



Lookback Sealing CPL 160.59

DATE: Monday, October 31, 2022
Instructor(s): Arielle Bryant, Esq.
MCLE: 1.0 Skills

This program has been approved for credit in
New York State for all attorneys
including those who are Newly Admitted
(less than 24 months) and administered by
the Onondaga County Bar Association.

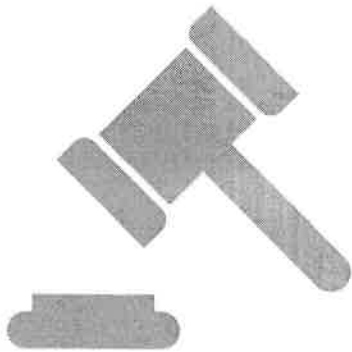
Presenter

Arielle Bryant, Esq. has worked for the Unified Court System since 2007 as Special Counsel, 9th Judicial District. Ms. Bryant received her B.A. in Sociology from SUNY Albany, and her J.D. from Pace University School of Law and is admitted to practice in New York. In 2020, Ms. Bryant received the distinguished Amicus Curiae Award, which is proudly displayed in her office. In her spare time, Ms. Bryant throws axes.

LOOKBACK SEALING CPL §160.59

BY: ARIELLE BRYANT, ESQ.

ABOUT THE LOOKBACK SEALING



- Went into effect on October 7, 2017
- A defendant who has been convicted of two or fewer crimes, including up to one felony conviction, may, with some exceptions, apply to have these convictions sealed by the Court, following the passage of 10 years.
- Defendants who are convicted of three or more crimes, resulting from more than two criminal transactions in their lifetime, are NOT eligible to have any convictions sealed.

MORE ABOUT TEN YEARS



CPL§160.59(5) provides that any eligible offense may be sealed only after *at least 10 years* have passed since the imposition of the sentence on the defendant's latest conviction, **or**, if the defendant was sentenced to a period of incarceration, the defendant's latest release from incarceration. Such 10-year period shall be extended by the period of time, equal to the amount of time served.

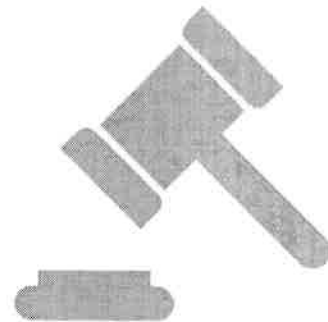
Ineligible For Sealing, CPL § 160.59(1)

Sex offenses as defined in Article 130 of the Penal Law

- Any offenses defined in Article 263 of the Penal Law
Sexual Performance by a Child

- A felony offense defined in Article 125 of the Penal Law (Murder, Manslaughter, etc.)

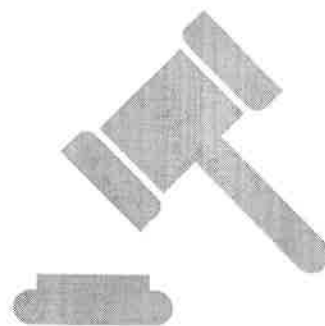
- A violent felony offense defined in § 70.02 of the Penal Law



Ineligible For Sealing, CPL § 160.59(1)

Sex offenses as defined in Article 130 of the Penal Law

- A class A felony defined in the Penal Law
- Conspiracy to commit any of the above ineligible offenses
- A felony conviction for an Attempt to commit any of the above ineligible offenses
- Any offense requiring registration as a Sex Offender



HEARING THE APPLICATION

The application for sealing pursuant to CPL §160.59 *may* be made to the Court in which the defendant was convicted of the most serious offense. If both convictions are of the same classification (Class A misdemeanors), the application *shall be made* to the court in which the defendant was last convicted.

WHAT SHOULD BE IN THE APPLICATION?

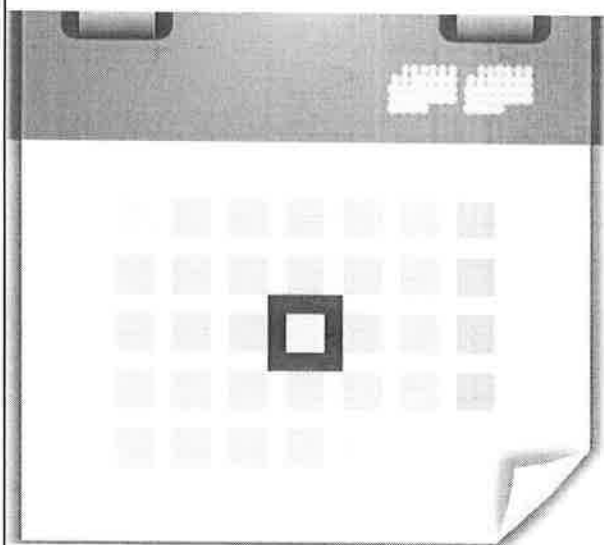
1. Certificate of Disposition (copy) for any offense for the which the defendant has been convicted.
 - If a certificate is not available, an explanation is required.
CPL§160.59(2)(b)(i)
2. A sworn statement of the defendant as to whether they have filed or intend to file any application for sealing of any other eligible offense.

WHAT SHOULD BE IN THE APPLICATION?

3. A sworn statement as to the conviction(s) for which relief is being sought.
4. A sworn statement of the reason(s) why the court should, in its discretion grant such sealing, with supporting documentation.

SERVICE OF THE APPLICATION

Defendant is *required* to serve their application to seal on the District Attorney's Office for EACH county in which the convictions occurred.



45 DAYS

The District Attorney has 45 days to notify the Court if they are objecting to the sealing application.

FINGERPRINTS

Before the Court can consider an application, the Court MUST request and received a criminal history report of the defendant. The report must have any sealed records and shall include and FBI response, regarding criminal history in any other jurisdictions (if any).

HEARING

If the District Attorney's Office opposes the sealing the Court MUST conduct a hearing on the application.

At that hearing, the Court should consider any evidence offered by either party that would assist the Judge in making a determination regarding a seal.

No hearing is required if the DA doesn't object BUT the court CAN hold a hearing if the Court wishes too.

SUMMARY DENIAL

CPL §160.59(3)

SEALING APPLICATION MUST BE DENIED

CPL § 160.59(3) provides that an application for sealing shall be summarily denied when:

- Defendant is required to register as a sex offender.
- Defendant previously obtained a sealing of the maximum number of convictions allowable under CPL § 160.58 (conditional sealing statute 2009).

SEALING APPLICATION MUST BE DENIED

CPL § 160.59(3) provides that an application for sealing shall be summarily denied when:

- Defendant previously obtained sealing of the maximum number of convictions allowed under CPL § 160.59(4)
- 10 years HAVE NOT passed since the date of conviction or date of release from incarceration, whichever is MORE recent.

SEALING APPLICATION MUST BE DENIED

CPL 160.59(3) provides that an application for sealing shall be summarily denied when:

- Defendant has an undisposed arrest OR charge is pending.
- Defendant was convicted of any crime AFTER the date of entry of judgment of the last conviction for which sealing is sought.

SEALING APPLICATION MUST BE DENIED

CPL 160.59(3) provides that an application for sealing shall be summarily denied when:

- Defendant has failed to provide the Court with the required sworn statement of the reasons why the court should grant the relief requested.
- Defendant has been convicted of two or more felonies or more than two crimes.



If the motion is properly filed, the judge should issue a ruling.
GRANT or DENY the motion to seal the conviction(s).

WHAT DO YOU CONSIDER WHEN MAKING A DECISION?
CPL § 160.59 (7)

- How much time has lapsed between the defendant's last conviction and the filing of the motion?
- Circumstances and seriousness of the offense(s) defendant was convicted of, was the arrest charge a non-eligible offense?

WHAT DO YOU
CONSIDER WHEN
MAKING A
DECISION?
CPL § 160.59 (7)

- Circumstances and seriousness of any other offenses for which defendant was convicted?
- Character of the defendant INCLUDING actions taken towards rehabilitation. i.e. treatment programs, work, schooling, community service and volunteer programs.

WHAT DO YOU
CONSIDER WHEN
MAKING A
DECISION?
CPL § 160.59 (7)

- Victim's statement(s) associated with the conviction defendant is seeking a sealing.
- Impact of sealing the defendant's record upon rehabilitation or successful and productive reentry and reintegration of society.
- Impact of sealing of defendant's record on public safety and public confidence and respect for the law.

If The
Application is
Granted...

RESULT OF THE SEALING

All official records or papers relating to the arrest, prosecutions, and convictions, including all copies, on file with DCJS or any court shall be sealed and not made available to any person or public or private agency, except for the following:

1. The defendant or designated agent
2. Qualified agencies under Exec Law §835(9) and federal and state law enforcement agencies, when acting within the scope of their law enforcement duties—this is more expansive than CPL §160.50, and includes the Unified Court System, probation departments, sheriff's offices, DA's offices, DOCCS, local departments of correction, office of professional medical conduct, child protective services, etc.

RESULT OF THE SEALING

All official records or papers relating to the arrest, prosecutions, and convictions, including all copies, on file with DCJS or any court shall be sealed and not made available to any person or public or private agency, except for the following:

3. Any state or local officer or agency with responsibility for issuance of licenses to possess guns, when the defendant has made application for such license
4. Any prospective employer of a police or peace officer
5. The criminal justice information services of the FBI for the purpose of responding to firearm background checks

SEALING COVERS

This sealing provision covers the records on file with DCJS as well as any other court, but does NOT seal law enforcement's records, which is a significant difference from a CPL §160.50 seal.

CPL §160.59(10) provides that a conviction sealed pursuant to this section may still be used as an element or to enhance a punishment in a future criminal proceeding.

CPL § 160.59 Operational & Technical Guidelines:

- [CPL16059OperationalGuidelines.pdf \(nycourts.gov\)](#)

CPL § 160.59 REQUEST COPY OF CRIMINAL
CASE FILE

- [CPL16059FileRequestForm.pdf \(nycourts.gov\)](#)

CPL § 160.59 FORM DECISION AND ORDER

[CPL16059DecisionandOrderForm.pdf \(nycourts.gov\)](#)

Criminal Certificate of Disposition Request Form for CPL 160.59 Sealing Application

To: _____ Court
 Number & Street: _____
 City, State & Zip: _____
 Phone: _____

NOTE: The name, address and phone number of the court can be found by selecting the County and Court Type in the Court Locator at: <http://www.nycourts.gov/courts/index.shtml>

Please complete the required information below to request a criminal Certificate of Disposition for your CPL 160.59 sealing application. You may either bring your completed form to the court in person, or you may mail the completed form to the court. A fee of five (\$5) dollars is required to obtain a criminal Certificate of Disposition. When delivering your request in person, the fee may be paid in cash or by certified check or money order, and you must provide a valid photo ID. When mailing your request, the fee may be paid by certified check or money order (do not send cash in the mail), and the form must be notarized below.

Requestor Information	
	Date of Request:
Requestor	Name:
	Address:
	Phone:
	Email:
Role	I am the Defendant
	I am the Defendant's Agent (must provide notarized authorization from the defendant)
Receipt	Please mail to the above address (must provide self-addressed stamped envelope)
	I will pick up at court when notified
For Court Use Only	\$5 Certificate of Disposition fee paid Cash Certified Check # Money Order #
	Proper ID provided (specify):
	Written authorization provided (for Defendant's Agent only)
	Self-addressed stamped envelope provided (for request to receive Certificate of Disposition by mail only)

Defendant Information			
Name	First:	Middle:	Last:
AKA(s)			
Date of Birth			
Sex	Male	Female	Unknown

Case Identifiers (provide as much information as you can, but you MUST provide at least one of the following case identifiers)			
Docket, Indictment, SCI or IDV Number			
Arrest Number			
Order of Protection Number			
Certificate of Disposition Number			
Criminal Justice Tracking Number (CJTN)			
Complaint Number			
Ticket Number			
Other Identifiers (provide other identifiers if known)			
NYSID Number			
Partial Docket Number			
Motorist ID Number			
Arrest Date	or Date Range	from	to
Incident Date	or Date Range	from	to
Address			
License Plate Number			
Charges			
Other			

NOTE: Form MUST be notarized when submitting request by mail.

