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THE TRIAL COURT VIOLATED MR. LIEBESMAN'S STATUTORY RIGHTS TO BE HEARD AT SENTENCING UNDER CRIMINAL PROCEDURE LAW §380.50.

Background

At the sentencing hearing on January 15, 2009 Mr. Liebesman was not granted the opportunity to speak on his own behalf or make any kind of statement prior to being sentenced. The Trial Court violated Mr. Liebesman's statutory right to be heard prior to sentence when he was not given an opportunity to speak prior to sentencing and the sentence must be vacated and remanded to the Trial Court.

Applicable Legal Principles

Criminal Procedure Law §380.50(1) states, in pertinent part, that the defendant has the right to make a statement personally in his or her own behalf, and before pronouncing sentence the court must ask the defendant whether he or she wishes to make such a statement.

Where a defendant was not afforded the opportunity, as required by CPL§380.50 to make a statement on his behalf before the court pronounced sentence, the case must be remitted for re-sentencing to give the defendant an opportunity to make a statement on his own behalf. *People v. Crossland*, 251 A.D.2d 509, 675 N.Y.S.2d 358 (2d Dept. 1998).

A defendant must be afforded the opportunity to make a statement to the Trial Court at sentencing and the only remedy for a violation of this statutory requirement is to be remanded for sentencing. *People v. McClain*, 35 N.Y.2d 483, 364 N.Y.S.2d 143, 323 N.E.2d 685; *People ex rel. Williams v. Murphy*, 6 N.Y.2d 234, 189 N.Y.S.2d 182, 160 N.E.2d 480; *People v. Williams*, 46 A.D.2d 791, 361 N.Y.S.2d 33 (2d Dept. 1974).

Discussion and Analysis

In the instant case during the entire sentencing proceeding Mr. Liebesman was not given the opportunity to speak. In the four page transcript that constitutes the sentencing hearing the Trial Court decided immediately that it was going to sentence Mr. Liebesman to one year in jail. Mr. Liebesman's attorney was not given a chance to be heard prior to sentencing either.

The Trial Court violated Mr. Liebesman's statutory right to be heard at sentence pursuant to Criminal Procedure Law §380.50 in that it did not allow or afford Mr. Liebesman and his attorney the opportunity to be heard prior to being sentenced. The Trial Court violated this statutory right and the sentence must be vacated and remanded to the Trial Court for further proceedings where he should be sentenced to time served as he has already served the equivalent of 96 days in jail.

