

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF QUEENS: CRIMINAL TERM : PART K-23

3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK, Indictment:  
1709-10

5 -against-

6 HARRY DORVILIER,

SENTENCE

7 Defendant(s).

8 -----x

9 125-01 Queens Boulevard  
10 Kew Gardens, NY 11415  
October 4, 2012

11 B E F O R E:

12 HONORABLE JOEL BLUMENFELD,  
13 J U S T I C E

14 A P P E A R A N C E S:

15 RICHARD A. BROWN, ESQ.  
16 District Attorney, Queens County  
BY: ROSEMARY BUCCHERI, ESQ.,  
17 Assistant District Attorney  
For the People

18 RICHARD A. FINKEL, ESQ.,  
19 Atty. For the Defendant  
275 Madison Avenue  
20 New York, NY 10016-1101

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LYNNETTE Y. CRUZ, RPR, CRR  
Senior Court Reporter

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1 THE COURT CLERK: Calendar number 1, indictment  
2 number 1709 of 2010, Harry Dorvilier and Harry's Nurses.  
3 Also number 3 on the calendar, Harry Dorvilier and Harry's  
4 Nurses Registry Incorporated.

5 MS. BUCCHERI: Rosemary Buccheri for the People.

6 MR. FINKEL: Richard A. Finger, 275 Madison  
7 Avenue, for the defendants.

8 THE COURT: I've already given you a copy of my  
9 decision on the 330 motion. You will see it was denied.

10 I have given you a copy of the presentence  
11 memorandum that was submitted by Mr. Alter. A stack of  
12 letters that he arranged for people to send me and you've  
13 had a chance to read those; is that correct?

14 MR. FINKEL: It is now 10:30. I received those  
15 materials approximately a half hour ago. I have read them.  
16 I had not seen them before. I had not seen the letters  
17 before. I saw prior counsel's motion before.

18 MS. BUCCIERI: I have also read them.

19 MR. FINKEL: Your Honor, I might add that I  
20 appeared this morning for the first time for the defendant,  
21 as your Honor knows. I appear this morning having  
22 understood that we would be arguing my motion. I have  
23 prepared for that argument this morning. I have, in an off  
24 the record discussion with your Honor a few moments ago,  
25 about half an hour ago, I indicated that part of my argument

1 would have been the presentation of a recent decision of the  
2 Appellate Division.

3 THE COURT: And you gave me a copy of that.

4 MR. FINKEL: I gave you a copy of that decision.

5 THE COURT: That's the Villegas decision. The  
6 Villegas decision reversed the decision by Carol Berkmann on  
7 a 440. A 440 is the motion with which you can argue  
8 ineffective assistance of Counsel.

9 MR. FINKEL: I understand. I have read your  
10 Honor's opinion. I understand that's your opinion as well.  
11 Yes, your Honor.

12 THE COURT: It's the statute. I didn't write the  
13 statute.

14 MR. FINKEL: I understand that, your Honor.

15 THE COURT: So it comes down --

16 MR. FINKEL: Respectfully, I disagree.

17 THE COURT: You have a right to disagree. You got  
18 a copy of the decision and so the matter is now on for  
19 sentence. You've also had an opportunity to read the  
20 presentence report. You came into this case in August is  
21 when we first got a notification that you were succeeding  
22 Mr. Alter. There was nothing to stop you from coming to  
23 court to review anything in the file. There's nothing been  
24 hidden from you. Those letters were sent at the insistence  
25 of Mr. Alter to the various people who were concerned. The

1 presentence report was given out a while ago. The DA -- ADA  
2 who was here got a copy of it. Mr. Alter had a copy of it.  
3 I don't know why you couldn't get a copy from Mr. Alter, but  
4 we gave you a copy of the presentence report.

5 Is there any legal reason why your client cannot  
6 now be sentenced?

7 MR. FINKEL: Your Honor, I always prepare a  
8 presentence memorandum for every client prior to sentencing.

9 THE COURT: Did you prepare one here?

10 MR. FINKEL: I'm sorry?

11 THE COURT: Did you prepare one for today?

12 MR. FINKEL: I did not know we were proceeding to  
13 sentencing today.

14 THE COURT: I don't know why you didn't know that  
15 because once a defendant gets convicted after trial and a  
16 330 motion is decided, sentence proceeds forthwith.