Signature of Requestor

Sworn to before me this ____
 day of _____, 20 ____.

Notary Public

_____ Court

State of New York, County of _____

Present: Hon. _____

In the matter of the application of:

Name: _____

AKA(s): _____

Decision and Order

Motion to Seal Pursuant to CPL 160.59

NYSID: _____

Motorist ID: _____

DOB: _____

A motion having been made by the above-named applicant to seal the judgment(s) of conviction in following criminal action(s) pursuant to section 160.59 of the Criminal Procedure Law,

Docket, Indictment, or SCI Number(s)	Court Name	Top Conviction Charge	Law/Section/Subsection	Charge Weight	Conviction Date	Sentence Date	Term of any Post-Sentence Incarceration	Release Date

AND, the motion having been served upon the District Attorney, and the District Attorney having been given an opportunity to be heard, and the court having fully considered the arguments of the parties as well as each of the factors set forth in CPL 160.59(7), the motion is:

GRANTED, and it is hereby

ORDERED that the judgment(s) of conviction in the above-listed criminal action(s), including covered charges, are sealed pursuant to CPL 160.59, and it is further,

ORDERED that the clerk of the court shall enter the sealing in accordance with the provisions set forth in subdivisions eight and nine of CPL 160.59.

DENIED as required by one or more of the following provisions in CPL 160.59.

- A conviction for which sealing is sought is NOT an eligible offense as defined in CPL 160.59(1)(a).
- The offender has previously obtained sealing of the maximum number of convictions allowable pursuant to CPL 160.58.
- The offender has previously obtained sealing of the maximum number of convictions allowable pursuant to CPL 160.59(4).
- It has been less than ten years since the offender’s latest judgment of conviction as extended by any period(s) of post-sentence incarceration pursuant to CPL 160.59(5).
- The offender has an undisposed arrest or charge pending.
- Another judgment of conviction that includes convictions for crimes (i.e., misdemeanors or felonies) was entered against the offender after the date of entry of the latest judgment of conviction for which sealing is sought.
- The offender has failed to provide the court with the required sworn statement of the reasons why the court should grant the relief requested.
- Judgments of conviction that include convictions for crimes (i.e., misdemeanors or felonies) have been entered in more than two criminal actions.
- Judgments of conviction that include convictions for felony offenses have been entered in more than one criminal action.

DENIED as being contrary to the interests of justice.

Reasons:

So Ordered:

Date: _____

Judge Signature



New York State
Unified Court System

OFFICE OF COURT ADMINISTRATION

RONALD P. YOUNKINS, ESQ.
EXECUTIVE DIRECTOR

BARRY CLARKE, ESQ.
CHIEF OF OPERATIONS

NANCY M. SUNUKJIAN, ESQ.
DIRECTOR, OFFICE OF JUSTICE COURT SUPPORT

MEMORANDUM

To: All Town and Village Judges

From: Office of Justice Court Support

Subject: New Lookback Sealing Law CPL §160.59

Date: October 6, 2017

New Lookback Sealing Statute Passed as Part of Raise the Age Law

As part of the Raise the Age legislation passed by the New York State Legislature in April 2017, and signed into law by Governor Andrew Cuomo on April 7, 2017, a relatively unheralded sealing provision was enacted, which goes into effect on *October 7, 2017*.

Courts are familiar with the disposition sealing provisions pursuant to Criminal Procedure Law §§160.50 and 160.55, under which dismissed cases or cases terminated in favor of a defendant result in various amounts of sealing protection. Additionally, as currently constructed, defendants under the age of 19 may also be adjudicated as a Youthful Offender, which leads to the record of their charges and convictions being sealed according to CPL Article 720. Further, conditional sealing pursuant to CPL §160.58 was introduced in 2009, for those defendants who had completed Drug Court-type programs. Until now, no similar sealing provisions existed in New York for defendants convicted of crimes outside of these scenarios.

In brief, the new sealing law provides that a defendant who has been convicted of two or fewer crimes, including up to one felony conviction, may, with some exceptions, apply to have these convictions sealed by the Court, following the passage of 10 years.¹ Defendants who are convicted of three or more crimes, resulting from more than two criminal transactions in their lifetime, are not eligible to have *any* convictions sealed.

¹ CPL §160.59(5) provides that any eligible offense may be sealed only after at least 10 years have passed since the imposition of the sentence on the defendant's latest conviction, or, if the defendant was sentenced to a period of incarceration, the defendant's latest release from incarceration. Such 10 year period shall be extended by the period of time equal to the amount of time served.

Ineligible convictions

Pursuant to CPL §160.59(1), certain convictions have been declared ineligible for sealing:

- Sex offenses as defined in Article 130 of the Penal Law
- Any offenses defined in Article 263 of the Penal Law
- A felony offense defined in Article 125 of the Penal Law (Murder, Manslaughter, etc.)
- A violent felony offense defined in section 70.02 of the Penal Law
- A class A felony defined in the Penal Law
- Conspiracy to commit any of the above ineligible offenses
- A felony conviction for an Attempt to commit any of the above ineligible offenses
- Any offense requiring registration as a Sex Offender

What Court hears the application?

The application for sealing pursuant to CPL §160.59 may be made to the Court in which the defendant was convicted of the most serious offense. In the event that both convictions are of the same classification, the application shall be made to the court in which the defendant was last convicted.

Example 1: A defendant convicted of Grand Larceny in the Fourth Degree, a class E felony, in violation of PL §155.30(1) in County Court in April 2005 and Petit Larceny, a class A misdemeanor, in violation of PL §155.25 in Town Court in March 2007, could apply for sealing of **both** convictions to County Court in March 2017. Application would be made to the Court with the more serious conviction.

Example 2: A defendant convicted of Driving While Intoxicated, an Unclassified Misdemeanor, in violation of VTL §1192(3) in Village Court X in April 2005 and Petit Larceny, a class A misdemeanor, in violation of PL §155.25 of the Penal Law in Town Court Y in March 2007, would apply for sealing of **both** convictions to Town Court Y in March 2017. Since both convictions are of the same classification, application must be made to the Court of the most recent conviction.

How is application made?

The application must contain the following items to be considered by the Court:

- A copy of the certificate of disposition for any offense for which the defendant has been convicted²

² CPL §160.59(2)(b)(i) provides that an explanation of why such certificate is not available must be provided, if a certificate of conviction or other documentation is not available.

- A sworn statement of the defendant as to whether he or she has filed, or then intends to file, any application for sealing of any other eligible offense
- A copy of any such application that has been filed
- A sworn statement as to the conviction or convictions for which relief is being sought
- A sworn statement of the reason or reasons why the court should, in its discretion, grant such sealing, along with any supporting documentation

The application must be served on the District Attorney's Office for each of the counties in which convictions to be sealed were obtained. The District Attorney has 45 days to notify the Court if they are objecting to the sealing. If the District Attorney's Office opposes the sealing, the Court **must** conduct a hearing on the application in order to consider any evidence offered by either party that would aid the sentencing judge in their decision whether to seal the records. No hearing is required if the District Attorney's Office does not oppose the application, but the Court may hold such a hearing in its discretion.

Before considering the application, the Court must request and receive a fingerprint based criminal history report of the defendant, including any sealed or suppressed records, which shall include information from the FBI regarding criminal history information that occurred in other jurisdictions.

Per CPL §160.59(3), the application for sealing shall be summarily denied under the following circumstances:

- the defendant is required to register as a sex offender
- the defendant has previously obtained sealing of the maximum number of convictions allowable under CPL §160.58, the conditional sealing statute enacted in 2009
- the defendant has previously obtained sealing of the maximum number of convictions allowable under CPL §160.59(4)
- 10 years have not passed since the date of conviction or the date of release from incarceration, whichever is more recent
- the defendant has an undisposed arrest or charge pending
- the defendant was convicted of any crime after the date of the entry of judgment of the last conviction for which sealing is sought
- the defendant has failed to provide the court with the required sworn statement of the reasons why the court should grant the relief requested
- the defendant has been convicted of two or more felonies or more than two crimes

Factors for the Court to consider

Once the application is properly filed regarding eligible conviction(s), the Court considering the application has the discretion to grant or deny the motion to seal the conviction(s). The statute is designed is to facilitate employment and CPL §160.59(7)

provides that the Court shall consider any relevant factors, which include the following:

- The amount of time that has elapsed since the defendant's last conviction
- The circumstances and seriousness of the offense for which the defendant is seeking relief, including whether the arrest charge was not an eligible offense
- The circumstances and seriousness of any other offenses for which the defendant stands convicted
- The character of the defendant, including any measures that the defendant has taken toward rehabilitation, such as participating in treatment programs, work, or schooling, and participating in community service or other volunteer programs
- Any statements made by the victim of the offense for which the defendant is seeking relief
- The impact of sealing the defendant's record upon his or her rehabilitation and upon his or her successful and productive reentry and reintegration into society
- The impact of sealing the defendant's record on public safety and upon the public's confidence and respect for the law

Result of the sealing

If the application is granted, all official records or papers relating to the arrest, prosecutions, and convictions, including all copies, on file with DCJS or any court shall be sealed and not made available to any person or public or private agency, except for the following:

- The defendant or designated agent
- Qualified agencies under Exec Law §835(9) and federal and state law enforcement agencies, when acting within the scope of their law enforcement duties – this is more expansive than CPL §160.50, and includes the Unified Court System, probation departments, sheriff's offices, DA's offices, DOCCS, local departments of correction, office of professional medical conduct, child protective services, etc.
- Any state or local officer or agency with responsibility for issuance of licenses to possess guns, when the defendant has made application for such license
- Any prospective employer of a police or peace officer
- The criminal justice information services of the FBI for the purpose of responding to firearm background checks

Notably, this sealing provision covers the records on file with DCJS as well as any other court, but does NOT seal law enforcement's records, which is a significant difference from a CPL §160.50 seal.

Further, CPL §160.59(10) provides that a conviction sealed pursuant to this section may still be used as an element or to enhance a punishment in a future criminal proceeding.

Forms available

To assist in these applications, the Unified Court System has developed the following forms:

- Request for Criminal Certificate of Disposition for CPL §160.59 Sealing Application
http://www.nycourts.gov/FORMS/cpl_160.59_sealing_application/pdfs/CPL_160.59_CoD_Request_Form.pdf

This is a simplified CoD request form tailored specifically for CPL §160.59 sealing applicants.

- CPL §160.59 Sealing Application
http://www.nycourts.gov/FORMS/cpl_160.59_sealing_application/pdfs/CPL_160.59_Sealing_Application.pdf

The application includes a Notice of Motion and Affidavit of Support for Sealing Pursuant to CPL §160.59, an Affidavit of Service, and Instructions for completing the forms.

- List of District Attorneys' Offices
http://www.nycourts.gov/FORMS/cpl_160.59_sealing_application/pdfs/List_of_District_Attorneys_Offices.pdf

A listing of District Attorneys' Offices is provided to assist applicants in affecting service of their papers upon the applicable prosecutor.

Printed copies of these documents have been attached to this memo, as well as the text of CPL §160.59.

The lookback sealing law is designed to assist defendants convicted of some relatively minor crimes to seal the convictions to assist with employment. Studies have shown that a misdemeanor conviction remote in time can have a negative effect on one's ability to find gainful employment. Courts now have the ability and discretion to provide a second chance, while balancing societal needs that criminal records be maintained where appropriate. Please review this new law and feel free to contact the Office of Justice Court Support at 1-800-232-0630 to discuss further.

