

STATE OF VERMONT
CALEDONIA COUNTY, SS.

FILED
FEB 10 2010

STATE OF VERMONT)
) Caledonia District Court
v.) Unit #3, Caledonia Circuit
) Docket No. 414-6-09 Cacr
KEVIN KADAMUS)

MOTION TO COMPEL PROVISION OF DNA SAMPLE

NOW COMES the Vermont Department of Corrections, by and through Attorney General William H. Sorrell, pursuant to 20 V.S.A. § 1935(a), and respectfully requests that this Honorable Court order the Defendant provide a DNA sample.

20 V.S.A. §1933(a)(1) provides, in pertinent part, that a person convicted in a court of this state of a designated crime on or after April 29, 1998 shall submit a DNA sample. Designated crimes include all felonies. 20 V.S.A. § 1932(12)(A). The Defendant pleaded no contest to manslaughter on August 18, 2009 and received a deferred sentence on October 19, 2009. Thus, he is a person required by § 1933 to provide a DNA sample.

On January 28, 2010, the Department of Corrections ("DOC") directed Defendant to provide a DNA sample. Defendant refused to comply with the DOC's direction. When a person required to submit a DNA sample refuses to do so, the commissioner of the DOC or Department of Public Safety must file a motion for an order requiring the person to provide the sample.

Accordingly, the Court should issue an order requiring Defendant to provide

a DNA sample. *See* 20 V.S.A. § 1935(c). Additionally, the order should specify that the DOC shall obtain the sample by means of an oral swab and is authorized to use reasonable force to do so. *See id.*

Defendant's claim that he is not required to provide a DNA sample because he is not serving a sentence is unavailing. He received a deferred sentence on October 19, 2009. When a defendant is adjudicated guilty and the court defers sentencing, it must place the defendant on probation. *See* 13 V.S.A. § 7041. A person on probation for a designated crime, such as Defendant, is required to provide a DNA sample. 13 V.S.A. § 1933(a)(2)(D). That Defendant is not serving a term of incarceration for his crime does not relieve him of his statutory obligation to provide a DNA sample.

WHEREFORE, the Department of Corrections respectfully requests that this Honorable Court issue a written order requiring Defendant to provide a DNA sample and authorizing the Department of Corrections to obtain the sample by means of an oral swab and to use reasonable force to do, if necessary.

DATED at Waterbury, Vermont this 8th day of February 2010.

Respectfully submitted,

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



Kurt A. Kuehl
Assistant Attorney General
Vermont Attorney General's Office
103 South Main Street, Ladd Hall
Waterbury, VT 05671-0701
(802) 241-2288
Counsel for Department of Corrections