17 MR. FINKEL: I did not know the 330 motion -- my  
18 330 motion was decided until I walked into the courtroom  
19 this morning and was provided the decision by your Honor.

20 THE COURT: That was the decision date, but once  
21 it's decided we proceed to sentence. I will hear the People  
22 on sentence.

23 MS. BUCCIERI: Okay. Judge, as to the defendant,  
24 the person, the People are aware that the defendant has  
25 already provided and paid restitution in the amount of

1       \$25,451.25. However, in this case, the defendant's  
2       arrogance and blatant disregard for his workers, the LPN's  
3       who worked for him, show that these individuals worked for  
4       him, they cared for people who were very sick. They cared  
5       for children. This was fair job and they did their job very  
6       well, and in order to do their job, they were supposed to be  
7       compensated by the defendant, and as the jury read the  
8       verdict and the verdict stands, these LPN's were in fact  
9       employees and as that fact, defendant was not entitled to  
10      withhold their money from them. So that being said, he took  
11      full advantage of each of the workers, and Judge, for that  
12      matter, I think the defendant should be sentenced on each of  
13      the Larceny in the Third Degree, to one to three and the  
14      Grand Larceny in the Fourth Degree one and a third to four,  
15      and I ask that they be run consecutively.

16               THE COURT: Go ahead, Counsel.

17               MR. FINKEL: Your Honor, just for the record, I am  
18      not prepared to proceed to sentencing now for the reasons I  
19      stated before; nonetheless, having reviewed very quickly the  
20      materials that the Court provided to me this morning, again  
21      it's now 10:36, I make the following presentation:

22               I reviewed the probation report. I think the  
23      probation report is most interesting because the probation  
24      report recommends probation and recommends the issuance of a  
25      certificate of relief from civil disabilities.

1           In terms of my client's background, let me stress  
2 to your Honor that my client came here to the United States  
3 at the age of 20, approximately 20, in 1982, became a United  
4 States citizen promptly in 1989, pursued a college degree  
5 and graduated from CW Post with a Bachelors Degree in  
6 Business Administration. Established the Harry's Nursing  
7 Company in approximately 1991. That company has been in  
8 business for over 20 years, which, as an attorney dealing  
9 with health care agencies, that's quite a long time  
10 particularly in this particular industry and itself attests  
11 to the quality of the services that he provides.

12           I might add that one of the letters that I read  
13 this morning, your Honor, from one of the nurses, Debra  
14 Charles, who states in her letter that she has worked for  
15 Harry approximately 20 years and that she knows, which would  
16 be basically the length of Harry's Nurses Registry's  
17 existence, she knows that this company fulfills Harry's  
18 dream to help people who are in trouble. Harry's Nurses  
19 provides nursing services and nurses for nursing services  
20 for over 150 nurses.

21           Interestingly, also, one of the nurses writes to  
22 the Court, several of the nurses write to the Court how they  
23 work for multiple nursing agencies because they believe they  
24 are independent contractors. They work for multiple nursing  
25 agencies and find Harry's Nurses Agency to be the highest

1 quality of the group. There are several relatives of  
2 patients, because the patients themselves are infirmed and  
3 can't write letters, particularly parents of young patients,  
4 who claim the quality of the service and the quality of the  
5 services provided by Harry's Nursing Services, so he has  
6 over 150 nurses that he sends to help patients. He has over  
7 seven or eight office employees, administration employees.

8 Harry has never been previously convicted of a  
9 crime. What I emphasize, and this follows through the  
10 second round of my 330 motion, your Honor, is that Harry was  
11 confronted with a problem with regard to Workers'  
12 Compensation insurance, and he retained the professional  
13 services of a certified public accountant.

14 That certified public accountant advised Harry  
15 that the proper and lawful manner to defray the huge costs  
16 of Workers' Compensation insurance would be to take out  
17 payroll deductions. Your Honor knows that that's incorrect  
18 as a matter of law, but that's the information that Harry  
19 got from this CPA.

20 THE COURT: Is that in any exhibit that you  
21 submitted?

22 MR. FINKEL: Yes, it is, your Honor.

23 THE COURT: He sent him a letter. He sent him an  
24 opinion. He sent him an opinion from an agency that  
25 suggests that ultimately what you have to do is check with

1 the appropriate state agency to determine whether or not  
2 they're employees. Did Harry, his lawyer or his accountant  
3 check with any official agency as the law requires under a  
4 mistake of fact?

