

COURT OF APPEALS : STATE OF NEW YORK

-----X  
THE STATE OF NEW YORK ex rel GEORGE  
SASSOWER, Esq., on behalf of SAM POLUR,  
Esq., an Attorney at Law,

Petitioner-Appellant,

-against-

JOHN CUNNINGHAM, WARDEN OF THE BRONX  
HOUSE OF DETENTION,

Respondent-Respondent.

For A Writ of Habeas Corpus.

-----X  
JURISDICTIONAL STATEMENT

- a. 1. The title of the case appears above.
2. The appeal is taken from an Order of the Appellate Division of the Supreme Court, First Judicial Department in a proceeding which originated in that Court (CPLR §7002[b][2]), and directly involve[s] the construction of the Constitutions of the State of New York and of the United States (CPLR §5601[b]).
3. The notice of appeal was served and filed on August 12, 1985.
4. The Order appealed from, with notice of entry was never served.
5. Frederick A.O. Schwarz, Jr., Esq.  
100 Church Street,  
New York, New York, 10007  
(212) 566-3317
- Robert Abrams, Esq.  
2 World Trade Center,  
New York, New York, 10047  
(212) 488-5896
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55 East 52nd Street,  
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Kreindler & Relkin, P.C.  
500 Fifth Avenue,  
New York, New York, 10110  
(212) 719-1600

b. 1. The Notice of Appeal is annexed hereto  
(Exhibit "A").

2. The Order appealed from is annexed hereto  
(Exhibit "B").

3. None.

4. The opinion of the Appellate Division  
(Exhibit "C").

5. None.

6. None.

STATEMENT OF ESSENTIAL FACTS

1a. Appellant, an attorney, without a trial  
and other fundamental rights of a constitutional  
(federal and state) magnitude, was convicted, sentenced  
to be incarcerated for 30 days, and indeed incarcerated  
for his full term for non-summary criminal contempt by  
Order of the Supreme Court, New York County per Hon.  
Alvin F. Klein, entered July 1, 1985.

b. Since Bloom v. Illinois (391 U.S. 194), absent, as here, a plea of guilty, as a matter of ministerial constitutional compulsion all courts, mandated to obey the Constitution of the United States, are without the jurisdictional power to convict, sentence and incarcerate for non-summary criminal contempt .

c. Absent constitutional waiver, the confrontation clause contained in the VI Amendment of the United States Constitution, is, inter alia, the federally imposed death-knell (Pointer v. Texas, 380 U.S. 400) to the legality of the aforementioned incarceration.

d. The manifest illegality of the aforementioned conviction is such that no one has been able to cite a single extant authoritative case in this state, and since Bloom v. Illinois (supra) in the United States, to support appellant's conviction!

Such authority simply does not exist, even as a matter of specious argument.

2a. An immediate notice of appeal was filed from the aforementioned nisi prius order of July 1, 1985.

b. Indeed the appeal from such egregious order was perfected and filed with extraordinary alacrity (July 15, 1985), so that it could be heard at the first available term (September 1985) of the Appellate Division, First Department.

c. A stay pending the hearing of the appeal was denied by the Appellate Division, although under the above conceded facts, the order appealed from was a patently clear constitutional nullity.

3a. Simultaneously with the motion for a stay of the Order of July 1, 1985 at the Appellate Division, a proceeding, in the nature of prohibition was commenced in that Court against Hon. Alvin F. Klein, based upon constitutional and statutory "double jeopardy".

b. Although the grant of relief, in the nature of prohibition is compelling, the Appellate Division made same returnable on September 10, 1985, and an interim stay pending such determination was also denied!

4. Thus unless relief was granted by virtue of a writ of habeas corpus ad subjiciendum, federal and/or state, the judicial illogic was that first there be full execution of the sentence and thereafter an order declaring the conviction and incarceration of appellant to be illegal!

\* \*

5a. Within minutes of appellant's arrest on July 16, 1985, a writ of habeas corpus was secured at nisi prius, returnable the following day. The application for bail pending the return was denied.

b. Even before the Magna Carta, the "legality" of the detention is the issue to be summarily determined on the return on a writ of habeas corpus ad subjiciendum. Nonetheless, Mr. Justice Jawn A. Sandifer refused to adjudicate the manifest illegality of appellant's incarceration and dismissed the petition (Exhibit "D").

