

# Appendix

COUNTY COURT  
COUNTY OF ONONDAGA : STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,  
Plaintiff,

ORDER

-VS-

Indict No. 2001-0883-1


HOWARD GRIFFITH,  
Defendant.

The defendant having been convicted of Rape in the First Degree on January 10, 2002, and having been sentenced to a term of 5 years in state prison to be followed by 5 years of post-release supervision, and the Hon. William D. Walsh having subsequently determined the defendant to be a risk level 3 sex offender pursuant to Article 6-c of the New York State Corrections Law; and the defendant having filed a pro se petition, dated January 27, 2017, seeking a downward modification of that assessment pursuant to the provisions of Correction Law § 168-0, and the Court having received an updated recommendation of the New York State Board of Examiners of Sex Offenders suggesting that the petition be denied, and the Court having assigned attorney Theodore Stenuf to assist the defendant at taxpayer expense, and the court having scheduled a hearing on the matter for June 9, 2017, and the Court having concluded that the defendant has failed to establish sufficient pertinent facts supporting the requested modification by clear and convincing evidence,

NOW, it is

ORDERED, that the defendant's petition for a downward modification of his sex offender rating level be denied.

Date: June 9, 2017

  
Thomas J. Miller  
Onondaga County Court Judge

2017 JUL 21 P 2:03

FILED & ENTERED

To: Howard Griffith  
Board of Examiners of Sex Offenders  
Onondaga County District Attorney's Office  
Theodore Stenuf, Esq.

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1074

**KA 17-01664**

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, DEJOSEPH, AND TROUTMAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HOWARD GRIFFITH, DEFENDANT-APPELLANT.

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WILLIAM CLAUSS, ROCHESTER, FOR DEFENDANT-APPELLANT.

HOWARD GRIFFITH, DEFENDANT-APPELLANT PRO SE.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER, JR., OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Onondaga County Court (Thomas J. Miller, J.), entered July 21, 2017. The order denied defendant's petition seeking a downward modification of his previously-imposed classification as a level three risk pursuant to the Sex Offender Registration Act.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is reinstated, and the matter is remitted to Onondaga County Court for further proceedings in accordance with the following memorandum: Defendant appeals from an order that denied his petition pursuant to Correction Law § 168-o (2) seeking a downward modification of his previously-imposed classification as a level three risk under the Sex Offender Registration Act ([SORA] § 168 et seq.). As a preliminary matter, we note that defendant's pro se notice of appeal states that he is appealing pursuant to CPL 450.10 (1) "as it applies" to Correction Law § 168-n. CPL 450.10 (1), however, does not grant defendant the right to appeal from an order denying his petition for a downward modification of his risk level; instead, that right is conferred by CPLR 5701 (see generally *People v Charles*, 162 AD3d 125, 126, 137-140 [2d Dept 2018], lv denied 32 NY3d 904 [2018]). Nevertheless, we deem the appeal to have been taken pursuant to the proper statute, and we therefore reach the merits of the issues raised on appeal (see CPLR 2001).

We agree with defendant that he was denied effective assistance of counsel, and we therefore reverse the order, reinstate the petition, and remit the matter to County Court for a new hearing on the petition. Defendant contended in the petition, among other things, that he was entitled to a downward modification of his risk level classification. His assigned counsel, however, wrote a letter

to the court indicating that the petition lacked merit, counsel would not support the petition, and he had advised defendant to withdraw the petition so that defendant would not needlessly delay his right to file a new modification petition in two years. We conclude that defense counsel "essentially[] became a witness against [defendant] and took a position adverse to him," which denied defendant effective assistance of counsel (*People v Caccavale*, 305 AD2d 695, 695 [2d Dept 2003]; see *People v Freire*, 157 AD3d 963, 964 [2d Dept 2018]; *People v Brown*, 152 AD3d 1209, 1212 [4th Dept 2017], *lv denied* 30 NY3d 978 [2017]). In addition, a defendant may commence a Correction Law § 168-o (2) proceeding no more than once annually (see *People v Lashway*, 25 NY3d 478, 483 [2015]), thus defense counsel's advice was incorrect as well as adverse to defendant's position.

