

Wherein, it is considered that the said judgment be affirmed, as aforesaid.

And heretupon, as well the Notice of Appeal and return thereon aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the County Court, Nassau County.

before the Judges thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said County Court, before the Judges thereof, &c.

Raymond J. Cannon
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office.

Albany, July 7, 1961

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Raymond J. Cannon
Clerk

Court of Appeals

State of New York, ss.

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the

7th day of July

in the year of our Lord one thousand nine hundred and

sixty-one, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,
Chief Judge, Presiding.

RAYMOND J. CANNON, Clerk.

REMITTANCE

JUL 7 1961

The People &c.,

Respondent,

vs.

Francis E. Dec,

Appellant.

Be it Remembered, That on the 28th day
of April in the year of our Lord
one thousand nine hundred and sixty-one,
Francis E. Dec,

the appellant - in this cause, came here unto the Court
of Appeals, ~~xxx~~ in person,

~~xxxxxxxx~~ and filed in the said Court a Notice of Appeal
and return thereto from the judgment
of the Appellate Division of the Supreme Court in and
for the First Judicial Department.
And The People &c.,

the respondent - in said cause, afterwards appeared in
said Court of Appeals by Manual W. Levine, District Attorney.

~~xxxxxxxx~~

Which said Notice of Appeal and the return thereto,
filed as aforesaid, are hereunto annexed

~~Whereupon~~, The sa

Court of Appeals having heard this cause argued b

Mr. Henry P. DeVine, of counsel for the respor
submitted by the appellant,
~~of counsel for the appellant, and by~~

Mr.
~~of counsel for the respondent~~

and after due deliberation had thereon, did order an
adjudge that the judgment
of the Appellat
Division of the Supreme Court appealed from herein b
and the same hereby is affirmed.

And it was also further ordered, that the record afore
said, and the proceedings in this Court, be remitted to
the County Court, Nassau County,

there to be
proceeded upon according to law.

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SEP 21 4 24 PM '61

DISTRICT ATTORNEY'S OFFICE
NASSAU COUNTY, N. Y.

COPY RECEIVED

Manuel W. Levine

MANUEL W. LEVINE
DISTRICT ATTORNEY
NASSAU COUNTY

Julius L. Starni

In the Supreme Court of the United States

October Term, 1961

RECEIVED

SEP 22 1961

OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 558 Misc.

OCT. TERM 1961

U. S. Supreme Court

No. _____ Misc.

People of the State of New York,

Respondent,

Francis E. Dec,

Petitioner-Appellant.

On Appeal from the Court of Appeals of the State of New York
Petition for a Writ of Certiorari.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner-Appellant, Francis E. Dec, moves the Court for an order permitting him to proceed in this Court, in forma pauperis, with his appeal from the judgment of the Court of Appeals of the State of New York entered in this cause on July 7, 1961, pursuant to the provisions of Title 28, United States Code, Section 1915, and Rule 53 of the Rules of this Court, and in support thereof attaches the affidavit of said petitioner-appellant.

Petitioner-appellant's statement as to jurisdiction, petition for writ of certiorari, is being filed with this motion and petitioner-appellant's affidavit.

Francis E. Dec
Francis E. Dec
Petitioner-Appellant
pro se
P. O. Address
171 So. Franklin Street
Hempstead, New York

Affidavit of Francis E. Dec

State of New York) ss.:
County of Nassau)

Francis E. Dec, being duly sworn, deposes and says:

1. I am a citizen of the United States and the petitioner-appellant in the above entitled action.

2. I desire to prosecute an appeal from the judgment entered by the Court of Appeals of the State of New York, on July 7, 1961, pursuant to 28 U. S. C. Section 1257 (1), (3), but because of my poverty I am unable to pay the costs of such appeal or give security therefor and still be able to provide myself with the necessities of life. I have no income, I have been in jail and unemployed since my automatic disbarment from the practice of law upon my conviction nearly three years ago.

3. I have been unable to obtain a certified copy of the record in the court below without payment of fees and costs.

4. I believe that I am entitled to the redress I seek by such an appeal, and that such an appeal presents substantial federal questions.

The nature of the questions to be presented upon such appeal is as follows:

1. May a State consistent with the due process of law guaranteed by the Fourteenth Amendment to which guarantee is pertinent the right to a speedy trial, repeatedly adjourn a citizen's criminal trial over a period of nine months in spite of the citizen's duly undertaken repeated demands for a speedy trial as guaranteed by the Constitution.

2. May a State consistent with the equal protection and due process of the law guaranteed by the Fourteenth Amendment deprive a citizen of his statutory right to appellate review by producing a substantially fraudulently altered official trial record; which said trial record is obviously wantonly fraudulently deleted, abbreviated, juxta positioned, hashed together, jumbled and length-

ened with substitute material in an obvious attempt to keep secret the gestapo like farce kangaroo court trial to support an unjust felonious conviction of the citizen, a volunteer Veteran of World War II and a member of the Bar of the State of New York.

