those in his community seeking spiritual, emotional, or economic assistance.

As a result of his dedication to, and efforts on behalf of, his community, Mr. Weberman has earned and enjoyed a favorable reputation as a prominent member of the Satmar Hasidic community of Williamsburg, as reflected in the many letters submitted on his behalf at sentencing (Exhibit 3). Throughout those letters one sees the recurring theme of Mr. Weberman's assistance to both men and women, young and old. Giving just a few examples:

- Yocheved Fried, Mr. Weberman's past personal secretary, credited Weberman for her ability to be a "stable wife, mother and proud grandmother despite [her] difficult challenges that [she] left behind;"
- Baila Gluck, who also testified at Weberman's trial, stated in her letter that Weberman, "with his great knowledge and wisdom has helped me find my path to truth . . . he helped me identify more clearly with myself, and the person I want to be in the future. When all turned against me he didn't allow me to fall into despair. . . " Ms. Gluck's parents wrote that Weberman saved their daughter's life, "and in doing that he saved our lives;"
- Jacob Moskovitz, a former business partner of Mr. Weberman's, described Weberman as "a serious person putting his time, pleasure and pride in his family, his torah studies and his noble deeds on behalf of countless others, many of whom he barely knew;"

- Mindy Ackerman, a teacher who is acquainted with Mr. Weberman and his family, wrote that Weberman “went out of his way to help big or small. The adults and children alike felt only love and admiration for this selfless man. In his free time he helped with the synagogue, the children’s activities, and the individual needs of so many;”
- Joel Berger stated that his “fondest memories with Nechema are from the youth program that he founded and directed;”
- Zelig Mayer, who was counseled by Weberman since age 17, explained how Weberman “transformed [his] life from bitter to hopeful” and also assisted Mayer’s brother who was going through a :devastating” divorce. According to Mr. Mayer, Weberman succeeded in “pull[ing] him away from the brink of despair;” and
- Libby Weberman, Mr. Weberman’s youngest daughter, described how her father often could not help her with her homework because of the “ton of people coming to our house with broken expressions and broken hearts,” and how he did not “have the heart to send away these helpless crying people.”

Today, after having served more than 12 years in prison, Mr. Weberman maintains the support of his wife and children, who frequently visit him, along with an overwhelming number of individuals from his community (*see Exhibit 6*).

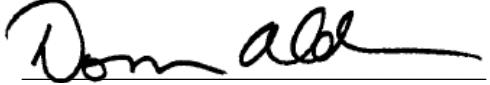
In addition, during his more than 12 years of incarceration at Shawangunk CF, he has not received a single infraction, has not been involved in any physical altercations, nor has he committed any new crimes. To the contrary, he has served his time peacefully and meaningfully. He has participated in computer training and “Thinking 4 Change,” a cognitive-behavioral curriculum developed by the National Institute of Corrections that concentrates on changing the criminogenic thinking of offenders. Additionally, Mr. Weberman regularly attends religious services and meets with a Rabbi twice each week. Mr. Weberman spends the majority of his days engrossed in the study of Torah. Were he to be resentenced to a time-served sentence, Mr. Weberman would live with his wife and his children, who range in age from early twenties to early forties. Additionally, Mr. Weberman, who will be required to register as a sex offender, with all of the attendant limitations on his activities, can be monitored safely by a parole officer.

CONCLUSION

For the foregoing reasons, Mr. Weberman respectfully moves for an Order setting aside his sentence and ordering a new sentencing hearing.

Dated: June 27, 2025
Garden City, New York 11530

Respectfully submitted,

by: 
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