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PETITIONER'S AFFIDAVIT.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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GEORGE SASSOWER,

Petitioner,

Index No.
10314-1978

-against-

JOHN P. FINNERTY, SHERIFF OF SUFFOLK
COUNTY,

Respondent.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

GEORGE SASSOWER, first being duly sworn, deposes,
and says:

This affidavit is in support of the petition and
in opposition to respondent's application to dismiss.

THE PETITION.

The essential allegations of the petition are not
controverted by respondent, including the fact that the
Order of Criminal Contempt and Warrant of Commitment are:

"unconstitutional and known to Respondent
as illegal and unconstitutional" (albeit
respondent) intends to arrest and
detain (me) in counties outside Suffolk
County (and) abduct (me) ... without
permitting (me) to obtain a Writ of Habeas
Corpus in the County of (my) arrest
or in the (U.S.) Southern District of New
York, as was previously done under similar
adjudicated invalid documents."

Respondent was served on June 9th, 1978, and the
events which followed went far beyond my predictions as set
forth in my petition.

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I was tried, found guilty, and sentenced all in absentia.

A previous trial, finding, and sentence, also all in absentia, by the same court for the same charge was annulled by the Supreme Court as a practice clearly unconstitutional by a decision dated July 28, 1977.

That the instant conviction and sentence are unconstitutional and illegal has never been controverted by anyone, at anytime, at anyplace.

RESPONDENT'S CONTENTION AS TO MOOTNESS.

The day following service of the petition herein two Deputy Sheriffs from Suffolk County, at about 9:30 a.m., unassisted by any state or local peace officer or authority, seized me in Westchester County and abducted me to Suffolk County.

I was not permitted to take or present my Writ of Habeas Corpus, communicate with any judge (State or Federal), make any telephone calls, or obtain local police assistance.

Despite the above, as well as the physical brutality employed against me and other illegalities, incredible as it seems, it is I who have been charged with violation of Penal Law §120.05-3 (assault upon a peace officer, a Class D Felony).

Eventually I was able to communicate with DORIS L. SASSOWER, Esq., who obtained a Writ of Habeas Corpus approved by Hon. ANTHONY J. FERRARO, which ordered me to be paroled on my own recognizance pending the determination thereof.

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Such Writ of Habeas Corpus was presented on my behalf by DORIS L. SASSOWER, Esq. at about 8:30 p.m. of that day. The Deputy Sheriffs of Suffolk County while pretending that they would shortly effectuate said Writ instead imprisoned her and my daughter Carey in the Suffolk County Jail Building without any toilet or telephone facilities -- facilities routinely made available to convicted criminals.

At about 11 p.m., DORIS L. SASSOWER, Esq. and my daughter were released, communicated with Hon. ANTHONY J. FERRARO, who, in turn, communicated with the Deputy Sheriff in charge and the Assistant County Attorney concerning the extraordinary delay in complying with the Court mandate.

Such telephone communication by Hon. ANTHONY J. FERRARO took place at about midnight (fourteen and one-half hours after I was illegally seized and three and one-half hours after respondent's deputies were served with the Writ of Habeas Corpus). Up to this point and until 1:30 a.m. when I was finally released, the respondent's deputies refused to honor the Writ of Habeas Corpus and continued to disobey its provisions.

1. I commenced an action in this Court for damages arising out of respondent's gross and blatantly illegal conduct in this matter and intend to commence a similar action in Federal Court. Consequently the issues involved in this proceeding are not "moot" because of the subsequent events, since a surviving damage claim will always destroy a claim of "mootness" (13 Federal Practice & Procedure, Wright & Miller, §3533, at p. 272-3).

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doctrine of "mootness" is inapplicable (Jones v. Berman, 37 N.Y.2d 42, 371 N.Y.S.2d 422).

5. Obviously, neither law, logic or equity would permit a wrongdoer to defeat the legal rights of an aggrieved party by engaging in illegal conduct in order to "moot" the very proceeding which puts such conduct in issue.

In the case at bar, the respondent was served with the papers in support of the pending motion just the day before my seizure and abduction.

6. Respondent's attorney himself stated to me on June 16th, 1978, at about 3:30 p.m., that he does not believe the petition herein is "moot" because of the subsequent events, a position which is diametrically opposed to his application herein.

7. Respondent's attorney's affidavit is a farrago of misstatements and misleading remarks (as to most of which he has no personal knowledge). Only because they are irrelevant to the issues herein, I will make no attempt to dispute them at this time, except by way of the following examples.

- a. " ...on June 10, 1978, after two and one-half months of attempting to take petitioner into custody pursuant to the March 8, 1978, warrant, petitioner was finally apprehended by two deputies of your respondent Sheriff of Suffolk County." (Affidavit of respondent's attorney, p. 6t).

The unquestionable truth.

On numerous occasions, I offered to permit the respondent to execute his Warrant at his convenience in Special Term of the Supreme Court of New York, Bronx, or Westchester County, so that I could immediately obtain a

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It may be that the subsequent events will alter my prayer for relief or relief given by the court, but that is an issue not before this Court at this time.

