

Mr. Charles W. ...

New York, March 23, 1939.

Dear Sir:

Very truly yours,
[Signature]

COURT OF GENERAL SESSIONS,
COUNTY OF NEW YORK, PART III.

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THE PEOPLE : B e f o r e :
-against- : HON: CHARLES G. MOTT, Jr., J.
JAMES J. HINES :
----- X

S E N T E N C E

New York, March 23, 1939.

(Indicted for violation of Sections 380 and 1372 of
the Penal Law.)

(Indictment filed May 26, 1938.)

A p p e a r a n c e s :

For the People:

Hon. Thomas E. Dewey,
District Attorney of the County of New York.

For the Defendant:

Lloyd Paul Stryker, Esq.,
Joseph Shalleck, Esq.

(On February 25, 1939, the defendant was
convicted of Conspiracy, the first count of the
indictment, and of contriving, proposing and drawing
a lottery as charged in the second to thirteenth
counts of the indictment.) 13v

The defendant was duly arraigned at the Bar.

THE CLERK: James J. Hines, what have you now to say why judgment of the Court should not be pronounced against you according to law?

MR. STRYKER: If your Honor please, I have some motions to make.

I move to set aside the verdict in this case and for a new trial on the ground that the verdict is contrary to the law, contrary to the evidence, and contrary to the weight of evidence, against the clear weight of evidence; on the ground that the People have failed to prove by legal evidence the crimes charged in the indictment; upon all the grounds set forth in Section 465 of the Code of Criminal Procedure or other relevant sections of that Code.

THE COURT: Motion denied.

MR. STRYKER: I except.

In pursuance of Section 467 and other relevant sections of the Code of Criminal Procedure, I move in arrest of judgment and that no judgment be rendered on the verdict of guilty, upon the ground that the facts stated in the indictment do not constitute a crime, in that

(a) The first count does not set forth any overt

act alleged to have been committed within the statutory period of limitations;

(b) That the acts alleged in Counts 2 to 13 inclusive of this indictment constitute, if anything, a violation not of Section 1372 of the Penal Law, which is a felony, but of Section 974 of the Penal Law, which is a misdemeanor; and that it appears upon the face of the said indictment that each of the said acts charged in Counts 2 to 13 inclusive were acts not committed within the statutory period of limitations applicable to a misdemeanor.

THE COURT: Motion denied.

MR. STRYKER: I except.

If your Honor please, the Clerk has asked if the defendant had anything to say. I merely wish to say in response to that that I have stated in this trial my views of the facts to the jury and my views upon the law to your Honor.

The defendant since the conviction has cooperated fully and completely with the Probation Officer and others making inquiry on matters before the Court. I wish to add nothing to that statement, and the defendant does not desire to be heard.

THE COURT: In this case there is one other peculiar feature, at least in my mind.

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The defendant has been convicted - disregarding for the moment this conspiracy count - he has been convicted for contriving and operating a lottery. That substantive felony is not one of the most serious felonies on the calendar and the Penal Law. The Legislature has fixed the punishment there of a maximum of two years. That is, in the case of a first offender, of course, it will produce a sentence of not less than one nor more than two years. And, as I say, the substantive crime is among the less serious crimes.

But in this case, to my mind, the method and the means that the defendant took to carry out the crime is in every way far more serious than the substantive crime itself.

We have a situation here where a gang of criminals, by forcible means, has secured the control of this policy - lottery-policy activity, by which they were taking hundreds of thousands of dollars out of the pockets of people living in one of the most poverty-stricken districts of the City. That, I say, was effected by force and violence in a great many instances, and by holding out inducements to those operating that game, to come in and form a combination under the auspices of this gang; and their activities ran the usual course, resulting in finally the murder of Schultz and at least of his lieutenants, produced murders, these

constant violations of law, and altogether a blot on the City.

Now, in that situation the defendant was approached and asked to join in this combination, using his undoubted political power and influence to aid this combination. The defendant accepted that invitation. Instead of using his political power and influence for the well-being of the City and for the promotion of law and order and good government, he used his position for the promotion of the interests of this crowd of criminals. Under that agreement he received for ~~at~~ over a year at least \$500 a week, which aggregated \$26,000 a year, which, with extras, would bring it up to upwards of \$30,000 a year; and his part in the matter was to afford protection to the operations of the gang of criminals by means of his influence in the Police Department and his influence over certain Magistrates.

To my mind that, of course, is a most serious situation; and, as I say, the means and methods employed far exceeded the substantive crime.

I am frank to say that if it were not for the defendant's years I would deal much more stringently with him than I am going to do. The man is sixty-two years of age and I see no point in imposing any - I might call

it vindictive or theatrical sentence against him.

At the same time, in view of what I have said, certainly the sentence must be such as to be substantial.

I am well aware that human judgment is wrong. Mistakes are liable to be made. But after mature consideration I have come to a conclusion which I think, as far as I can see, combines leniency x due to a man of his years x with the seriousness of the situation in which he finds himself.

As to the conviction in the conspiracy count, that being a misdemeanor, I am not going to trouble myself about that and I shall suspend sentence on that count.