Mr. Justice Sandifer held that appellant's remedy was his pending appeal from the Order of conviction (People ex rel. McChesney v. Draxler, 59 A.D.2d 952, 398 N.Y.S.2d 774 [3d Dept.]). Bail pending such event was again denied.



c. The aforementioned dismissal was made although the term of incarceration would have been fully completed before the appeal was to be heard, and the conviction declared a nullity.

In haec verba, Mr. Justice Sandifer stated (SM 60-61):

"The Court holds, as a matter of law, that while an appeal is pending, as in this case, from the judgment of conviction, no basis exists to determine the same issues by habeas corpus proceedings. People ex rel McChesney v. Drazler, 59 A.D.2d 952, 398 N.Y.S.2d 774, Third Department. ... Mr. Polur's application to be released on his own recognizance is denied. The proper application for any relief is the Appellate Division, First Department, and not here. That concludes the hearing."

6a. Thereupon applications were made for a Writ of Habeas Corpus (1) in the United States District Court for the Southern District of New York, and (2) in the Appellate Division, First Department.

b. Since the "legality of the detention" was not determined by Mr. Justice Sandifer, the application at the Appellate Division was an original, but successive, writ of habeas corpus, permitted at common law and by statute (CPLR §7003[b]).

c. The Appellate Division also refused to address the specific illegalities of appellant's conviction, but instead rendered an opinion which proliferates with irrelevant false and contrived facts, misleading statements, and unconstitutional observations (Exhibit "C"), as hereinafter briefly shown.

For more than 800 years, the issue in the traditional writ of habeas corpus ad subjiciendum is not an involved examination of the guilt or innocence of the person detained, but a summary determination of the legality of the detention!

In manifest violation of blackletter habeas corpus law, the opinion of the Appellate Division (Exhibit "C") examines appellant's conduct, when it should have examined the misconduct of the judiciary (Bushell's Case, 6 How St. Trials 999, 124 Eng. Rep. 1006 [1670]) in incarcerating appellant, without a trial and without a plea of guilty!

7a. The Federal District Court, although accepting the petition for habeas corpus relief, and compelling response (Exhibit "E"), thereafter refused to grant the relief requested, based upon the failure to exhaust state remedies (Exhibit "F").

b. In its opinion, the Federal District Court (per Hon. Mary Johnson Lowe) stated (Exhibit "F"):

"After hearing the parties, and in view of the fact that an interim stay of the contempt sentence was denied by a Justice of the Appellate Division, First Department and an appeal is presently pending before that Court; this Court is of the opinion that petitioners have failed to exhaust their state remedies within the meaning of 28 U.S.C. 2254 nor does this Court find an absence of available state corrective process or the existence of circumstances rendering state process ineffective. See record. Petition dismissed. So Ordered."

POINT I

THE JUDICIARY IS WITHOUT CONSTITUTIONAL POWER (FEDERAL AND STATE) TO SUSPEND AND ABROGATE THE WRIT OF HABEAS CORPUS WHERE THE INCARCERATION IS ILLEGAL AND THE FULL SHORT TERM OF INCARCERATION WILL HAVE ELAPSED PENDING REVIEW BY NORMAL PROCEDURES.

1a. In all criminal cases, absent, as here, a plea of guilty, no american court can jurisdictionally convict, sentence, and incarcerate without a trial, and such criminal constitutional rights attendant to such trial!



The right to such constitutional trial and trial rights do not exist by reason of judicial grace or discretion, but are a ministerial obligation of the courts.

c. Whatever view may have existed at one time the Supreme Court began to recognize that the accused in the federal courts were entitled to all the fundamental criminal rights in criminal contempt proceedings (Gompers v. United States, 233 U.S. 604, Gompers v. Buck Stove, 221 U.S. 418; Cooke v. United States, 267 U.S. 517).

d. By Bloom v. Illinois (supra), the full panoply of fundamental criminal constitutional rights in ordinary criminal cases were imposed upon the state courts in non-criminal contempt cases by the Supreme Court. As the Court noted (p. 207):

"In modern times, procedures in criminal contempt cases have come to mirror those used in ordinary criminal cases."

e. At bar, release must, as a matter of law, follow a determination of the illegality of the appellant's incarceration, since appellant was convicted, sentenced, and was incarcerated without a trial and those legal rights attending a trial (Bloom v. Illinois, supra; Pointer v. Dexter, supra). To set forth any additional assertions as to the nullity of appellant's conviction would be supererogatory.

