

## **Client's 9 Year Sentence and Conviction Vacated With Appeal Victory**

Upon reading and filing the within Notice of Motion, dated May 31, 2005, submitted by Matthew B. Tully, Esq., attorney for defendant, the Affirmation in Response of David R. Huey, Esq., Assistant District Attorney for the County of Orange, dated June 14, 2005 and upon all the papers and proceedings had herein, it is hereby Ordered that the defendant's application is decided as follows

Defendant moves pursuant to CPL 440.20 for an Order Vacating the Conviction of Assault in the First Degree on the ground that prior to his plea of guilty, neither the Court nor his attorney advised him that his imprisonment would be followed by post-release Parole Supervision (See, *People v. Melio*, 304 AD2d 247).

The facts underlying defendant's plea of guilty and sentence imposed are generally not in dispute. On August 12, 2002, defendant was Indicted for the Crimes of Assault in the First Degree, Assault in the Second Degree, Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Fourth Degree. On November 25, 2002, following plea negotiations with the Court and the District Attorney, defendant entered a plea of guilty to a single count of Assault in the First Degree in satisfaction of all charges contained in the Indictment. The District Attorney agreed to recommend a sentence of fifteen years in State Prison. The Court promised to limit its sentence to fifteen years in State Prison. On October 24, 2001, defendant was sentenced to a determinate nine year term in State Prison. By operation of law, the prison term was to be followed by five years of Post Release Parole Supervision. Defendant moves for an Order vacating the conviction on the ground that he was not advised of the statutory requirement for Post-Release Supervision before he entered his plea of guilty.

It appears that defendant may not have been advised of having to serve five years of post release supervision at the time of his plea of guilty. As such, defendant's Motion must be granted (See, *People v. Catu*, 4 NY3d 242). Based on the foregoing, it is hereby Ordered that the Judgment of Conviction of the Felony of Assault in the First Degree entered on January 14, 2003 be and the same is vacated.

It is further Ordered that the District Attorney cause defendant be produced before the Court on September 19, 2005 at 9:30 A.M. for further proceedings under the Indictment. The aforesaid constitutes the Decision and Order of the Court.