3. May a State consistent with the equal protection and due process of law guaranteed by the Fourteenth Amendment uphold the felonious conviction of a citizen brought about through the halting of the gestapo like farce kangaroo court trial of the citizen for a period of approximately one week after the court's ordering the halting of the cross examination of the completely breaking down and confessing perjurous chief prosecution witness, Mrs. Elizabeth Wirschning, wherein she through her sworn, detailed, cross examination testimony disproved the accusations of the false indictment created by and through the gestapo like frauds of the District Attorney and his staff and the Trial Court's further ordering the alternation of said Elizabeth Wirschning's cross examination with that of the near non-existent hearsay testimony of the near speechless, petrified, aged, perjurous, life long District Attorney's stenographer, namely, Nathan Birchall, and then after halting both said cross examinations in spite of the citizen's objections the court ordered the halting of the citizen's trial for approximately one week during which week the citizen, defendant, was coerced through oral and written messages by Judge Philip Kleinfeld, a Judge of the New York State Appellate Division of the Supreme Court for the Second Judicial Department, the said messages warning the citizen defendant that regardless of the citizen's innocence, the citizen must surrender his Constitutional Rights as a citizen and lawyer and give up trying his own case because both judge and jury were fixed and if the citizen did not retain a "chosen" ex District Attorney, namely, Edward Neary, as his lawyer to plead guilty to the false charges then the citizen's trial would lead only to the citizen's felonious conviction and a severe prison sentence because "the judge and jury are fixed!"

4. May a State consistent with the equal protection and due process of law guaranteed by the Fourteenth Amendment uphold a felonious conviction wherein the trial court in collusion with the prosecution and in spite of the citizen defendant's objections withheld the contradictory sworn statements of complaint of the prosecution's perjurous only two chief witnesses, namely, Mrs. Elizabeth Wirschning and Dr. Milton E. Robbins, especially when the withheld statements disprove the indictment of the citizen defendant.

5. May a State consistent with the due process of law guaranteed by the Fourteenth Amendment uphold a felonious conviction of a citizen brought about by a trial wherein repeated statements by the trial judge and prosecutor claim directly and impliedly and through statutory definition that a hearsay, unverifiable copy of the District Attorney's stenographic notes consisting mostly of hearsay conversations of others than the citizen defendant did constitute a confession by the citizen defendant and thereby through statutory definition of criminal confessions practically convict the citizen defendant; when subsequently through written admissions of the prosecution in the prosecution's appeal brief to the Court of Appeals of the State of New York the said District Attorney's hearsay stenographic notes are stated not to constitute a confession, a contention obviously directly opposite to that taken by the prosecution and trial judge during the citizen's trial.

6. May a State consistent with the right to due process of law guaranteed by the Fourteenth Amendment place in evidence and permit the prosecution to repeatedly read aloud to the jury during the citizen's criminal trial copies of stenographic records of conversations of people other than the citizen who were never made witnesses during the citizen's trial although they were available and two of whom were important members of the judiciary, especially when the District Attorney's stenographer testified that the original stenographic records produced by the said District

Attorney's stenographer were written in his own personal secret code of shorthand which can be read and understood only by himself; and in spite of the citizen's repeated objections the trial judge precluded any inspection of the said original stenographic notes and ordered the citizen to accept the veracity of the District Attorney's stenographer's stenographic notes on the say so of the District Attorney's stenographer and further the said hearsay stenographic notes were falsely stressed by trial judge in collusion with the prosecution as a confession by the citizen, in the said citizen's criminal trial that brought about the felonious conviction of the citizen.

7. May a State consistent with the right to equal protection and due process of law guaranteed by the Fourteenth Amendment procure a felonious criminal conviction against a citizen through the fraud and collusion of the trial court in conspiracy with the prosecution.

8. May a State consistent with the equal protection and due process of the law guaranteed by the Fourteenth Amendment deprive a citizen of liberty and property through a felonious conviction and intentionally ignore the explicit statutory protection afforded by Section 456 of the Code of Criminal Procedure for New York State, which said section provides that the trial record upon conviction shall be produced within the maximum time of 12 days after notice of appeal has been served and further intentionally disregard the said statutory rights in spite of the citizen's formal written appellate court motion for an order compelling the trial court stenographers to produce the trial record in accordance with said Section 456 of the Code of Criminal Procedure in order to minimize the time in which court officials would have to fraudulently alter said citizen's trial record, wherein support of said motion detailed sworn facts of other felonious fraudulent alterations of such trial records by jurists was stressed by the citizen.

9. May a State consistent with the equal protection and due pro-

cess of the law guaranteed by the Fourteenth Amendment repeatedly coerce a citizen lawyer to surrender his Constitutional Right to defend himself by coercive statements of state court judges and court officials to the extent that the State's Court of Appeals Court Clerk under orders of the justices of said Court of Appeals did in detail letters wantonly with prejudice prejudice the criminal appeal taken by the citizen pro se and the said clerk of the Court of Appeals impliedly completely approved and sanctioned the wanton fraudulently altered almost unintelligible official record of this citizen's trial produced by the lower courts in collusive conspiracy with the District Attorney's office, which said frauds this citizen repeatedly complained of in his appeal brief.

