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IN THE DISTRICT COURT OF THE UNITED STATES
For the District of New Jersey

THE UNITED STATES OF AMERICA,)
)
 v.) Ind. 4178c
)
 CONSTANTINO VINCENT RICCARDI.)

Hearing on application for reduction of sentence.

Newark, N. J., Wednesday, October 5, 1949

Before The Honorable GUY L. FAKE, U. S. D. J.

APPEARANCES:

CHARLES J. TYNE, Assistant U. S. Attorney, for
the Government.

GEORGE S. PEARSE for defendant.

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MR. TYNE: If your Honor please, two weeks ago
Constantino Vincent Riccardi was brought before your Honor
on an application by his counsel, I believe, in connection
with an application for reduction of sentence. At that
time your Honor ordered that the matter be postponed until
today and the matter is now before the Court.

THE COURT: Does anyone desire to address the Court?

MR. PEARSE: I would like to, sir. We made the appli-
cation for reduction of sentence some time ago, after the
appeal was dismissed and the certiorari denied in the United
States Supreme Court, for two or three reasons. One was
that he had not gone to a federal penitentiary pending his
appeal but had stayed in Jersey City, in the Hudson County
Jail, for the primary purpose of attempting to settle some

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litigation, civil litigation but part of the meat of the present offense, with the Princess. At that time it all depended upon his getting out on bail to perform any settlement that we might be able to enter into. I was never successful in that because the Circuit Court of Appeals always insisted upon security for his \$10,000 fine, which would have been just about what we needed to enter into an agreement with the Princess. However, during that time he also returned to the Princess, the complaining witness, the furniture or most of it, 95 per cent of it, that was the issue in all four counts of the indictment, which went out to Arizona. He received no credit for approximately a year that he was in the Hudson County Jail because the Supreme Court turned him down just about a year from the time he originally was sentenced; I think it was the end of June. In addition, he did make restitution of the items mentioned in the indictment; and it was for this reason that I made the application, and I feel that in view of those circumstances and his really sincere efforts to adjust his differences with the Princess, he is entitled to some consideration, because I feel that the sentence, although legal, was rather stiff, in spite of anything that was testified to at the trial. You were perfectly justified, sir; I am not criticizing the sentence; I simply say that both my father and I were shocked at the time.

THE COURT: Well, it is true this petitioner has been

incarcerated for upwards of a year--

MR. PEARSE: May I interrupt your Honor a moment? I am sorry but I forgot one point; that is, there are three indictments pending in New York, one a very old one, one comparatively recent and one having to do with the jewelry that became an issue in his case. Those three detainers will prevent his being eligible for parole, as I understand the parole rules. That means he will have to do his full time.

THE COURT: This petitioner was sentenced by the Court on two counts of an indictment to serve concurrently ten years on each count, and fined the sum of \$10,000. Since then an appeal has been taken to the Circuit and the Court here was sustained by an opinion in the Circuit, and thereafter the petitioner petitioned for certiorari to the United States Supreme Court. This, the appeal and the petition to the United States Supreme Court, covered a long period of time, upwards of a year, and during that period this defendant has been incarcerated in the Hudson County Jail and would not in the usual treatment receive any credit for that on account of the sentence heretofore imposed. Yet, nevertheless, he has been incarcerated, and my thought is he should have credit for that incarceration as a factor to come before me on the present petition.

I have given a lot of thought to the factors involved

... has been advised from time to time by

the district attorney and by counsel for the complaining witness and others of attempts that have been made to bring about a complete restitution to the complaining witness, and these negotiations have taken considerable time. I am convinced that counsel for the complaining witness have gone as far as they possibly could go in bringing about restitution. The result has been that substantially all of the goods, wares and merchandise that this petitioner had taken from the complaining witness have been returned. There is some of it perhaps damaged; yet nevertheless there has been a very substantial restitution of those chattels while the defendant has remained here in the Hudson County Jail; and it was because of those attempts and the fact that his counsel needed him in preparing appeals that he was kept here in the Hudson County Jail. It appears, however, that he has not been able to make restitution of some extremely valuable jewelry, one of them a piece said to be worth \$40,000 and the other pieces of jewelry that run into several thousands, and I am convinced that this petitioner had placed himself in a position where he simply could not make restitution of those items, and therefore of course he has not done so. It appears that there are detainers against him; I believe there is one detainer in Arizona--

MR. PEARSE: I think the only detainers are in New York. Anything in Arizona was finished when they brought him to New York.

