

New York Journal Dec 5, 1986
p. 1

Lawyer Freed After 21 Days in Jail In Contempt Case

A federal judge in Manhattan yesterday ordered the release of a lawyer who had been confined for criminal contempt in the Bronx House of Detention for twenty-one days.

Acting on the recommendation of a U.S. Magistrate, Judge David N. Edelstein granted the lawyer, George Sassower, a writ of habeas corpus because he had been given a thirty-day term on a finding entered without a "full evidentiary hearing" that he was guilty of sixty-three counts of criminal contempt.

Freed Nov. 26

Mr. Sassower had actually been freed on Nov. 26 when the recommendation of Magistrate Nina Gershon was presented to Judge Leonard B. Sand who handled the matter on an emergency basis because of Judge Edelstein's absence from the courthouse. Acting on Nov. 26, two days after Magistrate Gershon submitted her recommendation, Judge Sand ordered that Mr. Sassower be freed "forthwith," but "without prejudice" to any action by Judge Edelstein in the case upon his return.

Yesterday, as the judge initially

Continued on page 2, column 6

Jailed Lawyer Freed

Continued from page 1, column 2

assigned to the case, Judge Edelstein confirmed Magistrate Gershon's recommendation and nullified the sentence, relieving Mr. Sassower of the obligation to spend the remaining nine days of his sentence in jail.

Yesterday's ruling upsets an order of the Appellate Division, First Department, issued June 24, 1986, which imposed the thirty-day jail term.

A state court referee had initially recommended a thirty-day contempt sentence and fines of \$250 for each of the sixty-three instances in which he found that Mr. Sassower had violated four previous state court orders. The orders barred Mr. Sassower from continuing to represent, to file lawsuits or to take related legal actions on behalf of a clothing company — Puccini Clothes, Ltd. — that had been placed in receivership.

The referee's finding as to contempt was confirmed by State Supreme Court Justice Martin Evans, but Justice Evans declined to approve of fines and a jail term, a ruling that the Appellate Division modified in reinstating the jail term.

Constitutional Error Found

Reviewing this procedural history, Magistrate Gershon found that the state court referee erred in entering a finding of criminal contempt by deciding the matter before him entirely on papers submitted in the case.

The referee justified his decision that an evidentiary hearing was not required, Magistrate Gershon noted, by stating that Mr. Sassower had failed to allege any facts disputing the contempt charges; that the violations are documented by court filings and other matters of records; and that Mr. Sassower had asserted in a separate proceeding that he was free to ignore one of the orders in issue.

Those reasons, Magistrate Gershon concluded, were not sufficient to deprive Mr. Sassower of his constitutional right to a trial before being found guilty of criminal contempt.

In addition to failing to afford Mr. Sassower a constitutionally required evidentiary hearing, Magistrate Gershon found that there is "no indication that the determination of guilt was based on a finding that the evidence proved petitioner's guilt, including the requisite intent, beyond a reasonable doubt."