2a. Additionally, at bar, by Order dated and entered the same day, appellant was fully exonerated for precisely the same act charged herein, triggering a plea of constitutional and statutory "double jeopardy".

b. Since appellant was also not afforded allocution, he did not have any opportunity to interpose his constitutional right not to be placed in jeopardy more than once, and certainly not to be convicted, sentenced and incarcerated under one order and simultaneously exonerated under another.

c. Consequently, a Writ of Prohibition was applied for at the Appellate Division against Hon. Alvin F. Klein, but that Court made same returnable September 10, 1985, and denied a stay pending the hearing.

3a. It follows, where both bail and a stay are denied, the term is sufficiently short causing its completion before a hearing on appeal, only an expeditious determination as to the legality of the incarceration by way of a state writ of habeas corpus, can prove to be an effective remedy (Rose v. Lundy, 455 U.S. 509; Picard v. Conner, 404 U.S. 270), if not the only remedy.

b. At bar, appellant was incarcerated for a substantial portion of the summer of 1985 because the Appellate Division was in its summer recess and could not hear his appeal from the Order of conviction; and his Writ of Prohibition based on "double jeopardy" in its most quintessential aspect, to wit., actual incarceration rather than the "wearing down" and "needless anxiety" of the appellant (Justices v. Lyndon, U.S. , 104 S.Ct. 1805; Green v. United States, 355 U.S. 184) were involved.

C. Indeed, it was because Francis Jencks was incarcerated for the entire summer of 1676, because the english judiciary were similarly on their summer recess, that Parliament enacted the Habeas Corpus Act of 1679, which by its "details" was intended to cover "every possible hitch in the [habeas corpus] proceedings Parliament could foresee" (Chafee, The Most Important Human Right in the Constitution, 32 Boston Law Rev. 143, ).

Thus there was presented a reenactment of the events of 309 years ago; a reenactment of an event 100 years before the Declaration of Independence, well known to the men who met in Carpenter's Hall and who, by unanimous vote, included Article 1, Section 9, Clause 2 into the Constitution of the United States.

4. The Writ of Habeas Corpus ad subjiciendum

In People ex rel. Tweed v. Liscomb (60 N.Y. 559), the Court stated:

"The history of the writ is lost in antiquity. It was in use before magna carta, and came to us as a part of our inheritance from the mother country, and exists as part of the common law of the State. It is intended and well adapted to effect the great object secured in England by magna carta, and made a part of our Constitution, that no person shall be deprived of his liberty 'without due process of law.' (Const., art. 1, §6.)

... The statutes which have been passed in England ... and in this State from the time of its first organization, have not been intended to detract from its force, but rather to add to its efficiency. They have been intended to prevent the writ being rendered inoperative, by increasing the facilities for procuring it, ... imposing penalties for refusal to grant it, or to obey it, and providing for a speedy return, and a prompt trial and discharge, of the person, if not held according to the law of the land.

... This writ cannot be abrogated, or its efficiency curtailed, by legislative action. Cases within the relief afforded by it at common law cannot, until the people voluntarily surrender the right to this, the greatest of all writs, by an amendment of the organic law, be placed beyond its reach and remedial action. The privilege of the writ cannot even be temporarily suspended, except for the safety of the State, in cases of rebellion or invasion. (Const. art. 1, §4.)

... It is no new feature in the law that inferior magistrates may, when thereunto called, sit in judgment upon the jurisdiction of the highest courts, when their process or judgment come collaterally before them. ... It matters not what the general powers and jurisdiction of a court may be; if it act without authority in the particular case, its judgments and orders are mere nullities, not voidable, but simply void, protecting no one acting under them, and constituting no hindrance to the prosecution of any right. ... Neither should the habeas corpus act, which judges have 'revered as the bulwark of the Constitution, the magna charta of personal rights,' be shorn of its power and its glory by a subtle and metaphysical interpretation; rather should it receive a liberal construction, in harmony with its grand purpose, and in disregard, if need be, of technical language used.



