

APPELLATE DIVISION
SUPREME COURT OF THE STATE OF NEW YORK
~~COUNTY OF~~ THIRD DEPARTMENT

In the Matter of the Application of

CHARLES E. COLLINS III,
Petitioner,

Petition For Writ
of Habeas Corpus

Index No. _____

v.

Kenneth S. Perlman,
Superintendent of Camp Georgetown
Respondent. Correctional Facility

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Your Petitioner respectfully alleges and shows ;

1. That CHARLES E. COLLINS III, the petitioner, makes application herein on his own for a writ of habeas corpus. That the place where said CHARLES E. COLLINS III is imprisoned and restrained of liberty, is Camp Georgetown Correctional Facility in the Town of Georgetown, County of Madison, State of New York. That the officer by whom petitioner is so detained is Kenneth S. Perlman. That the imprisonment and restraint of said CHARLES E. COLLINS III is by virtue of a mandate, a copy of which is hereto annexed and marked "Exhibit A".

2. That the Cause or pretense of detention of said CHARLES E. COLLINS III, according to the best knowledge and belief of petitioner is that he was convicted of criminal mischief in the 2nd degree.

3. That a Court or judge of the United States does not have exclusive jurisdiction to order the said CHARLES E. COLLINS III released.

4. That the detention of said Charles E. Collins, III is illegal in that 1) THE defendant was not informed of his rights and OTHER information as required by C.P.L. 180.10 at his arraignment and he did not have counsel present at his arraignment on JAN. 26, 1998 (Exhibit 1-Transcript); at the hearing on February 3, 1998 (Exhibit 2-transcript) when the matter was transferred to County COURT FOR Grand Jury action; and on April 28, 1998 (Exhibit 3-Transcript) when the defendant appeared before the Grand Jury. AT no time did the defendant request or state he wanted to waive his right to counsel. At no time during these proceedings did the judge ask defendant, if he wanted to waive his right to counsel nor did the judge inform defendant he was waiving his right to counsel or that he had waived his right to counsel. As the defendant never waived his right to counsel before the Grand Jury he is entitled to transactional immunity as he did not have counsel present and there was no judicial inquiry as required by law. Defendant had never appeared before a Grand Jury before and has never requested to waive his right to counsel in any criminal matter. Defendant would refer this court to accompanying memorandum of Law and to his writ of Prohibition filed with the court in Dec. 1999.

Also THE DISTRICT ATTORNEY is not Authorized to have defendant waive his right to counsel without counsel being present on a judicial inquiry done by a judge notifying defendant of his rights and other info as required by Law.
Even if defendant had waived his right to counsel at arraignment, which he did not, he did not waive right to counsel for future proceedings and must be informed of this. He was not informed of this as required by CPL 180.10

2) JUDGE LAMONT in his Decision dated JAN. 27, 2000 (Exhibit 4) STATES THAT there was no physical damage to the property AND further STATES THAT THE STATUTE does NOT define what "damage" IS. "Damage" IS a major element of the crime of criminal mischief. When one thinks of damage to property, one thinks of something being
(continued on page 3)

5. That no previous application has been made for the writ herein asked for.

6. That no appeal has taken from any order or judgment in any action or proceeding against said Charles E. Collins III whereby petitioner has been imprisoned or restrained of his liberty. Notice of Appeal has been filed.

Wherefore petitioner prays that a writ of habeas corpus directed to Kenneth S. Perlman issue requiring the production of Charles E. Collins III before the court for the purpose of inquiring into the cause of the imprisonment and restraint of said Charles E. Collins III and of delivering petitioner therefrom, pursuant to the statute in such case made and provided.

Charles E. Collins III
PETITIONER
(verification on page 4)

broken. such as a window, actual physical damage. This is supported by this court's ruling that there must be actual damage to tangible personal property, for criminal mischief. There was none in this case. Defendant is the only person convicted of criminal mischief in the 2nd degree where there was no physical damage to the property. There is no case law or anything in the statute that would lead defendant to believe that clean up costs, let alone necessary clean up costs, is damage to property. Clean up costs are damage to the owner and would be recoverable in a suit for negligence. The defendant was not given fair notice and warning of the statute's prohibitions and as such is unconstitutionally vague.
(see accompanying memorandum of law).

VERIFICATION

State of New York)
County of Madison)SS.:

CHARLES E Collins III, the above-named petitioner, being duly sworn, says that the contents of the foregoing petition are well know to him, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Charles E. Collins

SWORN TO BEOFRE ME THIS

24th DAY OF April 2000.

Lorraine M. Kupiec
NOTARY PUBLIC

LORRAINE M. KUPIEC
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN MADISON COUNTY
NO. 4671139
MY COMMISSION EXPIRES APRIL 30, 2002