Operational & Technical Considerations and Guidelines
for CPL 160.59 Sealing Applications

The following information outlines internal protocols for processing CPL 160.59 sealing applications once they are successfully filed with the court:

- **Effective Date** – The CPL 160.59 sealing statute becomes effective on October 7, 2017.
- **Assisting the Public** – Forms and instructions for filing CPL 160.59 sealing applications with the court have been created and posted online as a resource for applicants. You may direct applicants seeking assistance to access the public-facing forms and instructions at:
http://www.nycourts.gov/FORMS/cpl_160.59_sealing_application/index.shtml
- **Service** – The applicant must serve the district attorney in the county where the conviction was entered before filing the application with the court. In scenarios where the defendant is applying to seal more than one conviction, and the convictions were entered in different counties, the applicant must serve the district attorneys of both counties before filing the application with the court. An Affidavit of Service must be provided upon filing as proof of proper service.
- **Venue** – For an application to seal more than one conviction, the statute requires filing in the court where the conviction for the most serious offense was entered, or for two convictions of the same weight, in the court where the most recent conviction was entered.
- **Judicial Assignment** – The statute requires the case to be assigned to the same judge that entered the judgment of conviction (i.e., conviction and sentence) whenever possible. If that judge is no longer available (e.g., retired, presiding in a different court, etc.), the case may be assigned to another judge in your court.
- **Opposition** – The district attorney may oppose the sealing application within 45 days after it is served by the applicant. In scenarios where the defendant is applying to seal more than one conviction, and those convictions occurred in different counties, the district attorney of either county may oppose the sealing application.
- **Hearing** – If the district attorney opposes the sealing application, a hearing must be scheduled. At the hearing, the applicant and the district attorney may offer evidence and call witnesses to offer testimony. The court must decide the application after considering the evidence offered by both parties at the hearing and issue an order either granting or denying CPL 160.59 sealing.
- **No Opposition** – If the district attorney does not oppose the sealing application within 45 days after service by the applicant, the court must decide the application based upon the sealing application and the accompanying exhibits and documentation submitted by the applicant, and the judge must issue an order either granting or denying CPL 160.59 sealing.
- **“Covered By” Cases** – Identify any cases, whether in your court or another court, that were “covered by” the conviction for which sealing is sought and bring them to the judge’s attention. By extension, the court may order CPL 160.59 sealing of “covered by” cases as well.
NOTE: DCJS is aware that this is within the court’s discretion and is prepared to apply 160.59 sealing to cases that are “covered by” a conviction on another criminal case.
- **Criminal History Report** – The statute requires the court to have an unsuppressed, fingerprint-based, criminal history report before deciding the application. However, since the applicant is not being processed for a new arrest, it is not necessary to reprint the individual. The court may merely obtain an updated criminal history (that is based upon criminal arrest events for which the applicant has been previously fingerprinted) through eJusticeNY. To obtain an unsuppressed criminal history report from eJusticeNY as required by the statute, you **MUST** follow these steps:
 - Use the **CTA** reason code.

- Enter the case number (i.e., docket, indictment or SCI number) for the conviction the applicant wants sealed. If the applicant is applying to seal more than one conviction, enter the case number of the conviction for the most serious offense, or for two convictions of the same weight, enter the case number of the most recent conviction.
- Enter “CPL 160.59 Sealing Application” in the Comment field.
- If the applicant is applying to seal more than one case, enter any additional case numbers in the Comment field following the “CPL 160.59 Sealing Application” comment.

NOTE: In the rare instances where an applicant was not fingerprinted for the original conviction, fingerprinting may be ordered by the court in order to create an arrest cycle and apply the CPL 160.59 sealing to it.

NOTE: It is possible that DCJS will create a new, specific reason code for CPL 160.59, and if that occurs, updated information will be disseminated to the courts at that time.

- Case Files – Establish internal protocols for your court to retrieve archived case files if the judge requests them.
NOTE: The judge deciding the application will have both an unsuppressed rap sheet with the arrest, conviction and sentence information AND a Certificate of Disposition for each conviction that the applicant wants sealed. As a practical matter, retrieving an archived case file may not be necessary unless the district attorney opposes the sealing and a hearing must be held. Nevertheless, your court should have a procedure in place when the judge requests the file.
- Case Files from Another Court – If the defendant is applying to seal more than one conviction, and a conviction occurred in a different court, the judge may request a copy of the other court’s file. A copy of the other court’s file is NOT REQUIRED to decide the application. However, it is incumbent upon the Chief Clerk (or his/her designee) to contact another court for a copy of the file if the judge does request it.
NOTE: The judge deciding the application will have both an unsuppressed rap sheet with the arrest, conviction and sentence information AND a Certificate of Disposition for each conviction that the applicant wants sealed. As a practical matter, it is probably not necessary to obtain a case file from another court unless the district attorney opposes the sealing and a hearing must be held. Nevertheless, your court should have a procedure in place for requesting a copy of another court’s file if the judge directs it.
NOTE: A standard Request for Copy of Criminal Case File for CPL 160.59 Sealing Application form is provided for this purpose in fillable PDF format. However, this request is not a required part of the CPL 160.59 sealing process, and the request should only be made if the judge directs it.
- Eligibility Criteria – To be eligible for CPL 160.59 sealing, the applicant must meet the following criteria:
 1. Must have no more than two prior criminal convictions, and no more than one of those criminal convictions may include a conviction for felony offenses.
 2. More than ten years must have elapsed since the most recent conviction, excluding any periods of post-sentence incarceration.
 3. Must have a conviction for an eligible offense.

NOTE: While a clerk may return an application for correction for procedural defects (e.g., improper venue, no Affidavit of Service, unnotarized affidavit, etc.), a clerk should not reject a CPL 160.59 sealing application based upon Eligibility Criteria. These are substantive reasons to deny the application, and such determinations should be made by the judge after the application is filed.
- **Decision and Order – The judge must issue a written decision and order indicating if the CPL 160.59 sealing application is granted or denied. If the judge grants the sealing, the court must seal both its paper files and electronic records as well as make appropriate notifications to the prosecutor, law enforcement, DCJS and DMV (if applicable for VTL offenses). If the judge grants

sealing for more than one conviction, and the conviction occurred in a different court, send a copy of the sealing order to the court where the other conviction was entered so that court may seal both its paper files and electronic records as well as make appropriate notifications to the prosecutor, law enforcement, DCJS and DMV (if applicable for VTL offenses).

NOTE: If the court extends CPL 160.59 sealing to “covered by” cases, and the “covered by” cases were pending in another court, it is incumbent upon the court affecting sealing of the conviction that covered those cases to notify the court where the “covered by” cases were pending by sending a copy of the sealing order and identifying which “covered by” cases must be sealed so that court may seal both its paper files and electronic records as well as make appropriate notifications to the prosecutor, law enforcement, DCJS and DMV (if applicable for VTL offenses).

**A boilerplate Decision and Order for CPL 160.59 Sealing has been drafted, and will be disseminated for use as a means to assist in the expeditious processing and disposition of CPL 160.59 sealing applications.

- **Effecting a CPL 160.59 Seal:**
 - Since CPL 160.59 is a discretionary seal that must be granted by the court pursuant to an application by the defendant, it must be manually applied. There is no automatic sealing for CPL 160.59.
 - Regardless of the case management system used in your court, please be aware that CPL 160.59 seals a criminal conviction. It is **NOT A DISMISSAL**. Therefore, the original conviction and sentence information should not be deleted when applying a CPL 160.59 seal.
NOTE: DCJS is prepared to apply 160.59 sealing to existing convictions as required by the statute.
 - If a case is ordered sealed pursuant to CPL 160.59, and there is no electronic record in any current or legacy case management system (i.e., UCMS, CRIMS, ADBM), **DO NOT** create an electronic record until such time as an official procedure has been defined.
NOTE: An official procedure is being jointly formulated by the UCS and DCJS, and further instructions related to these scenarios will be disseminated once the procedures are finalized.
- **Case Management Systems** – CPL 160.59 sealing codes will be added to UCS criminal case management systems as follows:
 1. **CRIMS** – a CRIMS System Development Bulletin regarding the use of the new 160.59 sealing function has been issued by DoT.
 2. **ADBAM** – Enter “160.59” into the “Sealed” data field if the court grants the application.
 3. **UCMS-Criminal** – In the “Seal Task,” select the “Seal Type” of 160.59 and indicate the effective date of the sealing. Due to the age of these convictions (i.e., 10 or more years ago), it is likely that they have not been converted from your legacy case management system into UCMS-Criminal. Therefore, the court must import the case prior to applying the CPL 160.59 sealing.

NOTE: Please be aware that UCS case management systems currently have no programmatic restrictions for applying a CPL 160.59 seal to a case. For example, any of the three case management systems listed above will permit 160.59 sealing even if the statutory period has not been met, or if it is not an eligible conviction charge, or if it is already sealed under a different sealing section (e.g., 160.58, 720.35).

In the Matter of the Application of:

**Notice of Motion and Affidavit in Support
Sealing Pursuant to CPL 160.59**

① Name: _____

② AKA(s): _____

③ NYSID: _____

④ Motorist ID #: _____
(VTL Crimes)

⑤ DOB: _____

This is a Notice of Motion for sealing New York State convictions pursuant to Criminal Procedure Law (CPL) 160.59. The applicant moves to seal the following conviction(s):

⑥ Docket, Indictment, or SCI Number	⑦ Court Name	⑧ Conviction Charge	⑨ Law/Section/Subsection	⑩ Conviction Date	⑪ Sentence Date	⑫ Sentence Term	⑬ Release Date from any incarceration

ATTACHMENTS:

⑭ Applicant attaches the following documents in support of the request for sealing (applicant may attach documents related to reasons why the case(s) should be sealed, including evidence of rehabilitation, letters of recommendation, employment status, etc.):

1. Affidavit in Support of Sealing Pursuant to CPL 160.59 [see page 2].
2. Affidavit of Service on the District Attorney [see page 3].
3. Certificate of Disposition for each conviction for which I am requesting sealing.
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

APPLICANT UNDERSTANDS THE FOLLOWING PROCEDURES AND REQUIREMENTS OF THIS MOTIOIN:

If applicant is applying to seal two cases, this motion must be filed in the court where the most serious conviction was entered. If both cases involve convictions of the same class (e.g., two class A misdemeanors or two class B misdemeanors), the motion must be filed in the court where the more recent conviction was entered.

A copy of this Notice of Motion and all supporting documents must be served on the District Attorney of each county where a conviction listed above was entered.

The District Attorney has 45 days after being served with this Notice of Motion to consider whether to consent to the sealing or to oppose the sealing.

If the District Attorney opposes the sealing, the court will conduct a hearing and consider any evidence offered by either party that would aid the court in deciding whether to seal your convictions.

Before deciding this motion, the law requires the court to have a fingerprint-based criminal history report (rap sheet), which will include any sealed or suppressed cases and any criminal history information that occurred in jurisdictions outside of New York. By filing this Notice of Motion, you are agreeing to be fingerprinted if required. When the motion is filed, the clerk of the court will provide instructions if you must be fingerprinted.

Affidavit in Support of Sealing Pursuant to CPL 160.59

The applicant states the following facts upon information and belief that they are true:

15 I was convicted of a crime or crimes in no more than two criminal transactions in New York State or elsewhere, and no more than one of those criminal convictions includes a conviction for a felony offense. I do not have any open or pending criminal charges against me.

16 I have not been convicted of any of the following offenses:

- a. a sex offense defined in article one hundred thirty of the Penal Law;
- b. an offense defined in article two hundred sixty-three of the Penal Law;
- c. a felony offense defined in article one hundred twenty-five of the Penal Law;
- d. a violent felony offense defined in section 70.02 of the Penal Law;
- e. a class A felony offense defined in the Penal Law;
- f. a felony offense defined in article one hundred five of the Penal Law where the underlying offense is not an eligible offense;
- g. an attempt to commit an offense that is not an eligible offense if the attempt is a felony; or,
- h. an offense for which registration as a sex offender is required pursuant to article six-C of the correction law.

17 It has been over 10 years since I was sentenced for the most recent crime I am asking the court to seal. I did not count any jail or prison time I served after being sentenced in calculating the 10-year period.

Moreover, the applicant, having been sworn, says:

I have attached a copy of a certificate of disposition or other similar documentation for each conviction listed above, or an explanation of why such certificate or other documentation is not available.