5 MR. FINKEL: The accountant didn't tell Harry to  
6 do that.

7 THE COURT: It said it on the face of what was  
8 sent to him.

9 MR. FINKEL: As the affidavit that I submitted  
10 establishes, your Honor, Harry was told by the CPA that it  
11 was proper and lawful to make a payroll deductions and --

12 THE COURT: Who said that? Does Harry say that or  
13 do you have an affidavit from the CPA?

14 MR. FINKEL: I have two accounts from employees of  
15 Harry's Registry that say that they heard the CPA tell him  
16 that, and those employees also personally saw the CPA  
17 reprogram Harry's Nurses Registry's computers to make the  
18 payroll deductions and those affidavits further establish  
19 that the CPA advised Harry that he should, in writing,  
20 notify the nurses that that would occur, that the payroll  
21 deductions would occur.

22 THE COURT: Let's assume that's true. Let's  
23 assume that's true. Does he have a right to rely on the  
24 CPA?

25 MR. FINKEL: Yes, he does.



1 THE COURT: Under what law does that say that?

2 MR. FINKEL: I'm going to explain that, okay. I'm  
3 going to explain that, in a moment. If I may make two more  
4 points first, that the CPA also personally drafted the  
5 written notice that was then copied and distributed by the  
6 affidavit -- by the persons -- the affiants who signed those  
7 affidavits. They are among the employees who distributed  
8 the notices to the nurses.

9 Now, if this information had been presented to the  
10 jury, the jury was entitled to determine that Harry, on the  
11 basis of these facts, that Harry had no criminal intent and  
12 no larcenous intent and as this crime is a malum prohibitum  
13 crime as most of the crimes in the Penal Law are. It  
14 requires, as your Honor well knows, criminal intent for  
15 conviction. With this evidence, this evidence established  
16 no criminal intent, no larcenous intent; therefore, the jury  
17 was entitled to find not guilty on that basis, and that's  
18 what -- go ahead, I'm sorry.

19 THE COURT: The problem -- you didn't answer the  
20 question. You can't just go find some CPA that will tell  
21 you what you want to hear. Because the law, I mean, we had  
22 this discussion, not in chambers, but we had this discussion  
23 that if in fact the defendant wished to offer to the jury a  
24 mistaken fact that I was ignorant because I was misled by  
25 somebody, I would charge 1520 of the Penal Law, and

1 subdivision 2 says a person is not relieved of criminal  
2 liability for conduct because he engages in such conduct  
3 under a mistaken belief that it does not, as a matter of  
4 law, constitute an offense unless such mistaken belief is  
5 founded upon an official statement of the law contained in a  
6 statute or other enactment or an administrative order or  
7 grant of permission, or a judicial decision of a state or  
8 Federal Court, or an interpretation of the statute of law  
9 relating to the offense officially made or issued by a  
10 public servant agency or body legally charged or empowered  
11 the responsibility or privilege of administering enforcing  
12 or interpreting such statute of the law.

13 The legislature saw fit not to allow you to find  
14 someone who will tell you what you want to hear, but you  
15 would have to get it from an official agency and in fact,  
16 what you included in your exhibit was what the CPA in fact  
17 had said was a decision that said in the end you must  
18 contact the official agency to find out whether or not  
19 they're independent contractors or employees and what was  
20 interesting from your submission is that there was no  
21 evidence once Mr. Alter or your client saw that, did anyone  
22 follow through?

23 However, he was prepared to be able to do it. I  
24 don't know why he didn't go forward, why your client didn't  
25 go forward, why he didn't testify to any of that's a choice

1 he made. It was not Mr. Alter's decision to make.

2 MR. FINKEL: Most respectfully, your Honor, you're  
3 wrong.

4 THE COURT: The law is and your client was told  
5 that it was his decision whether or not to testify or not.

6 MR. FINKEL: That's not an issue, your Honor, I  
7 don't raise that, your Honor, because that's correct.

8 THE COURT: Did I interrupt you? Listen. You  
9 argue about intent. You were arguing repugnant because I  
10 indicated in the verdict --

11 MR. FINKEL: I didn't hear that, your Honor.

12 THE COURT: When you argued in your motion about  
13 the intent, the jury heard from the prosecution's witness  
14 testimony about what, you know, the difficulties in  
15 determining whether or not you're an employee or independent  
16 contractor and that's why you had to go to the agency, so it  
17 was not repugnant for the jury to acquit of scheme to  
18 defraud because scheme to defraud is you have to intend to  
19 defraud. People didn't meet their burden. They acquitted.  
20 On the intent, the larceny, you simply have to -- you intend  
21 to take someone else's money. The defendant acknowledges he  
22 took someone's money. Larceny requires it's not that you  
23 just intend to take someone's money, but you wrongfully take  
24 it and because they were convinced beyond a reasonable doubt  
25 that he had no authority to take it, he may have been

1 mistaken, but they concluded that he wrongfully took it.  
2 There are different intents which is why the verdict is not  
3 repugnant.