This act has always been construed in favor of, and not against, the liberty of the subject and the citizen; and the reading must be the same whether the benefit of it is invoked by the purest and best citizen of the State, or the greatest sinner, and the one most worthy of condign punishment. The law is no respecter of persons, and suffers no man, be he guilty or innocent, to be deprived of his liberty, except 'by due process of law;' and the writ of habeas corpus is as available, even to the guilty, and he whom the popular voice would condemn.

... If the record shows that the judgment is not merely erroneous, but such as could not, under any circumstances, or upon any state of facts, have been pronounced, ... the applicant must be discharged.

... the party detained on process, the existence and validity of the process are the only facts in issue ... If there was no legal power to render the judgment or decree, or issue the process, there was no competent court, and consequently no judgment or process.

... the prisoner had an undoubted right, when brought before the commissioner on habeas corpus, to show that the committing magistrate acted without authority, notwithstanding the commitment recites the necessary facts to give jurisdiction; that no court or officer can acquire jurisdiction by the mere assertion of it. Upon principle as well as upon authority, the court or magistrate having jurisdiction of the writ of habeas corpus must have the right, in order to give effect to the writ, to inquire into the jurisdiction of the court to give the judgment or decree, or issue the process by which the person is deprived of his

liberty. In so doing he but inquires whether he is deprived of his liberty 'by due process of law,' or the judgment of a court of competent jurisdiction." [emphasis supplied] (pp. 565-572)

b. In Fay v. Noia (372 U.S. 391), the Court stated:

[T]he Great Writ, habeas corpus ad subjiciendum ... affording as it does a swift and imperative remedy in all cases of illegal restrain or confinement. ... [I]f the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. The principle that judicial as well as executive restraints may be intolerable received dramatic expression in Bushell's case. The Habeas Corpus Act of 1679, no distinction was made between executive and judicial detentions. ... Bushell's Case, changed conceptions of the kind of criminal proceedings so fundamentally defective as to make imprisonment pursuant to them constitutionally intolerable ... " [emphasis supplied (pp. 399-414)].

5a. Thus, the conduct and opinion of the Appellate Division, in evaluating the guilt, vel non, of the appellant rather than the legality of the detention, is a giant and dramatic reversal in the 800 year old history of habeas corpus.

b. Thus also, the Appellate Division, dramatically, unconstitutionally suspended and abrogated the words, spirit, and intent of the Great Writ by refusing to adjudicate the manifest illegality of appellant's incarceration until he had fully served his sentence of imprisonment.

c. To deprive the short term prisoner, illegally incarcerated, of the effective use of the writ until he has fully served his term is an abomination to the Writ, to the law, and to reason. It is cruel and inhuman treatment, proscribed by Amendment VIII of the United States Constitution and Article 1, §5 of the New York State Constitution.

## POINT II

FEDERAL CONSTRUCTION OF THE CONSTITUTION OF THE UNITED STATES MANDATES THAT THE STATE EFFECTIVELY HONOR THE SPIRIT AND INTENT OF THE WRIT OF HABEAS CORPUS, IN CASES WHERE THE TERM OF INCARCERATION IS SHORT, AND RELIEF  
COMPELLING.

1a. Federalism had dictated that respect and deference be given to the state judicial system, which is also bound to give obedience to the federal constitution (Ex parte Royal, 117 U.S. 241).

b. Since the federal courts have exhibited a proclivity to extend "comity" in habeas corpus matters to its outer limits (Rose v. Lundy, supra), there is a concomitant constitutional obligation by the states to give extraordinary expeditious treatment to all state remedies in order not to delay the exhaustion requirement.

c. In Fay v. Noia (supra, at p. 400), the Court stated:

" '[T]here is no higher duty than to maintain it [the Writ of Habeas Corpus] unimpaired.' Bowen v. Johnson, 306 U.S. 19, 26, and unsuspended, save only in cases specified in our Constitution". Smith v. Bennett, 365 U.S. 708."

d. At bar, the facts reveal a studied judicial attempt to delay, impair, impede, and obstruct the state exhaustion requirement, in direct violation to the spirit and intent of the XIV Amendment and Supremacy Clause contained in Article III of the United States Constitution.

e. The opportunity by the federal courts to initially permit the state judiciary to "clean its own judicial house", under the aegis of federalism, mandates that if the state judiciary fail to do so, for whatever reason, it not prejudice appellant's right to federal relief - particularly where such relief is compelling.