18 I **have** **have not** filed any other application to seal a conviction pursuant to either CPL 160.58 or CPL 160.59. If I did file another application, I have attached it to this motion.

19 I **do** **do not** intend to file any other application to seal an eligible conviction pursuant to either CPL 160.58 or CPL 160.59. If I do intend to file another application, the following conviction is the one I will ask to have sealed:

Docket/Indictment/SCI Number(s)	Court Name	Conviction Charge	Law/Section/Subsection	Charge Weight	Conviction Date	Sentence Date	Sealing Section
							CPL 160.58 CPL 160.59

20 The court, in its discretion, should grant this application for sealing pursuant to CPL 160.59 for the following reasons (you must specify your reasons, which may include information about positive steps you've taken since your conviction – add additional pages if necessary):

_____.

Signature of Applicant

Sworn to before me this ____
day of _____, 20____.

Notary Public

Affidavit of Service

STATE OF NEW YORK
COUNTY OF _____

The undersigned, being sworn, says:

_____, is over 18 years of age and resides at:

[name of person serving/mailing]

_____.

[address of person serving/mailing]

That on _____, deponent served the within **Notice of Motion and Affidavit in Support of Sealing Pursuant to CPL 160.59** and the following supporting documents:

[date of service/mailing]

_____ upon the District Attorney(s) of the following county/counties: _____

[name(s) of county/counties]

at the following address(es): _____

[address(es) of District Attorney's office(s)]

Select one:

by mailing a complete copy in a properly stamped and addressed envelope at the post office or official depository of the United States Postal Service.

by personally delivering a complete copy to the District Attorney's Office.

Signature of person serving/mailing

Sworn to before me this _____
day of _____, 20____.

Notary Public

NOTE: If service was made upon more than one District Attorney's office, and service was made on different dates or by different people, attach separate Affidavits of Service.

INSTRUCTIONS

The instruction for each number below refers to the corresponding number in the **Notice of Motion and Affidavit in Support Sealing Pursuant to CPL 160.59** form. For additional help, and to find a fillable version of this form online, go to the Unified Court System's website at <http://www.nycourts.gov/forms/index.shtml>

- 1 Enter your full legal name.
- 2 Enter any names you are also known as (AKA) in addition to your legal name. If you used a different name than your legal name on a case you are applying to seal, make sure you also list that name.
- 3 Enter your New York State Identification Number (NYSID). This number can be found on the Certificate of Disposition you obtained from the court where your conviction occurred.
- 4 If you were convicted of a crime under the Vehicle and Traffic Law (VTL), enter your Motorist ID from your driver's license. (You will know that it is a Vehicle and Traffic Law charge if it says VTL in the conviction description on your Certificate of Disposition from the court.) If you do not have a VTL charge, you are not required to enter your Motorist ID.
- 5 Enter your date of birth.
- 6 Enter the court's docket number if you were convicted and sentenced in a city, town or village court, or enter the indictment/SCI number if you were convicted and sentenced in a supreme or county court. The case number will be in the Certificate of Disposition you get from the court.
NOTE: If you were convicted of a charge in another case that was part of the same incident, enter the information for #6 to #13 for the related case in the same row. (e.g., You were arrested for DWI and Unauthorized Use of a Vehicle, and both crimes occurred from the same incident. You were convicted for a misdemeanor DWI in the City Court, but you were convicted for a felony Unauthorized Use of a Vehicle in the County Court.)
- 7 Enter the name of the court where you were convicted and sentenced. The name of the court will be on the Certificate of Disposition you get from the court.
- 8 Enter the name of the charge for which you were convicted and sentenced (e.g., Petit Larceny, or Burglary 3°, or Criminal Possession of a Controlled Substance 7°, etc.). The name of the conviction will be in the Certificate of Disposition you get from the court. If the Certificate of Disposition lists more than one charge in the same case, list the most serious charge.
For example:
 - If you were sentenced for an A misdemeanor and a B misdemeanor, enter the A misdemeanor.
 - If you were sentenced for a felony and a misdemeanor, enter the felony.
 - If you were sentenced for a C felony and an E felony, enter the C felony.
 - If you were sentenced for two charges of the same weight (e.g., two A misdemeanors), enter the first charge listed in the Certificate of Disposition.
- 9 Enter the law, section and subsection, if any, of the charge for which you were convicted and sentenced. The law, section and subsection will be in the Certificate of Disposition you get from the court.
For example:
 - PL 155.30(1)
 - PL 220.03
 - VTL 1192 (2-a)
- 10 Enter the date you were convicted. This is the date that you entered a plea or were found guilty after a trial. The conviction date will be in the Certificate of Disposition you get from the court.
- 11 Enter the date you were sentenced. (Some people are convicted and sentenced on the same date. Others are convicted and come back to court at a later date for sentencing.) The sentence date will be in the Certificate of Disposition you get from the court.
- 12 Enter the sentence you received. The sentence will be in the Certificate of Disposition you get from the court.
For example:
 - Conditional discharge
 - 5 years probation
 - 60 days jail and 3 years probation
 - 6 months jail
 - 1-3 years state prison

13 If you served any time in jail or state prison after you were sentenced, enter the date you were released. If you did not serve any time in jail or state prison after you were sentenced, leave this blank.

14 Documents in support of sealing:

1. Affidavit in Support of Sealing Pursuant to CPL 160.59 [page 2 of this form]. The purpose of the affidavit is to provide additional information to support your motion for sealing. Make sure it is completed and attached.
2. Affidavit of Service [page 3 of this form]. The law requires you to provide a copy of your motion and supporting papers to the District Attorney in the county where you were convicted and sentenced before you file them with the court. If you are applying to seal two cases, and you were convicted and sentenced in different counties, you must send copies to the District Attorney in BOTH counties.
NOTE: If you served two different District Attorneys, and they were served on different dates and/or by different people, you must complete and attach a separate Affidavit of Service (page 3) for each.
3. Certificate of Disposition. You must attach a Certificate of Disposition for each conviction that you are asking the court to seal. To get a Certificate of Disposition, you must contact the court where you were convicted and sentenced. If you are applying to seal two cases, you must get a Certificate of Disposition for each case. If you cannot get a Certificate of Disposition, you must attach an explanation why a Certificate of Disposition is not available. Further information about getting a Certificate of Disposition is available on the court's website.
- 4.-10. If you have any additional documents evidencing your rehabilitation, you should attach them. These can include documents such as a certificate of relief from civil disabilities, verification of employment, community service, volunteer or charity work; educational transcripts; letters of recommendation or commendation from employers, teachers/professors, community leaders, charitable organizations; certificates of successful completion of a drug or alcohol treatment program, etc. You are not required to submit additional supporting documents.

15 You are telling the court that you have not been convicted in more than two criminal cases, and that no more than one of those cases was a conviction for a felony charge.

16 If you were convicted of any of the crimes listed below, you are not eligible for sealing pursuant to CPL 160.59. (check your Certificate of Disposition to verify that it does not include any of the following conviction charges). You are telling the court that you were not convicted of any of:

- a. PL 130.20 Sexual Misconduct; PL 130.25 Rape 3°; PL 130.30 Rape 2°; PL 130.35 Rape 1°; PL 130.40 Criminal Sexual Act 3°; PL 130.45 Criminal Sexual Act 2°; PL 130.50 Criminal Sexual Act 1°; PL 130.52 Forcible Touching; PL 130.53 Persistent Sexual Abuse; PL 130.55 Sexual Abuse 3°; PL 130.60 Sexual Abuse 2°; PL 130.65 Sexual Abuse 1°; PL 130.65-a Aggravated Sexual Abuse 4°; PL 130.66 Aggravated Sexual Abuse 3°; PL 130.67 Aggravated Sexual Abuse 2°; PL 130.70 Aggravated Sexual Abuse 1°; PL 130.75 Course of Sexual Conduct Against a Child 1°; PL 130.80 Course of Sexual Conduct Against a Child 2°; PL 130.85 Female Genital Mutilation; PL 130.90 Facilitating a Sex Offense with a Controlled Substance; PL 130.91 Sexually Motivated Felony; PL 130.95 Predatory Sexual Assault; PL 130.96 Predatory Sexual Assault Against a Child
- b. PL 263.05 Use of a Child in a Sexual Performance; PL 263.10 Promoting an Obscene Sexual Performance by a Child; PL 263.11 Possessing an Obscene Sexual Performance by a Child; PL 263.15 Promoting a Sexual Performance by a Child; PL 263.16 Possessing a Sexual Performance by a Child; PL 263.30 Facilitating a Sexual Performance by a Child with a Controlled Substance or Alcohol
- c. PL 125.10 Criminally Negligent Homicide; PL 125.11 Aggravated Criminally Negligent Homicide; PL 125.12 Vehicular Manslaughter 2°; PL 125.13 Vehicular Manslaughter 1°; PL 125.14 Aggravated Vehicular Homicide; PL 125.15 Manslaughter 2°; PL 125.20 Manslaughter 1°; PL 125.21 Aggravated Manslaughter 2°; PL 125.22 Aggravated Manslaughter 1°; PL 125.25 Murder 2°; PL 125.26 Aggravated Murder; PL 125.27 Murder 1°; PL 125.40 Abortion 2°; PL 125.45 Abortion 1°; PL 125.50 Self-Abortion 2°; PL 125.55 Self-Abortion 1°; PL 125.60 Issuing Abortion Articles
- d. Class B violent felony offenses:
PL 110/125.25 Attempted Murder 2°; PL 110/135.25 Attempted Kidnapping 1°; PL 110/150.20 Attempted Arson 1°; PL 125.20 Manslaughter 1°; PL 125.22 Aggravated Manslaughter 1°; PL 130.35 Rape 1°; PL 130.50 Criminal Sexual Act 1°; PL 130.70 Aggravated Sexual Abuse 1°; PL 130.75 Course of Sexual Conduct Against a Child 1°; PL 120.10 Assault 1°; PL 135.20 Kidnapping 2°; PL 140.30 Burglary 1°; PL 150.15 Arson 2°; PL 160.15 Robbery 1°; PL 230.34(5)(a)&(b) Sex Trafficking; PL 255.27 Incest 1°; PL 265.04 Criminal Possession of a Weapon 1°; PL 265.09 Criminal Use of a Firearm 1°; PL 265.13

Criminal Sale of a Firearm 1°; PL 120.11 Aggravated Assault upon a Police Officer or a Peace Officer; PL 120.07 Gang Assault 1°; PL 215.17 Intimidating a Victim or Witness 1°; PL 490.35 Hindering Prosecution of Terrorism 1°; PL 490.40 Criminal Possession of a Chemical Weapon or Biological Weapon 2°; PL 490.47 Criminal Use of a Chemical Weapon or Biological Weapon 3°;

Class C violent felony offenses:

An attempt to commit any of the Class B violent felony offenses listed above; PL 125.11 Aggravated Criminally Negligent Homicide; PL 125.21 Aggravated Manslaughter 2°; PL 130.67 Aggravated Sexual Abuse 2°; PL 120.08 Assault on a Peace Officer, Police Officer, Fireman or Emergency Medical Services Professional; PL 120.09 Assault on a Judge; PL 120.06 Gang Assault 2°; PL 121.13 Strangulation 1°; PL 140.25 Burglary 2°; PL 160.10 Robbery 2°; PL 265.03 Criminal Possession of a Weapon 2°; PL 265.08 Criminal Use of a Firearm 2°; PL 265.12 Criminal Sale of a Firearm 2°; PL 265.14 Criminal Sale of a Firearm with the Aid of a Minor; PL 265.19 Aggravated Criminal Possession of a Weapon; PL 490.15 Soliciting or Providing Support for an Act of Terrorism 1°; PL 490.30 Hindering Prosecution of Terrorism 2°; PL 490.37 Criminal Possession of a Chemical Weapon or Biological Weapon 3°;

Class D violent felony offenses:

An attempt to commit any of the Class C violent felony offenses listed above; PL 120.02 Reckless Assault of a Child; PL 120.05 Assault 2°; PL 120.18 Menacing a Police Officer or Peace Officer; PL 120.60 Stalking 1°; PL 121.12 Strangulation 2°; PL 130.30 Rape 2°; PL 130.45 Criminal Sexual Act 2°; PL 130.65 Sexual abuse 1°; PL 130.80 Course of Sexual Conduct Against a Child 2°; PL 130.66 Aggravated Sexual Abuse 3°; PL 130.90 Facilitating a Sex Offense with a Controlled Substance; PL 135.35 (3)(a)&(b) Labor Trafficking; PL 265.02 (5), (6), (7), (8), (9) or (10); PL 265.11 Criminal Sale of a Firearm 3°; PL 215.16 Intimidating a Victim or Witness 2°; PL 490.10 Soliciting or Providing Support for an Act of Terrorism 2°; PL 490.20 Making a Terroristic Threat; PL 240.60 Falsely Reporting an Incident 1°; PL 240.62 Placing a False Bomb or Hazardous Substance 1°; PL 240.63 Placing a False Bomb or Hazardous Substance in a Sports Stadium or Arena, Mass Transportation Facility or Enclosed Shopping Mall; PL 405.18 Aggravated Unpermitted Use of Indoor Pyrotechnics 1°;

Class E violent felony offenses:

PL 110/265.02 (5), (6), (7), or (8) Attempted Criminal Possession of a Weapon 3° as a lesser included offense of that section as defined in CPL 220.20; PL 130.53 Persistent Sexual Abuse; PL 130.65-a Aggravated Sexual Abuse 4°; PL 240.55 Falsely Reporting an Incident 2°; PL 240.61 Placing a False Bomb or Hazardous Substance 2°;

- e. A Class A felony offense (abbreviated on your Certificate of Disposition as "AF").
- f. A conviction for PL 105.10 Conspiracy 4°; PL 105.13 Conspiracy 3°; PL 105.15 Conspiracy 2°; or PL 105.17 Conspiracy 1°; when the crime you conspired to commit is one of the charges listed in this section.
- g. An attempt to commit a crime is displayed on your Certificate of Disposition as "Attempted" and will have the number 110 displayed before the section and subsection (e.g., Attempted Robbery 2°; PL 110-160.10). If it is a felony level offense, the charge weight will be BF, CF, DF or EF.
- h. A conviction that requires you to register as a sex offender.

- 17 Your conviction and sentence must be more than ten years ago. However, if you were in jail or prison after you were sentenced, that time does not count. For example, if you were convicted 11 years ago and you served 2 years in state prison ($11 - 2 = 9$), that is only 9 years.
- 18 If you have filed another application for conditional sealing pursuant to CPL 160.58 or sealing pursuant to CPL 160.59 with this court or any other court, attach a copy of that application regardless of whether it was granted, denied or is still pending.
- 19 If you are going to file another application for conditional sealing pursuant to CPL 160.58 or sealing pursuant to CPL 160.59 with this court or any other court, list the cases that you intend to include in the application and indicate the sealing section for which you intend to apply.
- 20 You must tell the court why you believe your prior convictions should be sealed. This is your opportunity to tell the court why sealing your convictions is in the interest of justice, such as participating in treatment programs, work or schooling, or participating in community service or other volunteer programs. If you need more space, continue your comments on a separate sheet of paper.



--- N.Y.S.3d ----, 2021 WL 3641365

(N.Y.A.D. 2 Dept.), 2021 N.Y. Slip Op. 04718

This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

*1 The People of the State
of New York, respondent,

v.

Brian K. Bugge, appellant.

OPINION

Supreme Court, Appellate Division,
Second Department, New York
2020-04996, (Ind. No. 1437/97)
Decided on August 18, 2021

MARK C. DILLON, J.P., LEONARD B. AUSTIN, BETSY
BARROS, ANGELA G. IANNACCI, JJ.

APPEARANCES OF COUNSEL

Brian K. Buggé, named herein as Brian K. Bugge, Staten
Island, NY, appellant pro se.

Timothy D. Sini, District Attorney, Riverhead, NY (Lauren
Tan and Marion Tang of counsel), for respondent.

DECISION & ORDER

Appeal by the defendant from an order of the County Court,
Suffolk County (Stephen L. Braslow, J.), dated March 11,
2020, which denied, without a hearing, his motion pursuant to
[CPL 160.59](#) to seal his convictions of unlawful possession
of examination questions in violation of [Civil Service Law](#)
[§ 50\(11\)\(d\)](#), unlawful disclosure of examination questions in
violation of [Civil Service Law](#) [§ 50\(11\)\(g\)](#) (10 counts),
and unlawful furnishing of secret information to persons to be
examined in violation of [Civil Service Law](#) [§ 106](#) (15 counts).

ORDERED that the order is reversed, on the law, without
costs or disbursements, and the matter is remitted to the
County Court, Suffolk County, for a hearing in accordance
with [CPL 160.59\(6\)](#) and a new determination of the
defendant's motion thereafter.

In 1999, the defendant, who was then a police officer
with the Suffolk County Police Department, pleaded guilty
to unlawful possession of examination questions ([Civil](#)
[Service Law](#) [§ 50\[11\]\[d\]](#)), 10 counts of unlawful disclosure
of examination questions ([Civil Service Law](#) [§ 50\[11\]\[g\]](#)),
and 15 counts of unlawful furnishing of secret information
to persons to be examined ([Civil Service Law](#) [§ 106](#)).
The defendant was sentenced to probation and directed to
pay a \$40,000 fine. In 2002, the County Court granted
the defendant's application for a certificate of relief from
disabilities.

In 2017, the defendant, pro se, moved pursuant to [CPL](#)
[160.59](#) to seal his convictions (hereinafter the prior motion).
In support of the prior motion, the defendant averred, inter
alia, that the County Court should exercise its discretion to
grant his application because he had held several prominent
positions within the security field and academia, and he was
applying for a security registration with the New Jersey State
Police. The People opposed the defendant's prior motion,
and on February 1, 2018, the court held a hearing on the
defendant's prior motion. In an order dated February 6, 2018,
the court denied the defendant's prior motion.

In 2020, the defendant again moved pursuant to [CPL](#)
[160.59](#) to seal his convictions (hereinafter the 2020 motion).
In support of the 2020 motion, the defendant averred, among
other things, that he was the owner/director of a security
guard training school and would like to extend *2 training to
religious institutions, and that having his convictions sealed
would enable him to apply for and receive a wider variety of
state and federal grants. The People opposed the 2020 motion,
contending, inter alia, that because the County Court had
already conducted a hearing, the court should deny the 2020
motion without a hearing. In an order dated March 11, 2020,
the court, without a hearing, denied the 2020 motion. The
defendant appeals from the order denying the 2020 motion.

Initially, the People's contention that an order denying a
motion to seal pursuant to [CPL 160.59](#) is not appealable is
without merit. Although a motion pursuant to [CPL 160.59](#)
relates to a criminal matter, “it does not affect the criminal
judgment itself, but only a collateral aspect of it--namely, the
sealing of the court record,” and, therefore, is civil in nature
(*Matter of Hynes v Karassik*, 47 NY2d 659, 661 n 1; see
[CPL 10.10\[7\]](#)). As such, the defendant is entitled to appeal

as of right from the subject order denying the 2020 motion, which was made upon notice to the People (*see* CPLR 5701[a][2] [v]; *People v Coulibaly*, ___ AD3d ___, 2021 NY Slip Op 04616 [2d Dept]; *People v Jihan QQ.*, 151 AD3d 1245, 1246 n; *People v M.E.*, 121 AD3d 157, 159; *People v Anonymous*, 7 AD3d 309, 310).

“CPL 160.59 provides that a defendant who has been convicted of up to two eligible offenses (but not more than one felony offense) may apply to the court in which he or she was convicted to have such convictions sealed” (*People v Shrayef*, 181 AD3d 935, 936; *see* CPL 160.59[2][a]; *People v Esposito*, 188 AD3d 1092, 1092). The statute, inter alia, defines “eligible offense” (CPL 160.59[1][a]), sets forth requirements for the defendant’s application to the court (*see id.* § 160.59[2][b]), and provides when the reviewing court must summarily deny the defendant’s application (*see id.* § 160.59[3]; *People v Shrayef*, 181 AD3d at 936). CPL 160.59(6) provides that “[u]pon determining that the application is not subject to mandatory denial pursuant to subdivision three of this section and that the application is opposed by the district attorney, the sentencing judge or county or supreme court shall conduct a hearing on the application in order to consider any evidence offered by either party that would aid the sentencing judge in his or her decision whether to seal the records of the defendant’s convictions. No hearing is required if the district attorney does not oppose the application” (emphasis added).

Here, the 2020 motion was not subject to mandatory denial under CPL 160.59(3), and the district attorney opposed the 2020 motion. “[W]here the language of a statute is clear and unambiguous, courts must give effect to its plain meaning” (*People ex rel. Negrón v Superintendent, Woodbourne Corr. Facility*, 36 NY3d 32, 36, quoting *State of New York v Patricia II.*, 6 NY3d 160, 162; *see People v*

Boston, 75 NY2d 585, 588). By using the word “shall,” the Legislature clearly and unambiguously provided that when the motion is not subject to mandatory denial under CPL 160.59(3) and the district attorney opposes the motion, the motion court does not have the discretion to dispense with the hearing requirement, even where, as here, the court had held a hearing on the defendant’s prior CPL 160.59 motion (*see id.* § 160.59[6]; *see generally Maine Community Health Options v United States*, ___ US ___ *Maine Community Health Options v United States*, ___ US ___, ___, ___ 140 S Ct 1308, 1320; *Lexecon Inc. v Milberg Weiss Bershad Hynes & Lerach*, 523 US 26, 35; *People v Schonfeld*, 74 NY2d 324, 328; *Podolsky v Narnoc Corp.*, 196 AD2d 593, 594-595; McKinney’s Cons Laws of NY, Book 1, Statutes § 177[a]). Further, CPL 160.59 is a remedial statute, and remedial statutes should be interpreted broadly to accomplish their goals (*see People v Brown*, 25 NY3d 247, 251; *People v Parker*, 160 AD3d 767, 768; McKinney’s Cons Laws of NY, Book 1, Statutes § 321).

Accordingly, we remit the matter to the County Court, Suffolk County, for a hearing in accordance with CPL 160.59(6), and a new determination of the 2020 motion thereafter (*see generally People v Decker*, 190 AD3d 1132; *People v Parker*, 160 AD3d at 771).

DILLON, J.P., AUSTIN, BARROS and IANNACCI, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court

Copr. (C) 2021, Secretary of State, State of New York

198 A.D.3d 84

Supreme Court, Appellate Division,
Second Department, New York.

The PEOPLE, etc., respondent,

v.

Siendou COULIBALY, appellant.

2019–09943

|

(Ind. No. 63/05)

|

Argued—February 4, 2021

|

August 4, 2021

Synopsis

Background: Defendant, convicted of criminal possession of controlled substance, filed motion to **seal** his conviction. The County Court, Suffolk County, Stephen L. Braslow, J., summarily denied the motion. Defendant appealed.

Holdings: The Supreme Court, Appellate Division, Brathwaite-Nelson, J., held that:

[1] motions to **seal** convictions are civil, rather than criminal, in nature, and

[2] ten years had not passed since imposition of defendant's sentence for criminal possession of controlled substance.

Affirmed.

Procedural Posture(s): Expungement Proceeding.

West Headnotes (7)

[1] **Criminal Law** 🔑 Nature and scope of remedy in general

No appeal lies from an order in a criminal proceeding in the absence of specific statutory authority for the appeal.

[2] **Criminal Law** 🔑 Nature and scope of remedy in general

Where court issuing order being appealed from possesses both civil and criminal jurisdiction, appellate courts look to true nature of proceeding and to relief sought in order to determine whether proceeding was criminal or civil.