I contend that the Court of Appeals of the State of New York erred in affirming the judgment of conviction of the petitioner-appellant in the Nassau County, County Court, namely, of second degree grand larceny, two counts forgery in the second degree and violation of the Penal Law section 1820 A subdivision two.

Wherefore, this affiant prays that he may have leave to proceed in this Court on appeal in forma pauperis.

State of New York
County of Nassau

Francis E. Dec
Francis E. Dec

Sworn to before me this

20 date of September, 1961

Conrad F. Hykys
Notary Public

CONRAD F. HYKYS
Notary Public, State of New York
No. 30-7025450
Qualified in Nassau County
Commission Expires March 30, 1962

Sir: -
Please take notice that the within is a true copy of a

this day duly entered herein in the office of the Clerk of

Dated, N. Y., 19

Yours, etc.,

Attorney for

Office and Post Office Address

Borough of New York City

To , Esq.

Attorney for

Sir: -

Please take notice that the within

will be presented for settlement and signature herein to the Hon.

one of the judges of the within named Court, at

in the Borough of

City of New York, on the

19 , at day of

Dated, N. Y., 19 M.

Yours, etc.,

Attorney for

Office and Post Office Address

Borough of New York City

To , Esq.

Attorney for

Index No.

Year 19

SUPREME COURT
of the
UNITED STATES

PEOPLE OF THE STATE OF NEW YORK,
Respondent,

v.

FRANCIS E. DEC,
Petitioner-Appellant.

Motion for Leave to Proceed

In Forma Pauperis

Francis E. Dec

Attorney for
Petitioner-Appellant
Office and Post Office Address

171 So. Franklin St.,
Borough of Hempstead, N. Y. New York City

To Manual Levine, Esq.

Dist. Nassau County

Due and timely service of a copy of the within is hereby admitted.

Dated, N. Y., 19

Attorney for

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DISTRICT ATTORNEY'S OFFICE
NASSAU COUNTY, N. Y.

COPY RECEIVED
James A. Levine
District Attorney
Nassau County
BY William J. Williams

COUNTY CLERK'S OFFICE,
STATE OF NEW YORK, } SS:
COUNTY OF NASSAU

I, FRANCIS J. ANDERSON, Clerk of the County of Nassau and of the Courts of Record thereof, do hereby certify that I have compared the annexed with the original ORDER FILED ~~SENTENCED~~ in my office July 28 1961 and that the same is a true transcript thereof, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County and Court. OCT 10 1961

Francis J. Anderson Clerk

Court of Appeals

State of New York, ss:

PLEAS in the Court of Appeals,
held at Court of Appeals Hall,
in the City of Albany, on the
.....7th.....day of.....July.....
in the year of our Lord one
thousand nine hundred and
.....sixty-one....., before the
Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,
Chief Judge, *Presiding.*

RAYMOND J. CANNON, *Clerk.*

JUL 28 1961

NASSAU INDEX # 17483 19

FILED

JUL 28 1961

FRANCIS J. ANDERSON
COUNTY CLERK, NASSAU COUNTY

The People &c.,

Respondent,

vs.

Francis E. Dec,

Appellant.

Be it Remembered, That on the 28th day
of April in the year of our Lord
one thousand nine hundred and sixty-one,
Francis E. Dec,

the appellant - in this cause, came here unto the Court
of Appeals, ~~xxx in person,~~

~~xxxxxxx~~ and filed in the said Court a Notice of Appeal
and return thereto from the judgment
of the Appellate Division of the Supreme Court in and
for the First Judicial Department.
And The People &c.,

the respondent - in said cause, afterwards appeared in
said Court of Appeals by Manuel W. Levine, District Attorney.

~~xxxxxxx~~

Which said Notice of Appeal and the return thereto,
filed as aforesaid, are hereunto annexed.

Whereupon, The said

Court of Appeals having heard this cause argued by

Mr. Henry P. DeVine, of counsel for the respondent, and
submitted by the appellant,
~~of counsel for the appellant~~, and by

Mr.
~~of counsel for the respondent~~,

and after due deliberation had thereon, did order and
adjudge that the judgment

of the Appellate
Division of the Supreme Court appealed from herein be
and the same hereby is affirmed.

And it was also further ordered, that the record afore-
said, and the proceedings in this Court, be remitted to
the County Court, Nassau County,

there to be
proceeded upon according to law.

Therefore, it is considered that the said judgment
be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return
thereto aforesaid as the judgment of the Court of Appeals
aforesaid, by it given in the premises, are by the said
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before the Judges thereof, according to the form
of the statute in such case made and provided, to be
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mains in the said County Court,
before the Judges thereof, &c.

Raymond J. Cannon
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office,

Albany, July 7, 19 61 .

I HEREBY CERTIFY, that the
preceding record contains
a correct transcript of the
proceedings in said cause
in the Court of Appeals,
with the papers originally
filed therein, attached
thereto.

SEAL

Raymond J. Cannon
Clerk.

No. 558 Misc.
OCT. TERM 1961
U. S. Supreme Court

No. 558 Misc.
OCT. TERM 1961
U. S. Supreme Court

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