4 So back to the fact is, is it a business who found  
5 somebody, gave him a document who says you have to go to  
6 some agency and chose to rely on the news that he got from  
7 that CPA. The jury decided and the law says you can't do  
8 that, so now we're back to asking about sentence.

9 You are free, once he's sentenced, to bring on a  
10 440. You can't argue the ineffective assistance of Counsel  
11 until after judgment is entered.

12 MR. FINKEL: I see you wrote that, your Honor. I  
13 most respectfully, I will not make the argument now, but I  
14 disagree with your conclusion on the repugnant verdict as  
15 well, because what really happened, the case that the DA  
16 cites is the reverse, which has no bearing here. The DA  
17 cites a case --

18 THE COURT: I'm not worried about what the DA  
19 cited. I'm worried about what I cited.

20 MR. FINKEL: What you have here is, you have a  
21 scheme to defraud acquittal and 13 grand larceny  
22 convictions. The difference -- the element difference  
23 between the Scheme to Defraud, most respectfully, and the  
24 Grand Larceny is really one element, and that is the number  
25 of victims. In the Scheme to Defraud you have to have ten

1 or more victims in the first degree. In this case, the DA  
2 presented in excess of ten and got 13 convictions. So  
3 clearly, there are 13 counts of Grand Larceny, each with a  
4 different complainant. So clearly the DA, based upon the  
5 Grand Larceny convictions, established more than ten or  
6 more. That removes that element from the comparison.

7 THE COURT: That leaves intent. And there are  
8 different intents.

9 MR. FINKEL: Most respectfully, I do not agree  
10 with your Honor. I don't think the intents are different.  
11 If you track the statutes, you see that the intents are not  
12 different.

13 THE COURT: I did track the statutes. I put it in  
14 the decision. The larceny says you intend to deprive  
15 somebody of property and you wrongfully take it. He clearly  
16 intended to take their property. They proved that beyond a  
17 reasonable doubt, not wrongfully intended, he simply  
18 intended to take the property.

19 MR. FINKEL: Your Honor was right the first time,  
20 not the second time. Intent to take the property --

21 THE COURT: Boy, you are rude, aren't you?

22 MR. FINKEL: I'm sorry?

23 THE COURT: You are rude.

24 MR. FINKEL: I'm sorry, your Honor.

25 THE COURT: So am I. In a Scheme to Defraud your

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1 intent has to be to defraud and larceny you simply have to  
2 take the property wrongfully. Wrongfully is not an intent.

3 Now can you continue.

4 MR. FINKEL: Thank you, your Honor. I'm sorry for  
5 interrupting. I apologize.

6 THE COURT: We are back to sentencing. Let's  
7 finish the sentencing part.

8 MR. FINKEL: I just want to make one additional  
9 point. We have not, I think, I'm sure your Honor recognizes  
10 it, we have not argued that there was any error by not  
11 presenting the testimony of Harry. In fact, we have argued  
12 in our papers that the problem was or the situation was  
13 Harry's testimony was not necessary, and that strategic  
14 choice was not an issue. The choice of not presenting the  
15 defense --

16 THE COURT: Through him?

17 MR. FINKEL: Through the two witnesses whose  
18 affidavits are attached to my motion, both of whom were  
19 present during the time that the CPA advised Harry to change  
20 the computer, prepared the written notice that was  
21 distributed to the nurses. They are fully aware of what  
22 happened and could have testified completely to the facts of  
23 the case without Harry's testimony.

