

COMMONWEALTH OF KENTUCKY  
CLARK CIRCUIT COURT  
CRIMINAL BRANCH  
1<sup>ST</sup> DIVISION

COMMONWEALTH OF KENTUCKY

PLAINTIFF

*vs*

No. 13-CR-114

**MOTION FOR SHOCK PROBATION AND TO CORRECT  
DEFENDANT'S CUSTODY CREDIT**

JOEL NASELROAD

DEFENDANT

\* \* \* \* \*

Comes now the Defendant, Joel Naselroad, by and through the undersigned counsel, and hereby Moves this Honorable Court pursuant to KRS § 439.267 to grant him the privilege of shock probation. Additionally, the Defendant requests that the Court Order that the Defendant be credited with an additional ten (10) days of custody credit. In support thereof, the Defendant states as follows:

- 1) Joel Naselroad was convicted after a jury trial of possession of marijuana and possession of drug paraphernalia, both misdemeanor offenses;
- 2) Joel was sentenced by this Court to serve 120 days on those offenses on July 10<sup>th</sup>, 2014;
- 3) Since that time, Joel has been in the custody of the Clark County Detention Center and is presently serving that sentence;
- 4) Joel has never been incarcerated before the instant case, and without a doubt this period of incarceration has made a significant impact on him. Joel has faced some unique challenges due to his incarceration because he was placed in protective custody for a period of time, leading other inmates to believe that Joel was jailed for a child molestation offense. Simply stated, his incarceration has greatly imperiled his well-being;

- 5) Joel is presently on disability, and due to his incarceration he is unable to participate in a comprehensive psychological exam to determine his ongoing disability. Therefore, the Social Security Administration is threatening to discontinue his disability benefits;
- 6) Joel has also been discontinued at the pain clinic due to his incarceration, and is essentially without any kind of pain management for the gunshot wound that he is still recuperating from;
- 7) Joel's instant offense is for possession of marijuana and drug paraphernalia – both misdemeanor offenses. The undeniable thrust of recent sentencing reforms within the Commonwealth is that first-time drug offenders should be managed in the community as opposed to incarcerated;
- 8) Indeed, individuals who are convicted of *felony* possession of a controlled substance are eligible for presumptive probation, which can only be overcome “by a finding on the record by the sentencing court of substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety.” KRS §§ 218A.010(3); 218A.1415(2)(d);
- 9) While the undersigned recognizes that Joel is not incarcerated on a felony drug possession charge and is instead incarcerated on misdemeanor drug and paraphernalia charges, it is submitted that the underlying rationale to the felony presumptive probation statutory scheme is equally applicable to Joel;

- 10) Charges of possession of marijuana and drug paraphernalia are routinely given fines in district court;
- 11) While the undersigned understands the Court's "long standing position" that any defendant found guilty subsequent to a jury trial is sentenced to imprisonment, the undersigned and Joel entered into the agreement with the Commonwealth with the understanding that Joel would be given the opportunity to serve on probation;
- 12) It is respectfully suggested that this position is in contravention of the law. KRS § 533.010 notes that "[b]efore imposition of a sentence of imprisonment, the court *shall* consider probation, probation with an alternative sentencing plan, or conditional discharge. . . probation *shall* be granted unless the court is of the opinion that imprisonment is necessary for protection of the public because (a) there is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime; (b) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or (c) a disposition under this chapter will unduly depreciate the seriousness of the defendant's crime." 533.010 further mandates that findings regarding the above be made on the record. The Court did not make any of those required findings for imposing a sentence of imprisonment. *See Knox v. Commonwealth*, 361 S.W.3d 891 (Ky. 2012) (holding that sentence of imprisonment must be based upon consideration of the circumstances of the crime as well as the history, character and condition of the defendant);

- 13) The Court did express concerns about Joel's mental health state. Before Joel was incarcerated he was receiving mental health treatment and was seeking to continue receiving mental health treatment for, amongst other things, PTSD. Since being incarcerated, Joel has been without mental health treatment. Should Joel lose his SSDI, his ability to continue to receive treatment will be imperiled;
- 14) Joel was arrested by Detective Keeton on October 8<sup>th</sup>, 2013, while Joel was treating at UK Hospital for his gunshot wound. At the time that he was arrested, he was placed under guard and his family was asked to leave the room. From October 8<sup>th</sup> on, it is submitted that Joel was "in custody" for the purposes of his custody credit calculation pursuant to KRS § 532.120. *See Bartrug v. Commonwealth*, 582 S.W.2d 61 (Ky. 1979); *Rees v. Garrett*, 2007 WL 1378452 (Ky. Ct. App. 2007);
- 15) Joel was in UK Hospital and under guard until October 17<sup>th</sup>, 2013 and then taken to the CCDC where he was released the next day. Therefore, counsel requests that Joel be credited with the ten (10) days that he spent in the hospital under guard subsequent to being arrested plus the day spent in the CCDC;
- 16) Finally, because of Joel's notoriety and animosity between him and the local police, it is respectfully requested that the remainder of Joel's 120 day sentence be conditionally discharged;

WHEREFORE, the Defendant respectfully requests that the Court grant him the relief that he requests in the instant Motion. Simply stated, Joel has been significantly punished and the instant period of incarceration has made a significant impact upon him. It is respectfully requested that the Court release

him so that he can get the treatment that he needs and that he can effectively pursue an appeal of the pending denial of his SSDI benefits.

Respectfully submitted,



R. Tucker Richardson, III  
Baldani, Rowland & Richardson  
300 W Short Street  
Lexington, KY 40507

**NOTICE**

Please take notice that this Motion shall come on for hearing on August 14<sup>th</sup> at the hour of 11:00AM or as soon thereafter as counsel may be heard.

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served via USPS mail and e-mail upon:

Hon. Charles Johnson  
*Assistant Commonwealth's Attorney*  
43 S Main Street  
Winchester, KY 40391  
prosecutor@johnsonandengel.com

Hon. William Clouse  
*Circuit Judge*  
101 W. Main Street  
Richmond, KY 40475  
krystinarnold@kycourts.net

On this, the 12<sup>th</sup> day of August, 2014.



R. Tucker Richardson, III

**Subject:** To Judge Clouse  
**From:** Jeannie Naselroad <j.naselroad@juno.com>  
**Date:** Thu, 7 Aug 2014 15:50:14 -0400  
**To:** tucker@brr-law.com

To the Honorable Judge Clouse,

My son, Joel Naselroad has lost his social security and medicaid card because he's been in jail. Joel had come up for a determination period, and as a result he was unable to attend the doctors appointments to determine his eligibility. He now has a limited period of time to appeal and keep these appointments. There will be no treatment program for Joel without his medicaid as we cannot afford to pay out of pocket.

Joel was attending Comp Care here in Winchester. Joel's doctor diagnosed him with PTSD, and he is not experienced in treating this issue. So he wanted us to take Joel to another man in the Lexington Georgetown area. This is out of the question without medicaid. Joel's surgery at the pain clinic is out of the question as well.

Your Honor Joel has suffered plenty. He lost all possessions that meant anything to him. He had things in his room broken. Not to mention this has been a huge punishment for me. I am unable to keep up with the duties and chores this small farm requires.

Again, there will be no treatment plans for Joel without his medicaid card. Please take all this into consideration.

Sincerely  
Jeannie Naselroad

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