THE COURT: Well, there are two or three detainers against him in New York?

MR. PEARSE: Three, Judge.

THE COURT: And I think you have stated the rule when you said that he will have no time off so long as these detainers remain.

MR. PEARSE: He won't be eligible to parole.

THE COURT: And another reason why he was permitted to remain here was so that you, as his counsel, might have an opportunity to see whether you could dispose of those detainers in New York by having the indictments nolle prossed.

MR. PEARSE: That's right.

THE COURT: Which you did not succeed in.

Taking into account these factors that I have roughly outlined, I think as a matter of justice, without any sympathy injected in it whatever, for I have none, this petitioner is entitled to some consideration in reducing the sentence heretofore imposed. He is now a man 58 or 59?

MR. PEARSE: 58 or 60

THE DEFENDANT: 61.

THE COURT: 61 years of age. There again is another factor I take into account. He is closely climbing up to where it may be said that he is an old man. That's a factor I am taking into account.

Therefore, summing up the things that I take into account. I find that he has served here this long period

without the possibility of its being credited on the sentence originally imposed; I find that he has made restitution as far, I believe, as the man is able to, and I find these detainers, and I consider his age; and the sentence heretofore rendered of ten years on each count is therefore reduced to seven years on each count, to run concurrently; the \$10,000 fine will remain.

THE DEFENDANT: Your Honor, may I be permitted to speak? May I?

THE COURT: You may.

THE DEFENDANT: At this time, if your Honor please, I wish to relieve Mr. Pearse for any action or anything I am about to say or present to this honorable court.

THE COURT: Now, just a moment. What are you going to talk about?

THE DEFENDANT: I am going to ask for an application based on legal grounds as an attorney of this court, that I am still in good standing, if your Honor will permit me.

THE COURT: Are you an attorney of this court?

THE DEFENDANT: I am still an attorney of a sister State in good standing of the United States District Court (producing a paper]. I was, up until '41, notwithstanding the fact that I have been referred to as disbarred. This matter at this time I wish to take up not only as a prisoner at large but also as attorney of record of a sister court, of a sister State of the United States District Court; at

this time, whether your Honor will consider it in the form of a coram nobis or whether your Honor will permit me orally to file a writ of habeas corpus, I believe that the statute is clear. I am prepared to bring before this honorable court documents that was impossible to bring or to present at the time of the trial. To recall to your Honor one instance why that is so, I have copies of those documents that when the complaining witness took the stand and certain documents were introduced in evidence and made a part of this record and when questioned at the time where she got them, she stated that they had been stolen from my briefcase and turned over to her by an employee of mine. My contention at this time, and I am prepared to bring before this honorable court copies and photostats of documents that were stolen in that briefcase, is had those documents or the copies and the photostats and the circumstances at that time been presented here before this honorable court, I am convinced that your Honor wouldn't have allowed that case to go to the jury. I am prepared to produce documents, testimony, that definitely and without any question of a doubt establish that I am being sentenced to prison for the remainder of my life on false and perjured testimony. It is true that I have appealed, I have appealed because I believed I was wrongly convicted, and as your Honor knows, to the higher court questions of facts are not permissible. I could be convicted on perjured testimony, which I have and am willing to prove, I can be

convicted of testimony unduly perjured willingly known that it was so and still I have no remedy in the higher court. The higher court is only concerned with questions of law, and for that reason I come to you, and there were no questions of law. I am also prepared to present to this honorable court, as it is elementary, that with every crime, and if there was one as alleged in the indictment, there must be an intent, an intent to defraud. Without that element there can't be any crime. And how do I intend to prove it? Prior to any indictment in this case I met the complaining witness, who refused to talk with me, at Mr. Neiden's office, and prepared there an accounting. Why I bring this up now is that although the complaining witness stated that it was a separate transaction, your Honor allowed the jewelry transaction to go as coming from the same matter, which the record shows. Now, then, at that time, and before any indictment or any accusation, as far as I know, I tendered the complaining witness an accounting, which document was stolen, and I have a photostat of that, predicated-- that settlement was predicated on an agreement which deliberately clears out anything to show that at any time there was anything of the sort as stated here of fraud. This document in itself together with the proof, together with testimony that was never brought before your Honor and I didn't know existed, definitely establishes that I am not guilty of this crime. Here is the document, this document, that was

stolen, the original. It was stolen from these papers. It reads: Before I read this I first wish to read this document [producing another paper], at the time the articles charged in the indictment was supposed to have been stolen. Before reading this article I wish to ^{re-}call another incident, that the Princess said at the time that she signed a bill of sale. That bill of sale was with the papers that were stolen and was turned over to her. The bill of sale is, "Phoenix, Arizona, August 1, 1949. To Whom it may Concern: The undersigned, D. Farid, of Morristown, New Jersey, has this day assigned, transferred title and interest in certain articles of household furnishings" --

THE COURT: May I interrupt a minute? You are seeking now what, a writ of habeas corpus?

