

11/22/2013

COPY

THE STATE OF NEW HAMPSHIRE

8th Circuit- District Division- Keene

Cheshire, ss.

November, 2013

State of New Hampshire

Docket No. 12-CR-953

v.

Graham Colson

**STATE'S MOTION FOR RECONSIDERATION OF ORDER ON
DEFENDANT'S MOTION TO DISMISS**

NOW COMES the State of New Hampshire, through Jean M. Kilham, prosecutor for the Keene Police Department, and submits this *Motion to Reconsider*:

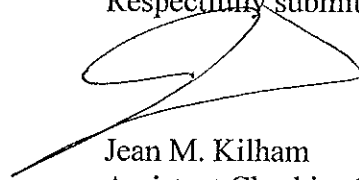
1. The defendant stands charged with Criminal trespass (RSA 635:2). The defendant filed a Motion to Dismiss arguing, inter alia, that his rights to procedural due process were violated. The Court issued an Order on the Defendant's Motion to Dismiss after an evidentiary hearing. The Court permitted the parties leave to file motions for reconsideration.
2. The State respectfully requests that the Court reconsider its ruling granting the defendant's motion to dismiss the defendant's charge of Criminal Trespass.
3. As grounds for this request, the State asserts that the defendant should not be permitted to mount a collateral attack upon the issuance of the "no trespass letter". The New Hampshire Supreme Court has held that a defendant could not collaterally attack a protective order in the trial of charges against him for Stalking as the subject could have been raised and litigated through the judicial process

prior to the violation charged. See *State v. Small*, 150 N.H. 457 (2004). Furthermore, the defendant could have sought out remedies on his own; the defendant could have taken the initiative to speak to the City officials upon receipt of the “no trespass letter” if he did not deem the letter proper; the letter clearly states that it was issued under the authority of the City of Keene. (See State’s Exhibit 1.) Here, the defendant received the order on or about May 10, 2012 and he did not raise any challenges thereto until he violated the “no trespass letter” almost one full year later on or about April 17, 2013. Moreover, the defendant, on information and belief, pled guilty in this Honorable Court to Criminal Trespass (RSA 635:2) on or about September 14, 2012 for knowingly remaining in Central Square in violation of the exact same no trespass letter of May 10, 2012. (See Docket Number 13-CR-953.) The defendant had an opportunity to challenge the no trespass letter in a judicial forum and he chose not to. There was a procedure available to the defendant but he failed to act. The defendant should be estopped from relying on any due process challenges at this juncture as he failed to challenge the lawfulness of the no trespass letter previously.

WHEREFORE, the State, through the Keene Police Department prosecutor, requests this Court:

- A. Grant such relief as justice requires.

Respectfully submitted,



Jean M. Kilham
Assistant Cheshire County Attorney
Bar ID # 18031

Keene Police Department
400 Marlboro Street
Keene, New Hampshire 03431
(603) 357-9815

CERTIFICATE OF SERVICE

I, Jean M. Kilham, do hereby certify that a copy of the foregoing Motion has been forwarded this 22nd day of November 2013 to Attorney Jon Meyer, counsel for the defendant.

A handwritten signature in black ink, appearing to be 'Jean M. Kilham', written in a cursive style.

Jean M. Kilham