Contrary to defendant's contentions in his pro se supplemental brief, the court did not err in refusing to allow him to challenge his plea or other aspects of his underlying conviction. It is well settled that a SORA proceeding may not be used to challenge the underlying conviction (see generally *People v Buniek*, 121 AD3d 659, 659 [2d Dept 2014], *lv denied* 24 NY3d 914 [2015]; *People v Clavette*, 96 AD3d 1178, 1179 [3d Dept 2012], *lv denied* 20 NY3d 851 [2012]; *People v Ayala*, 72 AD3d 1577, 1578 [4th Dept 2010], *lv denied* 15 NY3d 816 [2010]).

In light of our determination, we do not address the remaining contentions in defendant's main brief.

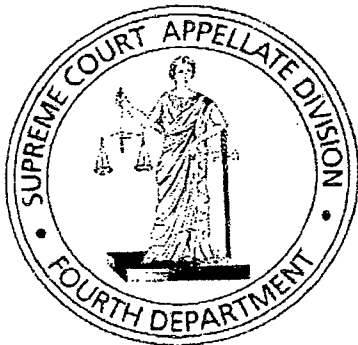
Entered: November 9, 2018

Mark W. Bennett  
Clerk of the Court

**Supreme Court  
APPELLATE DIVISION  
Fourth Judicial Department  
Clerk's Office, Rochester, N.Y.**



*I, Mark W. Bennett, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.*



*IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this November 9, 2018*

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**Clerk**

# *State of New York*

## *Court of Appeals*

*Decided and Entered on the  
twenty-first day of February, 2019*

**Present**, Hon. Janet DiFiore, *Chief Judge, presiding.*

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Mo. No. 2018-1188

The People &c.,  
Respondent,

v.

Howard Griffith,  
Appellant.

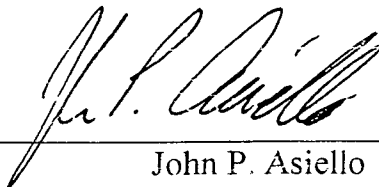
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Appellant having appealed to the Court of Appeals and moved for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution; and it is further

ORDERED, that the motion for poor person relief is dismissed as academic.



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John P. Asiello  
Clerk of the Court

# *State of New York*

## *Court of Appeals*

*Decided and Entered on the  
eleventh day of June, 2019*

**Present,** Hon. Janet DiFiore, *Chief Judge, presiding.*

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Mo. No. 2019-283  
The People &c.,  
Respondent,  
v.  
Howard Griffith,  
Appellant.

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Appellant having moved for reconsideration of this Court's February 21, 2019  
dismissal order;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied.



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John P. Asiello  
Clerk of the Court

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

October 15, 2019

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

Mr. Howard Griffith  
2903 James Street  
#1R  
Syracuse, NY 13206

"People v Griffith"

2001-0883-1

Re: Howard Griffith  
v. New York  
No. 19-5746

FILED

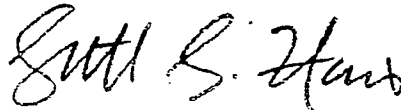
Dear Mr. Griffith:

ONONDAGA CO CLERK'S OFFICE

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk



HON. THOMAS J. MILLER, JUDGE

**County Court**  
ONONDAGA COUNTY  
CRIMINAL COURTS BUILDING  
505 S. STATE STREET, SUITE 370  
SYRACUSE, N.Y. 13202  
(315) 671-1056

October 25, 2019

DAVID A. ROTHSCHILD  
PRINCIPAL LAW CLERK

JENNIFER L. WEBB  
SECRETARY

Howard Griffith  
2903 James Street, Apt. 1R  
Syracuse, NY 13206

**RE: People v. Howard Griffith**  
Indict No. 2001-0883; Index No. 2001-0927

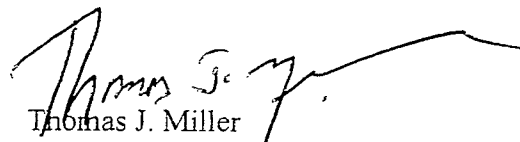
Mr. Griffith:

I have received your recent "omnibus motion" and supplemental submission regarding the above-referenced matter. It appears that you are seeking an expungement of records regarding this matter based upon your misunderstanding that the Appellate Division, Fourth Department has reversed your conviction for *Rape in the First Degree*. You have also asked me to recuse myself from participating in future proceedings regarding this matter.