THE DEFENDANT: No. Well, I would rather-- I am seeking both, your Honor. I am trying to seek this: I would like to relieve Mr. Pearse because I haven't been able to pay him; he has done a lot of work. I would like to be given a hearing. I would like to have this honorable court permit me to prove in documentary form and orally and I dare say--

THE COURT: Well, on what? a petition for--

THE DEFENDANT: Coram nobis, on newly discovered evidence.

THE COURT: Well, you see, your day has gone long since on that.

THE DEFENDANT: Well, on a writ of habeas corpus then.

THE COURT: That's another thing. You can't take a writ of habeas corpus and attempt to exercise all the prerogatives of an appeal, as you as a lawyer know. Now I don't want to have you waste your time and I don't want to waste mine in listening to an argument unless it is properly before me. You know what your rights are with regard to a writ of habeas corpus. There should be a petition filed.

THE DEFENDANT: That's why I am making it orally at this time before your Honor.

THE COURT: And there should be some careful study done on it.

THE DEFENDANT: That's right.

THE COURT: Now my disposition of the case today would probably result in your transfer to one of the federal prisons, probably out here at -- what, Pennsylvania?

MR. TYNE: Lewisburg.

THE COURT: Lewisburg, and when you are incarcerated there, always the right is open to sue out a writ of habeas corpus there, and I think you will find yourself there in more comfortable surroundings than you are in the county jail, and you will have time to work up whatever you want to do and you will have the opportunity to sue out a writ of habeas corpus, and it seems to me that there is where your application should be made.

THE DEFENDANT: That would be true, your Honor, but

knowing your Honor has had the facts and knowing your Honor's feeling in the matter, just from what has been told, I would prefer, although my chances are slimmer, I know that, as you say, my chances are better if I am there, yet I know of no one I would prefer to have a writ of habeas corpus heard by than your Honor, because I feel that with this definite evidence that I have been convicted on false and perjured testimony, I am sure that if your Honor is convinced, justice will act on the premises. Now that is the reason why I would prefer, notwithstanding the fact that my chances are better and impartial where the evidence has never been heard. If your Honor will permit me to file the writ of habeas corpus and permit me to let your Honor hear it, I am satisfied. I am satisfied because I know that if I am able and my statement is true, which is a definite one, that I have been convicted by false and perjured testimony, that your Honor will do justice in the premises. Another--

THE COURT: Now, you see, you can't come in at this late day--

THE DEFENDANT: But I have no other time; I have up until this time, as your Honor knows, --

THE COURT [Continuing] -- on a question of fact. It has been before the jury.

THE DEFENDANT: Yes; but where there is a definite-- now I don't mean to intend at this time that the perjured,

deliberate, perjured testimony on which I have been sentenced and convicted on that I am prepared to refute-- I do not intend to infer that the United States Attorney's office or any of the law agencies had any knowledge or any part of it but I do contend that--

THE COURT: Now, just a moment. If you have a right, and I don't know that you have but I rather lean to the view that you would have the right, to file a petition for a writ of habeas corpus, of course the court is always open for you. You are a lawyer. Rather than take the time here to rehearse the matter I would suggest that you prepare such a petition.

THE DEFENDANT: Will your Honor permit me to file one?

THE COURT: And you will file it pro se.

THE DEFENDANT: All right.

THE COURT: You have a right to file one pro se, and then I will pass on it. It would be a waste of time to go into the case here now because it isn't properly before the Court. The only thing properly before the Court at this time is this petition of yours for a reduction of sentence.

THE DEFENDANT: Well, going away your Honor, being taken away--

THE COURT: Now in view of the fact that you want to file that, if you do want to file a petition, --

THE DEFENDANT: I do.

THE COURT: -- then it would be necessary to keep him

here until he has had a reasonable time to file such a petition, and I will allow that, if it is within my authority to do so, that he be kept here in Hudson County until he can file a petition, because he is incarcerated, and wherever one is incarcerated he can sue out a writ of habeas corpus, as I understand the law.

All right.

THE DEFENDANT: Thank you.

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