d. In total disregard of appellant's basic constitutional rights and the issue on the traditional writ of habeas corpus, to wit., the legality of the incarceration, rather than the guilt of the petitioner (People ex rel Hubert v. Kaiser, 150 App. Div. 541, 550, 135 N.Y. Supp. 274, 281 [1st Dept.], aff'd 206 N.Y. 46; 39 CJS, Habeas Corpus, §35, p. 555), the Appellate Division stated (Exhibit "C" p. 2-3):

"nor does the petitioner [appellant] deny the actions taken were in violation of the order of Justice Gammerman, which formed the basis for the subsequent finding of contempt."

e. Nothing more need be stated at this point except appellant openly admitted to the service of a similar summons ten days previously on Mr. Schneider and was exonerated for such service. Furthermore, none of the others present when this purported service was made supported Mr. Schneider's accusation.

2a. Contrary to the repeated statements by the Appellate Division, an appeal was immediately taken from the orders of Hon. Ira Gammerman.

b. Furthermore, since appellant was not a party nor the attorney for any party in that proceeding, he did not have standing to prosecute any appeal.

c. Significantly and decisive, neither the Order of Conviction nor the underlying papers state, allege, or contend that the Order of Hon. Ira Gammernan was a "lawful mandate" (Judiciary Law §750(A)(3)).

This was not a mere oversight since appellant's papers revealed that the Order of Hon. Ira Gammernan was jurisdictionally defective (personal and subject matter) and was obtained by extrinsic fraud and corruption, all of which was undisputed.

3a. The issue on a writ of habeas corpus is the legality of the detention.

b. Under common law (39 Am Jur 2d, Habeas Corpus, §159, p. 290) and by statute (CPLR §7003(b)), a successive writ need not be issued "if the legality of the detention has been determined".

c. Mr. Justice Sandifer did not determine the legality of the incarceration, thus appellant properly made an original application to the Appellate Division.

d. The history, letter, spirit, and intent of the Great Writ is a summary and expeditious determination of the legality of appellant's incarceration -- nothing more!



e. If there was disobedience to the law, it was by the Appellate Division, not by appellant.

f. In view of the conceded fact that appellant was denied a trial and trial rights, the contrived unsupported conclusory statement by the Appellate Division that "the papers submitted do not demonstrate any basis to conclude that the detention is illegal" can be totally disregarded.

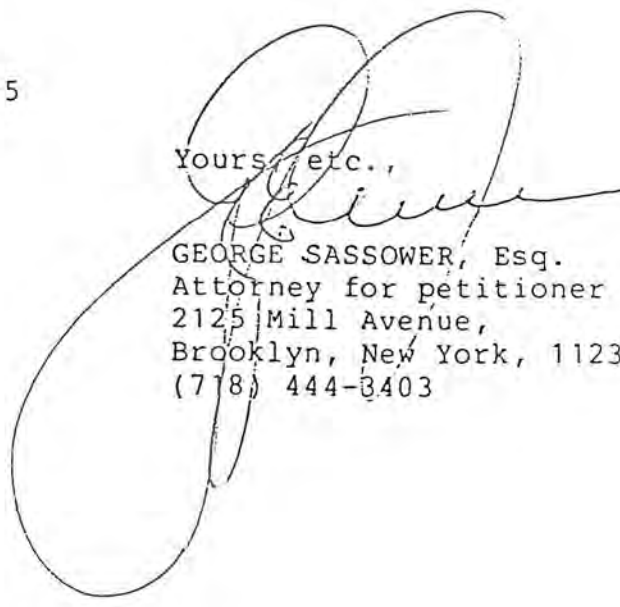
#### CONCLUSION

A SUMMARY REVERSAL OF THE ORDER APPEALED FROM SHOULD BE ENTERED BY THIS COURT, WITH COSTS.

In the spirit of the Writ of Habeas Corpus, expeditious and summary reversal should be made on this appeal.

Dated: August 23, 1985

Yours, etc.,

  
GEORGE SASSOWER, Esq.  
Attorney for petitioner  
2125 Mill Avenue,  
Brooklyn, New York, 11234  
(718) 444-3403

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

-----x  
THE STATE OF NEW YORK ex rel GEORGE  
SASSOWER, Esq., on behalf of SAM POLUR,  
Esq., an Attorney at Law,

Petitioner-Appellant,

-against-

JOHN CUNNINGHAM, WARDEN OF THE BRONX  
HOUSE OF DETENTION,

Respondent-Respondent.