2. There is an additional reason why respondent's contention of "mootness" is erroneous. Certainly the status of the Deputy Sheriff while in Westchester County on June 10, 1978 and the legality of his authority is involved in the pending criminal action, since the information must be dismissed if the relator was not a "peace officer" at the time of the incident or was not performing "a lawful duty",

3. The court will not entertain the doctrine of "mootness" where the situation is "capable of repetition, yet evading review" (Gerstein v. Pugh, 420 U.S. 103, 110-111 n. 11).

The incident of June 10, 1978 is the second time lightning struck, with my being seized in Westchester County by the Sheriff of Suffolk County, abducted to Suffolk County, denied my constitutional rights and incarcerated.

As stated hereinabove, the first incarceration was declared null and void and I have no doubt that the present Writ will likewise be sustained. In that event another proceeding will probably be instituted in Suffolk County and I will again be arrested in Westchester County and the previous scenario replayed.

4. The geographical limits of a Sheriff's authority (County Law §650, Criminal Procedure Law §1.20[34][b]) are jurisdictional and of such public importance as to transcend the issue of this proceeding. Under such circumstances, the

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Writ of Habeas Corpus. Respondent, knowing that the conviction and warrant were illegal repeatedly refused, but instead made many expensive and fruitless forays into New York City and Westchester in his attempt to abduct me under circumstances whereby I could not obtain a Writ of Habeas Corpus. Finally on June 10, 1978 he succeeded in this illegal operation.

On March 24th, 1978, I wrote to the Suffolk County Attorney (with a copy to the respondent) and stated:

" If you desire to proceed, you or the Sheriff may telephone and I will make arrangements to be in Special Term in New York, Bronx, or Westchester at your desired time or arrest."

- b. "However, your respondent was forced to release the petitioner only hours after taking him into custody on the basis of a writ of habeas corpus which was issued by this court, Honorable Anthony J. Farraro." (Affidavit of respondent's attorney, p. 6m).

The emphasized words reveal respondent's deliberate attempt to mislead the Court:

I was in custody from 9:30 a.m. until 1:30 a.m. the following day or a total of sixteen (16) hours and not "only hours". Furthermore the evidence will reveal that not only did the respondent and the county attorney refuse to obey the Writ of Habeas Corpus, but for their own vindictive reasons also incarcerated my wife-attorney and daughter because they dared to obtain and serve a Writ of Habeas Corpus. Three and one-half hours after such Writ had been served and about midnight on June 10-11, 1978, Mr. Justice ANTHONY J. FERRARO had to telephone respondent's deputies and the County Attorney of Suffolk County in order to have

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them comply with same. Even with such telephone calls, respondent did not comply until 1:30 a.m. nor would respondent's deputies even give me the opportunity to confer with counsel or to see my wife and daughter during the entire time they were waiting to see me after they had served the Writ upon respondent.

c. Respondent's attorney's affidavit states (p.6):

"That the respondent intended to transport the petitioner to the Surrogate's Court, Suffolk County, on the first business day on which the Court was in session, to wit, Monday, June 12, 1978, in order to afford petitioner an opportunity to purge his default and contempt and in conformance with the warrant of commitment."

Apparently the respondent and his co-conspirators were confident that with their "rack and screw" treatment I would in fact comply with their wishes. The fact that they knew that the conviction was absolutely and totally void did not disturb them. The only thing that disturbs these despots is the fact that a valid Writ of Habeas Corpus was served which ordered my immediate release.

It would be interesting to know what they intended in the event I insisted on remaining silent, or refused to acknowledged the legality of their actions.

RESPONDENT'S CONTENTIONS
AS TO RES ADJUDICATA AND
COLLATERAL ESTOPPEL.

Respondent, in this motion makes reference to the "doctrines of res adjudicata and collateral estoppel" but:

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makes no arguments or reference thereto in his attorney's affidavit in support of his motion (except as may appear by way of his annexed exhibits, copies of which were not served upon me, and I have doubt as to the identity of at least one such exhibit).

Obviously, no argument is made with respect to such doctrines in the moving affidavit because they are clearly inapplicable.

1. The basis upon which the Federal Court denied similar relief was on the "applicability of federalism and comity principles enunciated in Younger v. Harris, 401 U.S. 37 and Huffman v. Pursue, 420 U.S. 592" (e.g. decision of March 21, 1978 p. 8).

By now requesting this relief in this State court, I am following the direction/suggestion of the Federal courts.

2. Furthermore such determination pre-date the events set forth herein.

RESPONDENT'S CONTENTION
AS TO VENUE.

Respondent makes no argument nor does he set forth any exhibits in support of his contention that the venue of this proceeding is improper.

In the absence of any such supporting argument by respondent, this portion of the motion should be denied.

Attached hereto is a copy of my affidavits in this and the habeas corpus proceedings, confirming the propriety of the venue in this county (Exhibits B and C).

WHEREFORE, it is respectfully prayed that respondent's

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motion be denied with costs.

GEORGE SASSOWER

Sworn to before me this
20th day of July, 1978.

DORIS L. SASSOWER
Notary Public, State of New York
No. 60-345772
Qualified in Westchester County
Term Expires March 30, 1979