[3] **Criminal Law** 🔑 Nature and scope of remedy in general

Where relief sought is quintessentially of criminal nature or integral part of ongoing criminal investigation, proceeding falls within court's criminal jurisdiction and appeal may not be taken from order issued therein in absence of express statutory authority.

[4] **Criminal Law** 🔑 Appealable Judgments and Orders

Appeals may be taken as of right from orders denying motion to quash subpoena issued prior to commencement of any criminal action, granting motion to unseal criminal records that were **sealed** upon acquittal, denying motion to vacate stay of **sealing** of criminal records and granting request to continue stay, or denying motion for conditional order to **seal** criminal record. 📄 N.Y. CPL §§ 160.50, 160.58.

1 Cases that cite this headnote

[5] **Records** 🔑 Proceedings to **seal** or impound judicial records

Although a motion to **seal** a conviction plainly relates to a criminal matter, the motion does not affect the judgment of conviction, and concerns only the collateral aspect of the **sealing** of the records of the conviction long after

the judgment was entered and sentence imposed, and therefore such motions are civil, rather than criminal, in nature and orders denying such motions are thus, appealable as of right, notwithstanding the absence of specific statutory authority for the appeal. 📄 N.Y. CPL § 160.59.

1 Cases that cite this headnote

[6] **Records** 🔑 Time for proceedings; limitations and laches

Ten years had not passed since imposition of defendant's sentence for criminal possession of controlled substance, and therefore trial court was required to summarily deny defendant's motion to have his conviction for criminal possession of controlled substance **sealed**; even though ten years had passed since imposition of sentence for defendant's conviction of criminal sale of controlled substance, that judgment of conviction was vacated and, thus, no longer existed, and, on same day as that conviction was vacated, defendant pled guilty to criminal possession of controlled substance. 📄 N.Y. CPL §§ 1.20(15), 📄 160.59(3)(d), 160.59(5).

[7] **Judgment** 🔑 Operation and Effect

A judgment that is subsequently vacated no longer exists.

****500** APPEAL by the defendant from an order of the County Court (Stephen Braslow, J.), dated May 16, 2019, and entered in Suffolk County. The order denied the defendant's motion pursuant to 📄 CPL 160.59 to **seal** his conviction of criminal possession of a controlled substance in the third degree.

Attorneys and Law Firms

Labe M. Richman, New York, NY, for appellant.

Timothy D. Sini, District Attorney, Riverhead, N.Y. (Edward A. Bannan of counsel), for respondent.

REINALDO E. RIVERA, J.P., FRANCESCA E. CONNOLLY, VALERIE BRATHWAITE NELSON, LINDA CHRISTOPHER, JJ.

OPINION & ORDER

BRATHWAITE NELSON, J.


***85** On this appeal, we consider whether the appellate courts have jurisdiction to consider an appeal from an order denying a motion pursuant to 📄 CPL 160.59 to **seal** a conviction. We find that the determination of such a motion is properly characterized as civil, rather than criminal, in nature, and that, therefore, the defendant may appeal from such an order. Upon considering the merits of the defendant's appeal, we find that the motion was properly denied.





***86** I. Factual and Procedural Background


On January 9, 2006, the defendant was convicted of criminal sale of a controlled substance in the third degree and sentenced to two years imprisonment followed by two years of postrelease supervision. On April 10, 2015, the conviction was vacated, and the defendant pleaded guilty to criminal possession of a controlled substance in the third degree, in satisfaction of the same indictment, and was sentenced to time served, which the County Court specified to be nunc pro tunc to January 9, 2006.


In March 2019, the defendant moved pursuant to 📄 CPL 160.59 to **seal** his conviction. By order dated May 16, 2019, the County Court summarily denied his motion on the ground that the required 10-year period following imposition of sentence on the conviction had not yet passed. The defendant appeals.



II. Appealability

The People contend that the defendant's appeal should be dismissed because there is no mechanism in the Criminal Procedure Law to appeal from the denial of a motion made pursuant to  **CPL 160.59**. Although this Court previously has considered the merits of such a motion, implying that such an order is appealable as of right (see *People v. Shrayef*, 181 A.D.3d 935, 122 N.Y.S.3d 63), no published opinion has previously addressed the question of appealability. We take the opportunity to do so now, and reject the People's contention.

[1] It is a fundamental rule of the jurisdiction of New York's appellate courts that no appeal lies from an order in a criminal proceeding in the absence of specific statutory authority for the appeal (see *Matter of 381 Search Warrants Directed to Facebook, Inc. [New York County Dist. Attorney's Off.]*, 29 N.Y.3d 231, 242, 55 N.Y.S.3d 696, 78 N.E.3d 141;  *People v. Stevens*, 91 N.Y.2d 270, 278, 669 N.Y.S.2d 962, 692 N.E.2d 985;  *People v. Zerillo*, 200 N.Y. 443, 445, 93 N.E. 1108). The underlying policy of this rule is “is to limit appellate proliferation in criminal matters, sometimes to the seeming detriment of the ****501** defendant and sometimes to the detriment of the People. Litigation may be compounded unduly by protracted and multifarious appeals and collateral proceedings frustrating the speedy determination of disputes” ( *Matter of State of New York v. King*, 36 N.Y.2d 59, 63, 364 N.Y.S.2d 879, 324 N.E.2d 351; see *Matter of People v. Juarez*, 31 N.Y.3d 1186, 1187, 82 N.Y.S.3d 336, 107 N.E.3d 556; *Matter of Santangelo v. People*, 38 N.Y.2d 536, 538, 381 N.Y.S.2d 472, 344 N.E.2d 404). It is not disputed that the Criminal Procedure Law does not expressly provide for an appeal from an order ***87** deciding a motion to **seal** a conviction pursuant to  **CPL 160.59**, and, therefore, if such a motion is considered to be part of the criminal proceeding, there can be no appeal from an order deciding such a motion.

[2] [3] Where, as here, the court issuing the order being appealed from possesses both civil and criminal jurisdiction, appellate courts look to “the true nature of the proceeding and to the relief sought in order to determine whether the proceeding was criminal or civil” ( *Matter of Abrams [John Anonymous]*,

62 N.Y.2d 183, 191, 476 N.Y.S.2d 494, 465 N.E.2d 1). Where the relief sought is “quintessentially, of a criminal nature” (*Matter of 381 Search Warrants Directed to Facebook, Inc. [New York County Dist. Attorney's Off.]*, 29 N.Y.3d at 246–247, 55 N.Y.S.3d 696, 78 N.E.3d 141), or an integral part of an ongoing criminal investigation, the proceeding falls within the court's criminal jurisdiction and an appeal may not be taken from an order issued therein in the absence of express statutory authority (see *Matter of Alphonso C.*, 38 N.Y.2d 923, 382 N.Y.S.2d 980, 346 N.E.2d 819; *Matter of Santangelo v. People*, 38 N.Y.2d 536, 381 N.Y.S.2d 472, 344 N.E.2d 404). Thus, courts have found that no appeal lies from orders denying a motion to quash a warrant (see *Matter of 381 Search Warrants Directed to Facebook, Inc. [New York County Dist. Attorney's Off.]*, 29 N.Y.3d 231, 55 N.Y.S.3d 696, 78 N.E.3d 141), compelling disclosure of an affidavit supporting a warrant application (*id.*), directing a person to appear in a lineup or to provide a handwriting exemplar (see *Matter of Alphonso C.*, 38 N.Y.2d 923, 382 N.Y.S.2d 980, 346 N.E.2d 819), denying a motion to unseal records submitted in support of a search warrant (see  *Matter of Newsday, Inc.*, 3 N.Y.3d 651, 782 N.Y.S.2d 689, 816 N.E.2d 561), denying a motion to quash a subpoena issued in the course of a criminal prosecution (see *Matter of People v. Juarez*, 31 N.Y.3d 1186, 82 N.Y.S.3d 336, 107 N.E.3d 556), or denying an application to compel a special state prosecutor to inquire of federal authorities as to whether they had conducted electronic surveillance of the applicant and to direct the prosecutor to state whether any of the questions asked of the applicant before the grand jury were the product of such surveillance (see *Matter of Santangelo v. People*, 38 N.Y.2d 536, 381 N.Y.S.2d 472, 344 N.E.2d 404).

[4] By contrast, even when an order is issued pursuant to a criminal investigation or relates to a collateral aspect of a criminal proceeding, if the nature of the relief sought is civil in nature and the order can be said to be final and does not affect the criminal judgment itself, courts have found the matter to be civil and appeals from such orders are not constrained by the rule controlling appeals from orders in criminal proceedings ***88** (see  *Matter of Abrams [John Anonymous]*, 62 N.Y.2d 183, 476 N.Y.S.2d 494, 465 N.E.2d 1;  *Matter of Hynes v. Karassik*, 47 N.Y.2d

659, 661 n. 1, 419 N.Y.S.2d 942, 393 N.E.2d 1015). Thus, appeals may be taken as of right from orders denying a motion to quash a subpoena issued prior to the commencement **502 of any criminal action (see [Matter of Abrams \[John Anonymous\]](#), 62 N.Y.2d 183, 476 N.Y.S.2d 494, 465 N.E.2d 1), granting a motion to unseal criminal records that were **sealed** pursuant to [CPL 160.50](#) upon an acquittal (see [Matter of Hynes v. Karassik](#), 47 N.Y.2d at 661 n. 1, 419 N.Y.S.2d 942, 393 N.E.2d 1015), denying a motion to vacate a stay of the **sealing** of criminal records pursuant to [CPL 160.50](#) and granting a request to continue the stay (see [People v. Anonymous](#), 7 A.D.3d 309, 776 N.Y.S.2d 282), or denying a motion for a conditional order pursuant to [CPL 160.58](#) to **seal** a criminal record (see [People v. Jihan QQ.](#), 151 A.D.3d 1245, 1246, 55 N.Y.S.3d 536 n; [People v. M.E.](#), 121 A.D.3d 157, 991 N.Y.S.2d 232).

The People's reliance on ([People v. Stevens](#), 91 N.Y.2d 270, 669 N.Y.S.2d 962, 692 N.E.2d 985) is misplaced. There, the Court of Appeals held that an appeal did not lie pursuant to [CPL 460.20](#), or any other part of the Criminal Procedure Law, from an order designating a defendant a sex offender pursuant to the Sex Offender Registration Act (Correction Law art 6–C; hereinafter SORA), because the SORA designation was neither an amendment to the judgment of conviction, nor a resentencing (see [People v. Stevens](#), 91 N.Y.2d at 276–277, 669 N.Y.S.2d 962, 692 N.E.2d 985). The Court noted that it was confined to the strategic procedural course taken in the appeals before it, and made clear that it was not deciding “the true nature of the proceeding and the relief sought... and whether [such] determinations are subject to ... review as a civil or criminal proceeding” ([id.](#) at 279, 669 N.Y.S.2d 962, 692 N.E.2d 985 [internal quotation marks omitted]). Although the Legislature subsequently provided an express right to appeal from an order making a SORA designation (see [Correction Law § 168–n\[3\]](#)), it has also been determined that a SORA proceeding is, in fact, “civil in nature” ([People v. Mingo](#), 12 N.Y.3d 563, 571, 883 N.Y.S.2d 154, 910 N.E.2d 983).

Turning back to the subject application, pursuant to [CPL 160.59](#), a defendant convicted of certain eligible offenses may apply to the court of conviction to have an eligible conviction **sealed** after at least 10 years have passed since the imposition of the sentence or, where a sentence of incarceration was imposed, the defendant's release from incarceration (see [CPL 160.59\[2\]\[a\]](#); [5]). If the defendant's application is not subject to mandatory denial, then determination of the application rests within the discretion of the court (see [CPL 160.59\[4\]](#), [7]). If the court grants the motion, all official records and papers *89 relating to the arrest, prosecution, and conviction are **sealed** and not made available to any person or public or private agency, with specified exceptions (see [CPL 160.59\[8\]](#)), and it becomes an “unlawful discriminatory practice” to inquire about or act adversely against the defendant on the basis of the **sealed** records, with specified exceptions ([Executive Law § 296\[16\]](#)).