You should be aware that there is no legal basis for me to order the expungement of any records because the Appellate Division, Fourth Department has not reversed your conviction in this matter. Rather, the Fourth Department held that you had been deprived of the effective assistance of counsel with regard to your prior application for a downward modification of your classification as a level three risk under the Sex Offender Registration Act (SORA). Accordingly, the Fourth Department reinstated your petition and remitted the matter back to me to conduct a new hearing (*see, People v. Griffith, 166 AD3d 1518*). Although I adjourned your hearing date on several occasions to permit you to seek further appellate review of this determination, the Court of Appeals declined to grant you further relief. Ultimately, you failed to appear in court for the scheduled hearing on September 13, 2019 and, given the nature of the correspondence that you have repeatedly sent to me regarding this matter, it was apparent to me that your failure to appear was willful. Accordingly, I determined that you had abandoned your petition.

With regard to your current application for recusal, I would first note that there is not a pending proceeding before me at this juncture. Moreover, as you have not identified a valid basis in support of your application, I decline to recuse myself from all possible future proceedings relative to this matter. Should you elect to file another petition for a downward modification of your SORA rating in the future, I will certainly consider any concomitant application for recusal at that time.

Very truly yours,

  
Thomas J. Miller  
Onondaga County Court

cc: Kenneth Tyler, Jr., Esq.

Letter/Notice of Court Denying Order to Show Cause: February 03, 2020



MARK W. BENNETT  
CLERK OF THE COURT

NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION, FOURTH DEPARTMENT  
M. DOLORES DENMAN COURTHOUSE  
199 EAST AVENUE, SUITE 200  
ROCHESTER, NEW YORK 14604  
(585) 530-3100, Fax (585) 530-3247



ALAN L. ROSS  
DEPUTY CLERK OF THE COURT

Howard Griffith  
2903 James Street, #1R  
Syracuse, New York 13206

Re: **People v Howard Griffith**  
**Indictment No. 2001-0883-1**

Dear Mr. Griffith:

Your application for an order to show cause was presented to the Honorable Brian F. DeJoseph, and His Honor declined to sign the order to show cause.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles P. Cercone".

Charles P. Cercone  
Principal Appellate Court Attorney

CPC:kvs

pc: William J. Fitzpatrick, Esq.



Hon. Thomas J. Miller  
County Court Judge  
Onondaga County

## County Court Chambers

ONONDAGA COUNTY CRIMINAL COURT BUILDING  
505 SOUTH STATE STREET, SUITE 370  
SYRACUSE, NEW YORK 13202  
(315) 671-1056  
Fax (315) 671-1188

Received:  
February 26, 2020

H. G.

David A. Rothschild  
Law Clerk

Jennifer Webb  
Secretary

February 21, 2020

Nicole Intschert, Esq.  
Onondaga County District Attorney's Office  
505 S. State Street, 4<sup>th</sup> Floor  
Syracuse, NY 13202

Howard Griffith, pro se  
2903 James Street, Apt. 1R  
Syracuse, NY 13206

**Re: People v. Howard Griffith**  
Indict No. 2001-0883

Counselor and Mr. Griffith:

On October 25, 2019, the Court issued a letter advising the defendant that it was denying his request for an expungement of records related to this matter, based upon the defendant's apparent misunderstanding that the Appellate Division, Fourth Department had reversed his conviction for Rape in the First Degree. As the Court explained, the Fourth Department had merely determined that the defendant had been deprived of the effective assistance of counsel with regard to a prior application for a downward modification of his rating under the Sex Offender Registration Act, and remitted the matter back to this part to conduct a new hearing (see, *People v. Griffith*, 166 AD3d 1518). The Court also indicated that it was declining to recuse itself from further future proceedings regarding this matter.

The defendant has now moved to settle the record with regard to a potential future appeal of the determinations rendered in the Court's October 25, 2019 letter. The People have opposed the motion, and correctly indicated that there is neither an mandatory no right to appeal from the Court's October 25, 2019 letter. As such, the motion to settle the record is in all respects DISMISSED. This constitutes the decision and order of the Court.