For A Writ of Habeas Corpus.

-----x  
S I R S:

PLEASE TAKE NOTICE, that  
petitioner-appellant above-named hereby appeals to the  
Court of Appeals from an Order of the Appellate Division  
of the Supreme Court, First Judicial Department, dated  
and entered on July 29, 1985 and from each and every  
part thereof including the whole.

Dated: August 12, 1985

Respectfully yours,

GEORGE SASSOWER, Esq.  
Attorney for appellant  
2125 Mill Avenue,  
Brooklyn, New York, 11234  
(718) 444-3403

To: Hon. Frederic A.O. Schwarz, Jr.  
Hon. Robert Abrams  
Kreindler & Relkin, P.C.  
Feltman, Karesh & Major, Esqs.

Exhibit "A"

At a term of the Appellate Division of the Supreme Court  
held in and for the First Judicial Department in the County of  
New York, on July 29, 1985

Present—Hon. Joseph P. Sullivan,  
David Ross  
E. Leo Milonas  
Bentley Kassal  
Ernst H. Rosenberger,

Justice Presiding

Justices.

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The State of New York, ex rel. George Sassower, Esq.,  
on behalf of Sam Polur, Esq., an Attorney at Law,

Petitioner,

-against-

John Cunningham, Warden of the Bronx House of  
Detention,

Respondent.

23984

[M-3583]

For a Writ of Habeas Corpus.

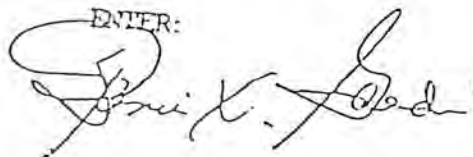
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The above-named petitioner, by his attorney George Sassower, having  
moved this Court pursuant to Civil Practice Law and Rules 7002 (b) (2), for an  
application for a writ of habeas corpus seeking release with respect to  
sentence in an adjudication, finding him guilty in a contempt order entered on  
July 1, 1985 by Justice Alvin Klein,

Now, upon reading and filing all of the papers in support of the  
petition and the papers filed in opposition or with respect thereto, and after  
hearing the parties with respect to the petition; and due deliberation having  
been had thereon, and upon the memorandum decision of this Court filed herein,

It is unanimously ordered that the petition be and the same hereby  
is dismissed, without costs and without disbursements.

ENTER:



Clerk.

Exhibit "B"

FILED JUL 29 1985

23984 -

The State of New York ex rel George Sassower, Esq., on behalf of  
Sam Polur, Esq., an Attorney at Law v John Cunningham, Warden  
of the Bronx House of Detention

MEMORANDUM FOR THE LIST

Application by petitioner Polur for a writ of habeas corpus pursuant to CPLR 7002(b)(2), dismissed, without costs.

Petitioner seeks a writ of habeas corpus with respect to a 30-day sentence imposed in an adjudication, which found him in contempt (order, Alvin Klein, J., entered July 1, 1985). It unquestionably appears from the papers submitted that there have been flagrant violations of the injunction contained in the prior order of Justice Gammernan, entered January 26, 1985. While counsel for petitioner has argued that the order of Justice Gammernan was improper and, therefore, void, no appeal from that order was ever taken and, as far as appears, it is a valid order, binding upon the petitioner. Having failed to appeal, petitioner may not disregard the order with impunity nor may he use the contempt citation to revive any right to appeal or otherwise challenge the underlying order, which right terminated as a result of his failure to appeal therefrom.

Moreover, it appears, without dispute, that petitioner had previously sought a writ of habeas corpus before Justice Sandifer, pursuant to CPLR 7002(b)(1) and (3), which application

was dismissed by order entered July 17, 1985. The dismissal was directed "as a matter of law", after a hearing on the merits, which afforded him an opportunity to adduce relevant proof bearing upon the claimed illegality of his detention. An appeal has been taken, both from the original contempt order of Justice Klein and from the order of Justice Sandifer which dismissed the petition for a writ of habeas corpus. Since the petition fails to present any new ground, not previously presented on the prior petition for a writ before Justice Sandifer, this is a "successive" petition for a writ under CPLR 7003(b). The only argument not made previously before Justice Sandifer is the claim that the arrest was improper since no warrant had been issued. However, petitioner's reliance upon former section 757 of the Judiciary Law lacks merit since the statute was repealed by the Legislature in 1977 (Laws of 1977, chapter 437, section 1). Furthermore, there was a legal mandate for commitment, which was contained as a provision in the contempt order.