[5] Although a motion pursuant to [CPL 160.59](#) plainly relates to a criminal matter, the motion does not affect the judgment of conviction, and concerns only the collateral aspect of the **sealing** of the records of the conviction long after the judgment was entered and sentence imposed. We see no reason to distinguish a motion to **seal** a conviction pursuant to [CPL 160.59](#) from a motion to unseal records that were **sealed** pursuant to [CPL 160.50](#) (see [Matter of Hynes v. Karassik](#), 47 N.Y.2d at 661 n. 1, 419 N.Y.S.2d 942, 393 N.E.2d 1015), or to stay [CPL 160.50 sealing](#) (see [People v. Anonymous](#), 7 A.D.3d 309, 776 N.Y.S.2d 282), or a motion to conditionally **seal** a conviction pursuant to [CPL 160.58](#), and agree with the Appellate **503 Divisions which have decided that such motions are predominantly civil in nature and do not arise from the criminal proceeding (see [People v. Jihan QQ.](#), 151 A.D.3d at 1246 n., 55 N.Y.S.3d 536; [People v. M.E.](#), 121 A.D.3d 157, 991 N.Y.S.2d 232). The nature of a motion pursuant to [CPL 160.59](#) and the relief sought is essentially administrative, and is addressed to the public accessibility of the defendant's criminal records in order to avoid the negative non-criminal consequences of a criminal

arrest, prosecution, and conviction, such as difficulty obtaining employment, housing, and access to credit (see Executive Law § 296[16]). This relief is civil in nature and the proceeding in which the application was brought must be deemed civil as well. Accordingly, we hold that a motion pursuant to CPL 160.59 falls within the court's civil jurisdiction (see CPL 10.10[7]), and the defendant may appeal as of right from an order denying his motion made on notice (see CPLR 5701[a][2][v]).

III. Merits of the Defendant's Motion

[6] Turning to the merits of the defendant's motion, the County Court properly determined that it was required to summarily deny the motion since 10 years had not passed since the imposition of sentence on the conviction. It is not disputed that the subject offense is an “eligible offense” under CPL 160.59 (see CPL 160.59[1][a]). Nonetheless, the statute directs that the court must summarily deny a defendant's motion where, among *90 other possibilities, 10 years have not passed since the imposition of the sentence on the defendant's latest conviction or release from incarceration (see CPL 160.59[3][d]; [5]).

[7] The subject conviction is the defendant's only criminal conviction. The defendant contends that the sentence was imposed on January 9, 2006, and, thus, more than 10 years had passed when he moved to have the conviction sealed. Contrary to his contention, the sentence was imposed on April 10, 2015. “A judgment

is comprised of a conviction and the sentence imposed thereon and is completed by imposition and entry of the sentence” (CPL 1.20[15]). A judgment that is subsequently vacated “no longer exists” (*People v. Thomas*, 33 N.Y.3d 1, 8, 97 N.Y.S.3d 642, 121 N.E.3d 270). On April 10, 2015, the defendant's January 9, 2006 conviction of criminal sale of a controlled substance in the third degree and the sentence imposed thereon were vacated, and thus no longer exist. On that same day, April 10, 2015, the defendant pleaded guilty to criminal possession of a controlled substance in the third degree and the County Court imposed sentence on that conviction. Thus, the date of the imposition of the sentence on the defendant's most recent conviction was April 10, 2015 (see *People v. Bell*, 73 N.Y.2d 153, 165, 538 N.Y.S.2d 754, 535 N.E.2d 1294). Since, at the time of the defendant's motion pursuant to CPL 160.59, 10 years had not passed, the court was obligated to summarily deny the motion (see CPL 160.59[3][d]; [5]).

ORDERED that the order is affirmed, without costs or disbursements.

RIVERA, J.P., CONNOLLY and CHRISTOPHER, JJ.,
concur.

All Citations

198 A.D.3d 84, 152 N.Y.S.3d 499, 2021 N.Y. Slip Op. 04616

190 A.D.3d 1132
Supreme Court, Appellate Division,
Third Department, New York.

The PEOPLE of the State
of New York, Respondent,

v.

Thomas DECKER, Appellant.

530281

|

Calendar Date: December 16, 2020

|

Decided and Entered: January 14, 2021

Attorneys and Law Firms


Jonna Spilbor Law, Poughkeepsie (Jonna M. Spilbor of counsel), for appellant.


Meagan K. Galligan, Acting District Attorney, Monticello (Leigh G. Wellington of counsel), for respondent.

Before: Garry, P.J., Egan Jr., Mulvey, Aarons and Reynolds Fitzgerald, JJ.



MEMORANDUM AND ORDER

Aarons, J.

Appeal from an order of the County Court of Sullivan County (LaBuda, J.), entered August 1, 2019, which denied defendant's application pursuant to  **CPL 160.59** to seal his criminal conviction, following a hearing.

After his conviction upon a guilty plea, defendant was sentenced in 2006 to five years of probation, six months of alternate weekends in jail and community service. In 2019, defendant moved under  **CPL**

160.59 to seal his conviction. The People opposed the motion. A hearing was held, after which County Court denied the motion. Defendant appeals.

 **CPL 160.59(7)** sets forth various factors for a court's consideration when presented with a motion to seal a conviction. In addition to the enumerated factors therein, a court “shall consider any relevant factor[]” ( **CPL 160.59[7]**). The record reflects that County Court held a hearing on July 29, 2019 wherein defendant testified and various documents were received into evidence.¹ At the conclusion of the hearing,² the court directed that “the matter [be] fully submitted by this Friday” and afforded the parties the opportunity to submit, upon notice, any other information in writing by that day. The court, however, *922 issued a decision on July 31, 2019 – i.e., two days before when the court stated that the matter would be deemed fully submitted. Defendant represents that he intended to submit more evidence by the stated deadline for the court's consideration. In view of the foregoing, the court prematurely decided the motion and improperly denied defendant the opportunity to submit additional information. Accordingly, the order must be reversed and the matter remitted so that defendant may provide more information for the court's consideration.

Garry, P.J., Egan Jr., Mulvey and Reynolds Fitzgerald, JJ., concur.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the County Court of Sullivan County for further proceedings not inconsistent with this Court's decision.

All Citations

190 A.D.3d 1132, 135 N.Y.S.3d 921 (Mem), 2021 N.Y. Slip Op. 00217

Footnotes

¹ We take judicial notice of the fact that July 29, 2019 was a Monday.

- 2 Defendant's assertion that County Court incorrectly allowed the People to cross-examine him about prior acts for which he was indicted but not convicted is unpreserved (see [CPL 470.05\[2\]](#)).

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.

205 A.D.3d 734

Supreme Court, Appellate Division,
Second Department, New York.

The PEOPLE, etc., respondent,

v.

Frank MIRANDA, appellant.

2021–01042

|

(S.C.I. No. 366/07)

|

Submitted—April 12, 2022

|

May 4, 2022

Synopsis

Background: Defendant, who had pled guilty to third-degree attempted promoting prostitution, filed motion to **seal** his conviction. The Supreme Court, Queens County, [Karen Gopee, J.](#), denied the motion without a hearing. Defendant appealed.


[Holding:] The Supreme Court, Appellate Division, held that third-degree attempted promoting prostitution was not defined as “sex offense” for which registration under Sex Offender Registration Act (SORA) was required at time defendant pled guilty to that offense.

Reversed and remitted.

Procedural Posture(s): Expungement Proceeding.




West Headnotes (1)

[1] **Mental Health**  [Persons and offenses included](#)

Records  [Sealing, unsealing, and impoundment of judicial records in criminal proceedings](#)

Third-degree attempted promoting prostitution was not defined as “sex offense” for which registration as sex offender under Sex Offender Registration

Act (SORA) was required at time defendant pled guilty to that offense, and therefore defendant's conviction for third-degree attempted promoting prostitution was not ineligible for **sealing** on basis that defendant was required to register under SORA following his conviction; at time of defendant's conviction, definition of “sex offense” did not include convictions for attempt to commit promoting prostitution, and, accordingly, defendant had never been required to register under SORA.

 [N.Y. CPL § 160.59](#); [N.Y. Penal Law §§ 110.00](#),  [230.25](#);  [N.Y. Correction Law § 168-a\(2\)](#).


Attorneys and Law Firms


***184** [Randall D. Unger](#), Kew Gardens, NY, for appellant.

[Melinda Katz](#), District Attorney, Kew Gardens, NY ([Johnnette Traill](#) of counsel; [Anmari Guerrero](#) on the brief), for respondent.

[FRANCESCA E. CONNOLLY, J.P.](#), [JOSEPH J. MALTESE](#), [LARA J. GENOVESI](#), [WILLIAM G. FORD, JJ.](#)

DECISION & ORDER

Appeal by the defendant from an order of the Supreme Court, Queens County ([Karen Gopee, J.](#)), dated January 11, 2021, which denied, without a hearing, his motion pursuant to  [CPL 160.59](#) to **seal** his conviction of attempted promoting prostitution in the third degree.

ORDERED that the order is reversed, on the law, without costs or disbursements, and the matter is remitted to the Supreme Court, Queens County, for a hearing in accordance with  [CPL 160.59\(6\)](#) and a new determination of the defendant's motion thereafter.

In 2007, the defendant pleaded guilty before the Supreme Court, Queens County, to attempted promoting prostitution in the third degree (Penal Law §§ 110.00, § 230.25[1]), a class E felony.

In January 2020, the defendant moved pursuant to § CPL 160.59 to seal his conviction, and the People opposed the motion. By order dated March 4, 2020, the Supreme Court denied the defendant's motion. However, when defense counsel noted that it appeared that his reply papers had not been considered, the court (Suzanne Melendez, J.) agreed to reconsider the motion. By order dated December 1, 2020, the court (Karen Gopee, J.) denied the defendant's motion upon the grounds that § CPL 160.59(1)(a) excludes offenses requiring registration under the Sex Offender Registration Act (Correction Law art 6-C; hereinafter SORA) and a conviction for violating Penal Law §§ 110.00, § 230.25(1) now requires SORA registration when the complainant is younger than 17 years old.

In December 2020, the defendant again moved pursuant to § CPL 160.59 to seal his conviction, contending, inter alia, that the 2016 amendment to SORA, which required registration as a sex offender for convictions pursuant to Penal Law § 230.25 where the person prostituted is in fact younger than 17 years old, did not apply to his conviction. By order dated January 11, 2021, the Supreme Court (Karen Gopee, J.) denied the defendant's motion to seal the record of his conviction without conducting a hearing. The court held that the defendant's conviction was ineligible for sealing because § CPL 160.59(1)(a) excludes offenses for which registration under SORA is required and the defendant would be required to register under SORA if he had pleaded guilty to attempted promoting prostitution in the third degree today, as one of the complainants was allegedly 15 years old. Alternatively, the court held that even if the defendant's conviction was eligible for sealing under § CPL 160.59, it would nevertheless deny the defendant's motion due to “the nature and seriousness of the crime” and “the circumstances and seriousness of the offense.” The defendant appeals from the order dated January 11, 2021.

“§ CPL 160.59 provides that a defendant who has been convicted of up to two eligible *185 offenses (but not more than one felony offense) may apply to the court in which he or she was convicted to have such convictions sealed” (*People v. Shrayef*, 181 A.D.3d 935, 936, 122 N.Y.S.3d 63; see § CPL 160.59[2][a]; *People v. Bugge*, 197 A.D.3d 653, 655, 153 N.Y.S.3d 107; *People v. Esposito*, 188 A.D.3d 1092, 1092, 132 N.Y.S.3d 698). The statute defines “eligible offense” as “any crime defined in the laws of this state other than [among other crimes not relevant to this appeal] an offense for which registration as a sex offender is required pursuant to article six-C of the correction law” (§ CPL 160.59[1][a]; see *People v. Esposito*, 188 A.D.3d at 1092, 132 N.Y.S.3d 698). Under Correction Law § 168-a(1), the term “sex offender” includes “any person who is convicted of any of the offenses set forth in subdivision two or three of this section.” Under the current version of Correction Law § 168-a(2)(a)(i), “sex offense” means “a conviction of or a conviction for an attempt to commit any of the provisions of ... section 230.25 of the penal law where the person prostituted is in fact less than seventeen years old.”