Now, as to the felony counts, the Court imposes on the second count a sentence of not less than one nor more than two years in State Prison.

On the third count, the fourth count and the fifth count, the Court imposes a like sentence of not less than one year nor more than two years, and directs that the sentences imposed on Counts 3, 4 and 5 shall each run consecutively: that is, each of those Counts shall run from the termination of the sentence on the count before.

As to the remaining counts, 6 to 13 inclusive, the Court imposes a like sentence on each of them, but directs that the sentence so imposed on Counts 6 to 13 inclusive

shall run concurrently with the sentence imposed on Count 5.

MR. STRYKER: If your Honor please, will you --

MR. DEWEY: May I ask that there be a warning concerning witnesses?

THE COURT: Yes.

MR. STRYKER: If your Honor please, will you permit the defendant to remain here for some moments. I have certain papers to sign --

THE COURT: Certainly.

MR. STRYKER: And I desire right now - I think it is ready to serve on the District Attorney - to facilitate us in our papers, notices of appeal.

I am going to ask your Honor if you would grant not only - if you would continue the defendant on bail pending the hearing and determination of a motion for a certificate of reasonable doubt, which papers I have now completed, and I expect to present the order to show cause within - at the earliest moment, probably within an hour or so, to a judge for the determination --

THE COURT: Well, the Court would have no objection to that, in and of itself; but the trouble is that the defendant has to be in custody before the application can be made.

MR. STRYKER: Well, my feeling is merely this: that pending the hearing and determination of that motion, it seemed to me that it might appeal to your Honor as --

THE COURT: Well, the Judge before whom the motion is made has the power to do that. As I say, application has to be made when he is in custody.

MR. STRYKER: If your Honor please, I want to be frank with the Court.

I think, as I view the law, there may be a question as to whether the Judge who signs the order to show cause has the right to continue the defendant on bail pending the motion. If that is my reading of the Hummell case - I don't know whether I am right or not.

MR. DEWEY: I may say to the Court that that also is my view, and that no certificate of reasonable doubt can even be applied for until the defendant is in custody; and I see no reason why this defendant should be granted bail, any more than anyone else.

THE COURT: No. I have continued this defendant on bail now ever since his conviction and I think it is enough.

But, as I say, he has to be in custody at the time the application is made. He is committed.

There is one thing I wish to say on these sentences. I rather assume that in the usual course of proceedings

by the Parole Board, that a defendant be discharged upon his minimum sentence. I will say this, however: that if there is any interference or attacks made on any of the People's witnesses in this case, that I shall take the matter up then with the Parole Board on the question as to the minimum sentence or more.

MR. STRYKER: Well, if your Honor please, I must say that I except to that statement, and I feel rather strongly about it, in view of the fact that I feel that there is no factual basis for the statement.

THE COURT: I do not know that there is. I have not said there is. I am speaking of a possible contingency, which experience in other cases has demonstrated is not beyond the ground of possibility.

MR. STRYKER: Well, I can assure you that any such action is beyond the bounds of possibility, so far as anything induced or advised or procured by this defendant is concerned.

THE COURT: I think so too, but there may be people that might take it into their own hands.

MR. STRYKER: I hope your Honor will make yourself clear on that subject as not conveying - so that the public will not be under the impression that there is any basis for such a fear or thought, because I am sure there is none.

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THE COURT: I say any such act could be of some irresponsible party. But I shall keep that in mind just the same.

MR. STRYKER: Well, now, if your Honor please, will you do this: You have been kind enough to grant me an opportunity to confer with the defendant on these motions. He has to sign certain affidavits. Will you stay the execution until at least such time as I can procure a stay in my order to show cause?

MR. DEWEY: I object to that, your Honor, there being no power to grant such a stay.

MR. STRYKER: Now, Mr. Dewey, it is understood I am not asking --

THE COURT: Yes. You mean stay the execution --

MR. STRYKER: Yes, that is what I mean.

THE COURT: --from removing him to State Prison?

MR. STRYKER: Yes, sir; until I can get an Order.

MR. DEWEY: To that there is no objection. I did not understand.

MR. STRYKER: Yes.

THE COURT: I will direct that the execution be stayed until the defendant's counsel has served his order to show cause, if that is done within a reasonable time.

MR. STRYKER: Would your Honor do this: would this

be a fair request? Will you parole this defendant in
~~William Hoven,~~
 my custody,- I am sure your Honor will trust me,- until
~~Official Stenographer.~~
 over the weekend; and that I may produce him then, so that
 he will be in custody at the time when I expect to make
 this motion returnable.

THE COURT: No; I am not going to do anything further
 than I have done.

MR. STRYKER: Very well. But you will grant a stay
 of execution until I can procure an Order from the Court?

THE COURT: Yes.

MR. STRYKER: In the meantime, may Mr. Hines be taken
 in the other room where I can confer with him on the other
 papers? I have other papers for him to sign.

THE COURT: Yes. Take him out into the jury room.

* * *

William Hoven,
 Official Stenographer.