24 THE COURT: Let's assume all that is true. Let's  
25 assume all that is true. You would then be stuck with the

1 fact that the CPA gave the letter to Harry that said that in  
2 order to do this properly you have to check with an  
3 appropriate agency and nobody did that. So it would end up  
4 looking like Harry found somebody who would tell him what he  
5 wanted to hear and ended up taking that advice, but the  
6 statute doesn't permit you to do that. The statute doesn't  
7 say find someone who will tell you what you want to hear.  
8 The statute requires that you have to contact the official  
9 agency, and that they didn't do. So I'm not -- it may very  
10 well be that when and if you get to a 440 motion, Mr. Alter,  
11 if he testified would say it was a strategic decision.  
12 Strategic decisions are not ineffective assistance of  
13 Counsel.

14 MR. FINKEL: That's correct.

15 THE COURT: Let's get back to sentencing because  
16 the 440 is not here.

17 MR. FINKEL: Very well, your Honor.

18 For the reasons we have just debated, I  
19 respectfully submit to the Court that those reasons  
20 establish, forgetting the issue of law that your Honor has  
21 argued with me just now, just on the facts alone, establish  
22 that Harry didn't intend to, quote, steal money.

23 THE COURT: What sentence are you recommending?

24 MR. FINKEL: I'm recommending what the Probation  
25 Department recommended.

1 THE COURT: Which is what Mr. Alter recommended.  
2 Okay. I will hear from Harry.

3 Are you also going to speak on behalf of the  
4 corporation?

5 MR. FINKEL: Yes, I am.

6 THE COURT: What do you suggest happen on the  
7 sentence for them?

8 MR. FINKEL: Your Honor, I have not had time to  
9 prepare that aspect of the sentencing situation. I would  
10 expect that since the corporation has already provided full  
11 restitution --

12 THE COURT: The corporation has not provided  
13 restitution, Harry has.

14 MR. FINKEL: Well, on behalf of the corporation --

15 THE COURT: There are two defendants in front of  
16 me.

17 MR. FINKEL: I understand there are two, your  
18 Honor. I understand. Full restitution has been provided.  
19 I think it's also important to recommend that the amount  
20 that was deducted from the nurse's salaries was not  
21 sufficient to pay the increase of the Workers' Compensation  
22 insurance and that several 100 thousand dollars above that  
23 had to be paid and was paid by Harry's Nurses' Registry to  
24 the Worker's Comp Insurance Fund; 400 thousand dollars above  
25 that, a very substantial amount and more than the amount



1 that was deducted from the salary.

2 I might add, if I may, your Honor, the stack,  
3 using your Honor's adjective, you said stack of letters,  
4 that's appropriate. The stack of letters establishes that  
5 Harry, and it's letters from nurses and patients, that Harry  
6 is hard-working, respected. I'm using words I took from the  
7 letters as I read them: Kind, generous, has a sense of duty  
8 and respect for employees, despite what the DA just  
9 suggested. High integrity and strives to do the right  
10 thing. These are all phrases I extracted from the letters,  
11 and one of the letters is written by one of the nurses who  
12 is a complaining witness on the indictment, and that is  
13 Norma Famoso, a licensed practical nurse, who speaks very  
14 highly of Harry and has been employed by Harry for  
15 approximately 20 years.

16 The letters establish, your Honor, and support  
17 what I've been saying that Harry didn't do this to hurt  
18 anybody. He believes because of the CPA, as a matter of  
19 fact, that he was doing the right and lawful thing because  
20 he believed the CPA. He didn't run around hunting CPA's,  
21 interviewing CPA's to find one who would come to the, quote,  
22 right, unquote, determination. This was the CPA he had, who  
23 professed to be an expert in this area.

24 The certificate of relief from civil disabilities  
25 is a very important request, your Honor. Harry's Nurses,

1 again that supplies nurses to over 150 infirmed people. It  
2 does that through the Medicaid system and this conviction  
3 and the conviction itself of Harry's Nurses could lead to --  
4 will lead to an administrative inquiry, will lead to an  
5 administrative inquiry and could lead to debarment and loss  
6 of provider status by Harry's Nurses, which will put them  
7 out of business, put Harry, the company and the nurses out  
8 of business.

9 Therefore what I can ask for, with regard to not  
10 just Harry, but with regard to the corporate entity as well,  
11 most respectfully, your Honor, is a certificate of relief  
12 from civil disabilities so that the agency can continue or  
13 have this argument because it's, as your Honor well knows  
14 I'm certain, is not binding on the Department of Health. So  
15 that the Nurses Registry has this additional argument in an  
16 effort to maintain it's business and continue the services,  
17 the medical and health services that it provided for 150  
18 patients, mostly in Queens County.