However, in 2007, at the time of the defendant's conviction for attempted promoting prostitution in the third degree (Penal Law §§ 110.00, § 230.25), the definition of “sex offense” in Correction Law § 168-a(2) did not include convictions of an attempt to commit Penal Law § 230.25 (see Correction Law former § 168-a[1], [2]; L 2006, ch 320, § 8 [eff Nov. 1, 2006]). Further, the defendant has never been required to register under SORA for this conviction. Accordingly, under the plain language of the statute, the defendant has not been not convicted of “an offense for which registration as a sex offender is required pursuant to article six-C of the correction law” (§ CPL 160.59[1][a]; see generally *Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 N.Y.2d 577, 583, 673 N.Y.S.2d 966, 696 N.E.2d 978). Thus, the Supreme Court should not have determined that the defendant's conviction falls into the category of excluded offenses (cf. *People v. Esposito*,

188 A.D.3d at 1092–1093, 132 N.Y.S.3d 698; *People v. Olubummo*, 66 Misc.3d 143[A], 2020 N.Y. Slip Op. 50169[U], 2020 WL 629735 [App. Term, 2d Dept., 9th & 10th Jud. Dists.]; *People v. Doe*, 62 Misc.3d 574, 578, 89 N.Y.S.3d 594). Likewise, although [CPL 160.59\(3\)\(a\)](#) provides that the reviewing court must summarily deny the defendant's application when, inter alia, “the defendant is required to register as a sex offender pursuant to article six-C of the correction law,” here, the defendant is not required to do so.

As the defendant's motion was not subject to mandatory denial under [CPL 160.59\(3\)](#) and the district attorney opposed the defendant's motion, a hearing on the defendant's motion was required (see [id.](#) § [160.59\[6\]](#); *People v. Bugge*, 197 A.D.3d at

656, 153 N.Y.S.3d 107). Accordingly, we remit the matter to the Supreme Court, Queens County, for a hearing in accordance with [CPL 160.59\(6\)](#), and a new determination of the motion thereafter (see *People v. Bugge*, 197 A.D.3d at 656, 153 N.Y.S.3d 107; see also *People v. Decker*, 190 A.D.3d 1132, 135 N.Y.S.3d 921; *People v. Parker*, 160 A.D.3d 767, 771, 75 N.Y.S.3d 204).

CONNOLLY, J.P., MALTESE, GENOVESI and FORD, JJ., concur.

All Citations

205 A.D.3d 734, 167 N.Y.S.3d 183, 2022 N.Y. Slip Op. 03009

66 Misc.3d 143(A)
Unreported Disposition
(The decision is referenced in
the New York Supplement.)
Supreme Court, Appellate Term, New York.

The PEOPLE of the State
of New York, Respondent,
v.
Adedoyin OLUBUMMO, Appellant.

2019-666 RO C

Decided January 30, 2020

Appeal from an order of the Rockland County Court (Kevin F. Russo J.), entered March 22, 2018. The order denied defendant's motion for an order, pursuant to [CPL 160.59](#), sealing the record of his judgment of conviction. The appeal was transferred to this court by decision and order on motion of the Appellate Division, Second Judicial Department, dated April 15, 2019.

Attorneys and Law Firms

Higbee & Associates (Raymingh L. Ngo of counsel),
for appellant.

Rockland County District Attorney (Tina L. Guccione
of counsel), for respondent.

PRESENT: BRUCE E. TOLBERT, J.P., TERRY
JANE RUDERMAN, ELIZABETH H. EMERSON, JJ

Opinion

*1 ORDERED that the order entered March 22, 2018
is affirmed, without costs.

In 2005, defendant pleaded guilty to criminal
possession of a weapon in the third degree (Penal Law
former § 265.02 [4]) and was subsequently sentenced
to, among other things, six months in jail. In January
2018, defendant moved, pursuant to [CPL 160.59](#),
for an order sealing the record of his judgment of

conviction. The People opposed the motion. By order
entered March 22, 2018, the County Court summarily
denied the motion.

At the outset, we note that even though defendant's
motion related to a criminal matter, since it “does not
affect the criminal judgment itself, but only a collateral
aspect of it—namely, the sealing of the court record,”
it is a civil matter (*Matter of Hynes v. Karassik*,
47 NY2d 659, 661 n 1 [1979]). Therefore, defendant
was entitled to appeal as of right the order denying his
motion (see CPLR 5701 [a] [2]).

[CPL 160.59](#) (1) (a) lists the types of criminal
offenses that are “Eligible” to be sealed, which list
does not include “a violent felony offense defined
in section 70.02 of the penal law.” Contrary to
the determination of the County Court, at the time
of defendant's plea in 2005, Penal Law former §
265.02 (4) was defined as a violent felony offense
pursuant to Penal Law former § 70.02 (1) (c) (see
People v. Green, 62 AD3d 1024, 1025 [2009]). The
County Court, however, correctly noted that Penal
Law former § 265.02 (4) was subsequently replaced
by Penal Law § 265.03 (3) (see *id.* at 1025), and
we note that current Penal Law § 70.02 (1) (b),
likewise, provides that Penal Law § 265.03 (3)
is a violent felony offense. Consequently, defendant
was not entitled to an order sealing the record of his
judgment of conviction.

Accordingly, the order entered March 22, 2018 is
affirmed.

TOLBERT, J.P., RUDERMAN and EMERSON, JJ.,
concur.

All Citations

Slip Copy, 66 Misc.3d 143(A), 121 N.Y.S.3d 510
(Table), 2020 WL 629735, 2020 N.Y. Slip Op.
50169(U)

181 A.D.3d 935

Supreme Court, Appellate Division,
Second Department, New York.

The PEOPLE, etc., Respondent,

v.

Abed "Jim" SHRAYEF, Appellant.

2019-06058

|

(Ind. No. 4136/02)

|

Submitted—December 5, 2019

|

March 25, 2020

Synopsis

Background: Defendant, who entered guilty plea to money laundering in the second degree, filed motion to **seal** conviction. Supreme Court, Queens County, Joseph A. Zayas, J., denied the motion, and defendant appealed.

[Holding:] The Supreme Court, Appellate Division held that the Supreme Court did not improvidently exercise its discretion in denying defendant's motion to **seal** his conviction.

Affirmed.

Procedural Posture(s): Expungement Proceeding.

West Headnotes (1)

[1] **Records** 🔑 **Sealing**, unsealing, and impoundment of judicial records in criminal proceedings

Records 🔑 Weight and sufficiency

Supreme Court did not improvidently exercise its discretion in denying defendant's motion to **seal** his conviction for money laundering in the second degree; the court considered the circumstances of the offense, including the defendant's centrality in the scheme

and length of time he participated in it, and while the defendant submitted evidence that demonstrated his professional success, he failed to submit sufficient evidence to aid the court in considering other aspects of his character, or the impact that **sealing** his conviction would have had on his rehabilitation and productive reentry into society. 📄 N.Y. CPL § 160.59; N.Y. Penal Law § 470.15.

3 Cases that cite this headnote

Attorneys and Law Firms

Schwed & Zucker, Kew Gardens, N.Y. (Michael Schwed of counsel), for appellant.

Melinda Katz, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Johnette Trill of counsel; Eleanor Reilly on the brief), for respondent.

MARK C. DILLON, J.P., JEFFREY A. COHEN, COLLEEN D. DUFFY, FRANCESCA E. CONNOLLY, JJ.

DECISION & ORDER

*935 Appeal by the defendant from an order of the Supreme Court, Queens County (Joseph A. Zayas, J.), dated April 23, 2019, which denied his motion pursuant to 📄 CPL 160.59 to **seal** his conviction of money laundering in the second degree.

ORDERED that the order is affirmed, without costs or disbursements.

In 2004, the defendant pleaded guilty to money laundering in the second degree (Penal Law § 470.15). The defendant was sentenced to a term of imprisonment of three months followed by a period of probation **64 of five years. In 2012, the Supreme Court granted the defendant's application for a certificate of relief from disabilities.

In 2019, the defendant moved pursuant to § 160.59 to seal his conviction of money laundering in the second degree. The People agreed that the defendant's conviction was eligible for sealing under § 160.59, took no position on whether the Supreme Court should seal the defendant's conviction, and left the matter to the court's discretion. Since the People did not § 936 oppose the motion, the court did not conduct a hearing (see § 160.59[6]). However, the court denied the defendant's motion, concluding that sealing was not warranted under the circumstances of this case. The defendant appeals.

§ 160.59 provides that a defendant who has been convicted of up to two eligible offenses (but not more than one felony offense) may apply to the court in which he or she was convicted to have such convictions sealed (see § 160.59[2][a]). The statute, *inter alia*, defines “eligible offense” (§ 160.59[1][a]), sets forth requirements for the defendant's application to the court (see § 160.59[2][b]), and provides when the reviewing court must summarily deny the defendant's application (see § 160.59[3]). In addition, § 160.59 provides that an eligible offense may not be sealed until after the statutorily prescribed 10–year period has passed (see § 160.59[5]). Provided the defendant meets these eligibility requirements, the court “shall consider any relevant factors, including but not limited to” those set forth in § 160.59(7).

Where the defendant meets the requirements of § 160.59, the decision of whether to seal an eligible offense is within the sound discretion of the court (see § 160.59[4], [7]; *People v. Decker*, 65 Misc.3d 282, 286, 103 N.Y.S.3d 824 [Sullivan County Ct.]; *People v. N.N.*, 58 Misc.3d 610, 612, 67 N.Y.S.3d 438 [Sup. Ct., Queens County]; William C. Donnino, Practice Commentaries, McKinney's Cons Laws of NY, § 160.59; cf. *People v. Parker*, 160 A.D.3d 767, 771, 75 N.Y.S.3d 204; *People v. Jihan QQ.*, 151 A.D.3d 1245, 1246, 55 N.Y.S.3d 536; *People v. M.E.*, 121 A.D.3d 157, 159, 991 N.Y.S.2d 232 n).

Here, there is no dispute that the defendant's conviction of money laundering in the second degree is eligible for sealing, as it does not fall within any of the categories of excluded offenses (see § 160.59[1][a]). Further, the People do not dispute that the defendant satisfied the 10–year statutory period (see § 160.59[5]), that his motion contained the materials required by § 160.59(2)(b), and that his criminal history report demonstrated that he did not have any prior or subsequent criminal convictions (see § 160.59[2][d]; [3]). Rather, the only issue before this Court is whether the Supreme Court improvidently exercised its discretion in denying the defendant's motion to seal his conviction.

The Supreme Court did not improvidently exercise its discretion in denying the defendant's motion pursuant to § 160.59 to seal his conviction. The court considered the nonexhaustive relevant factors identified in § 160.59(7) to make the discretionary determination that granting the defendant's motion to seal his conviction was not warranted. Specifically, the § 937 time since the defendant's conviction (see § 160.59[7][a]), as well as his lack of contacts before or since with the criminal justice system (see § 160.59[7][c]), weighed in favor of granting the motion. However, the circumstances and seriousness of the offense (see § 160.59[7][b]), including the defendant's centrality in the scheme and length of time he participated in it, weighed against granting the motion. Further, although the defendant submitted § 65 evidence demonstrating his professional success, he failed to submit sufficient evidence to aid the court in considering other aspects of his character (see § 160.59[7][d]), and failed to submit any evidence indicating the impact that sealing his conviction would have on his rehabilitation and upon his successful and productive reentry and reintegration into society (see § 160.59[7][f]).

DILLON, J.P., COHEN, DUFFY and CONNOLLY,
JJ., concur.

All Citations

181 A.D.3d 935, 122 N.Y.S.3d 63, 2020 N.Y. Slip Op.
02073

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.