Clearly, petitioner has an available remedy via his appeal from the original contempt order and the order dismissing the writ of habeas corpus, which appeals he has taken. Successive applications for writs of habeas corpus before different justices or courts on identical grounds may not be entertained. The papers submitted do not demonstrate any basis to conclude that the detention is illegal nor does the petitioner deny the actions taken were in violation of the order of Justice Gammerman, which formed the basis for the subsequent finding of

contempt. Similarly, there is no showing to conclude that there is any merit to the appeal from the order dismissing the petition, which would be relevant had petitioner sought a stay pending appeal, which he has not.

Inasmuch as it appears that an appeal has been taken from the order dismissing the petition for a writ of habeas corpus, that appeal shall be perfected for the September 1985 Term, to be heard with the pending appeal from the order adjudging petitioner in contempt.

All concur.

Order filed.



COUNTY OF NEW YORK  
SPECIAL TERM, PART II

173

STATE OF NEW YORK

GEORGE SASSOWER, ESQ. OF/A.

SAM POLUR, ESQ.

Petitioner,

opposed

SHERIFF OF THE CITY OF NEW YORK

Respondent.

Index Number 16595 Year 19 85

Proced:

WILLIAM A. SANDIFER

Hon.

Judge.

The following papers used on this proceeding

Petition

Paper  
Number

1

Writ of Habeas Corpus

2

Return to Writ of Habeas Corpus

3

Offer of an Affidavit by Michael J. Ginter, Esq.

4

Answer in Opposition to the Writ of Habeas Corpus

5

Report of Mental Health Information Service

Supplemental Affidavit

Upon the foregoing papers and the hearing and proceedings had, it is

ORDERED and ADJUDGED, that this writ is

FILED

JUL 17 1985

COUNTY CLERK'S OFFICE  
NEW YORK

Exhibit

ORDER

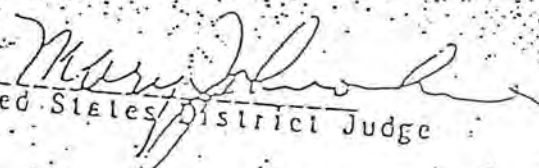
Raffe, et al. v. New York, 85 Civ. 5112 (MJL)

Upon consideration of the petition for a Writ of Habeas Corpus pursuant to Rule 4 of the Rules Governing §2254 cases, 28 U.S.C. foll. §2254, we find that it is not plain from the face of the petition that no relief can be granted. Accordingly the respondent shall file an Answer to the petition by July 23, 1985.

The Clerk of the Court shall serve a copy of this Order and the underlying petition, by first class mail upon the Attorney General of the State of New York and shall serve a copy of this Order by mail upon the petitioner's attorney at 2125 Mill Avenue, Brooklyn, New York 11234. Provided, however, that personal service of a copy of this Order and the petition upon the office of the Attorney General by 2:00 p.m. on July 19, 1985 will be deemed good and sufficient service to require the respondent to Answer by July 23, 1985.

It Is So Ordered.

Dated: New York, New York  
July 19, 1985

  
United States District Judge

1985 JUL 19 P 1:31  
OFFICE OF CORR. COUNSEL  
NEW YORK

Re: George Sassower  
Sam Polur

Exhibit "E"



Petition

GEORGE SASSOWER

Attorney for plaintiff.

(Office and Post Office Address, Telephone)

2125 MILL AVENUE

BROOKLYN, NEW YORK 11234

718-444-3400

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

7/25/85

After hearing the petition, and in view of the fact that interim stay of the contempt sentence was denied by District of the Appellate Division, First Department and appeal is presently pending before that Court, Court in the opinion that petitioners have failed to show that state court process within the meaning of USC § 254 nor does this find in absence of suitable state corrective process or the existence of circumstances rendering state process ineffective. See cord Petition dismissed. 50

ORDERED

Mary [Signature]

6503

BROOKLYN, NEW YORK 11234