19 Thank you.

20 THE COURT: Mr. Dorvilier.

21 MR. FINKEL: I'm sorry?

22 THE COURT: It's now your client's turn to speak.

23 THE DEFENDANT: Your Honor, I'm sorry for whatever  
24 the advise that I received from the CPA.

25 THE COURT: There came a point -- there came a

1 point that whatever you received from the CPA, you find  
2 yourself now being prosecuted criminally, and you hired a  
3 lawyer, Mr. Alter, and one of the things that was submitted  
4 by your current Counsel, was a letter from Mr. Alter  
5 recommending that you take the misdemeanor plea just to  
6 avoid any consequences to your business and at that time you  
7 understood that the State was saying that what you did was  
8 criminal and what he was saying was don't jeopardize your  
9 business, take the misdemeanor. You turned that down and  
10 decided to go to trial.

11 You understood that the State was taking the  
12 position that whatever advice you got from the CPA may have  
13 been incorrect, but the law says you have no right to rely  
14 on it, and you went forward.

15 The jury heard all this and after listening to the  
16 prosecution's witnesses, realized that it was a rather  
17 complicated area of the law whether or not they were  
18 independent contractors or employees and that the very  
19 letter that Mr. Alter had shown us said that you can't rely  
20 on this letter, you have to contact the agency.

21 Everything I've learned about you is that you are  
22 a very bright man and I'm confident you know how to read and  
23 saw that, but nevertheless, you permitted the CPA to  
24 undertake changing all of your -- the computer and the  
25 deductions and stuff like that. That was a business

1 decision that you can't blame on the CPA unless you're  
2 telling me you didn't read the stuff he sent you. That's  
3 what got you in this position.

4 Mr. Alter did a wonderful job of amassing these  
5 letters. Was there anything else you wanted to tell me?

6 THE DEFENDANT: Your Honor, there was another CPA  
7 hired to look into the aspect of the first CPA where they  
8 have the difference between what the money that --

9 MR. FINKEL: This was after the indictment was  
10 filed, your Honor, in preparation for trial.

11 THE COURT: What I'm saying to you is that  
12 Mr. Alter recommended to you that you would be wise to take  
13 the misdemeanor. You now find yourself -- listen, I got all  
14 these letters. I've heard the prosecution. She wants you  
15 in jail. I've read probation's report. I read the stack of  
16 letters and I understand and I agree with Mr. Finkel that if  
17 I'm to put you in jail, I'm going to essentially put a lot  
18 of those nurses out of business and a lot of the patients  
19 not getting their care. So I'm not looking for you to go to  
20 jail. I have read the probation report. You know, it was  
21 Mr. Alter who wrote me a letter, submitted a memo who  
22 recommended that you get the Article 23 and you get placed  
23 on probation.

24 In the letters, you know, Mr. Finkel wasn't here  
25 when one of those nurses stood up when the case was

1 originally on for sentence, who wanted to see you punished  
2 and there's a letter here from someone else who wanted to  
3 see you punished. To punish you is to punish a bunch of  
4 innocent people. So I think the fact that you made  
5 restitution isn't sufficient because it just makes them  
6 whole and just asking for restitution would not deter other  
7 people from doing it because there's nothing to lose. If I  
8 get caught, I will make restitution. If I don't get caught,  
9 I'm ahead of the game.

10 So there has to be a punitive sanction to this.

11 So here's your sentence:

12 I am going to place you, on each of the 13 counts,  
13 on five years probation. One of the conditions of your  
14 probation is that you're going to have to pay a fine of two  
15 thousand dollars on each count, that adds up to 26 thousand  
16 dollars, and on each of the counts you have to do a day of  
17 community service so that is up to 13 days of community  
18 service that you will have to do over the five years of  
19 probation.

20 I'm granting the request for Article 23 relief  
21 from civil disabilities because that will enable those other  
22 people to be able to be employed and not destroy the  
23 business. There are a lot of fine letters in here about  
24 what it is that your nursing company. You keep good people  
25 working and you help patients. Because you made the

1 restitution there is no \$250 mandatory surcharge or \$20  
2 dollar crime victim assistance fee, because you made the  
3 restitution. Therefore no -- there is, however, a \$50 DNA  
4 fee and your DNA is going to be taken.