Very truly yours,

Thomas J. Miller  
Onondaga County Court Judge

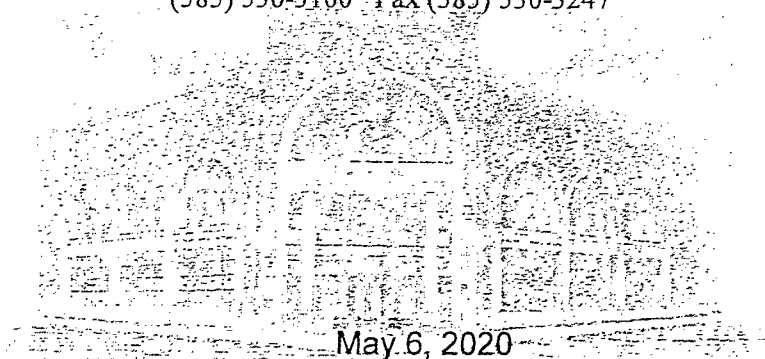


MARK W. BENNETT  
CLERK OF THE COURT

NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION, FOURTH DEPARTMENT  
M. DOLORES DENMAN COURTHOUSE  
50 EAST AVENUE, SUITE 200  
ROCHESTER, NEW YORK 14604  
(585) 530-3100 Fax (585) 530-3247



ALAN L. ROSS  
DEPUTY CLERK OF THE COURT



May 6, 2020

Howard Griffith  
2903 James Street, #1R  
Syracuse, New York 13206

Re: **People v Howard Griffith**  
**Appellate Division Docket No. KA 17-01664**

Dear Mr. Griffith:

This Court received your motions dated March 10, 2020, and March 18, 2020, which are being returned without consideration. Your appeal was decided by this Court on November 9, 2018. Therefore there is nothing pending before this Court.

Sincerely,

Charles P. Cercone  
Principal Appellate Court Attorney

Received  
May 09, 2020  
H.G.

CPC:kvs  
Enclosures

pc: William J. Fitzpatrick, Esq.  
William Clauss, Esq.

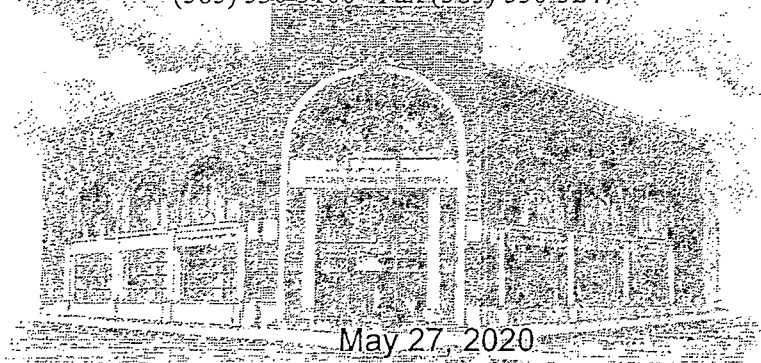


MARK W. BENNETT  
CLERK OF THE COURT

NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION, FOURTH DEPARTMENT  
M. DOLORES DENMAN COURTHOUSE  
50 EAST AVENUE, SUITE 200  
ROCHESTER, NEW YORK 14604  
(585) 530-3100 Fax (585) 530-3247



ALAN L. ROSS  
DEPUTY CLERK OF THE COURT



May 27, 2020

Received:  
May 29, 2020

H.G.

Howard Griffith  
2903 James Street, #1R  
Syracuse, New York 13206

Re: **People v Howard Griffith**  
**Indictment No. 2001-0883-1**

Dear Mr. Griffith:

Your application for an order to show cause was presented to the Honorable Brian F. DeJoseph, and His Honor declined to sign the order to show cause. Because Justice DeJoseph decided not to sign your order to show cause, you were not granted the relief you requested.

Sincerely,

Charles P. Cercone  
Principal Appellate Court Attorney

CPC:kvs

pc: William J. Fitzpatrick, Esq.

# *State of New York*

## *Court of Appeals*

*Decided and Entered on the  
twenty-second day of October, 2020*

**Present**, Hon. Janet DiFiore, *Chief Judge, presiding.*

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Mo. No. 2020-552  
The People &c.,  
Respondent,  
v.  
Howard Griffith,  
Appellant.

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Appellant having moved for leave to appeal to the Court of Appeals in the above  
cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is dismissed upon the ground that the order sought to  
be appealed from does not finally determine the proceeding within the meaning of the  
Constitution.



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Heather Davis  
Deputy Clerk of the Court