5 With regard to the corporation, on each of the  
6 counts, there's a three year conditional discharge and on  
7 each count the corporation has to pay a fine of two thousand  
8 dollars. So it's a 26 thousand dollar fine for the  
9 corporation, a 26 thousand dollar fine for you. There is no  
10 DNA fee for a corporation, but the corporation has to pay  
11 the 250 dollar mandatory surcharge and the 20 dollars crime  
12 victim assistance fee.

13 You are hereby being advised that both you and the  
14 corporation have 30 days from today's date within which to  
15 file a notice of appeal of the conviction and sentence of  
16 the Court, and that if you cannot afford Counsel to perfect  
17 such an appeal, one would be provided free of charge.

18 Probation will arrange for your community service.  
19 When will you be able to pay the fines and the corporation  
20 be able to pay the fines?

21 MR. FINKEL: Can we have the term of probation to  
22 do that, your Honor?

23 THE COURT: What?

24 MR. FINKEL: During the term of probation?

25 THE COURT: I just want to know how he wants to

1 pay it off. Do you want to make it --

2 MR. FINKEL: Make installments during the term of  
3 probation.

4 THE COURT: Well, the corporation isn't on  
5 probation.

6 MR. FINKEL: Yes. That's correct, your Honor.

7 THE COURT: So the corporation has to pay 26,270  
8 dollars, and he has to pay 26,050 dollars. That was the DNA  
9 fee. So two six zero five zero.

10 The DNA fee he should pay up front, but what  
11 happens is if he pays in installments they may end up  
12 getting a surcharge, and I think they hike 10 percent.

13 MR. FINKEL: May I have a moment with I my client,  
14 your Honor?

15 THE COURT: Yes.

16 MR. FINKEL: Before I do that, regarding my  
17 request for certificate of relief --

18 THE COURT: I granted it.

19 MR. FINKEL: For the corporation defendant?

20 THE COURT: I granted it for both.

21 MR. FINKEL: Thank you, your Honor. I wasn't  
22 clear as to that.

23 THE COURT: Okay.

24 (Whereupon, the defendant and his attorney  
25 confer.)

1 MR. FINKEL: Your Honor, according the fines,  
2 both, can we have before -- payment before the end of this  
3 year, by December 31st?

4 THE COURT: Well, the Court is not going to be in  
5 session after the 23rd or the 24th. I think the last day  
6 the courts are going to be in session likes look the 21st.

7 MR. FINKEL: That's acceptable that date, your  
8 Honor.

9 THE COURT: Okay. So the corporation and the  
10 defendant have to pay fines by December 21.

11 Now, when he is he going to pay the \$50 DNA fee  
12 and the mandatory surcharge?

13 MR. FINKEL: Can we have until the end of next  
14 week on that, your Honor, until the 12th?

15 THE COURT: I will put it on the calendar. Do you  
16 want the 15th?

17 MR. FINKEL: Do you want an appearance by us here  
18 for that, your Honor, or just go to the clerk's office to  
19 make payment?

20 THE COURT: Well, if he doesn't make a payment he  
21 will have to come here and explain to me why not.

22 MR. FINKEL: Okay. I don't think that's going to  
23 happen.

24 THE COURT: What happens is I will have it on the  
25 calendar for the 15th. If he hasn't paid it he must appear.



1 If he doesn't pay it then he has to come back on December  
2 21st.

3 MR. FINKEL: Yes, your Honor. I understand.

4 THE COURT: Do you understand all this,  
5 Mr. Dorvilier?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Okay. Now you have to wait around.  
8 You're going to get paperwork from the clerk and you will  
9 start reporting to probation. I'm signing the Article 23  
10 relief for both you and the corporation. It takes a while  
11 for the clerk's office to mail that to you, so make sure the  
12 clerk has a current address for which both of these things  
13 could be mailed to you. Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You are too smart not to read what the  
16 CPA sent you. That's what got you in trouble. That's it.

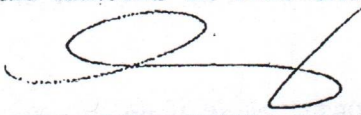
17 MS. BUCCIARI: Thank you.

18 MR. FINKEL: Thank you, your Honor.

19 \* \* \* \*

20 CERTIFIED THAT THE FOREGOING IS A TRUE  
21 AND ACCURATE TRANSCRIPT OF THE ORIGINAL  
22 STENOGRAPHIC MINUTES IN THIS CASE.

23  
24  
25

  
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Lynnette Y. Cruz, RPR, CRR  
Senior Court Reporter