

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

The People of the State of New York
ex rel. Charles E. Collins, III,

Docket No.: 00-CV-1650

Petitioner,

- v -

NOTICE OF MOTION

Herbert McLaughlin, Superintendent

U. S. DISTRICT COURT
N.D. OF N.Y.
ORIGINAL FILED

Respondent.

DEC - 5 2000


SIRS:

LAWRENCE K. BAERMAN, CLERK
ALBANY

PLEASE TAKE NOTICE that upon the annexed Affidavit of Charles E. Collins, III, sworn to on the 5th day December, 2000, and upon all prior pleadings and proceedings heretofore had herein, the undersigned will move this Court on 14th day of December, 2000 at 9:30 a.m. at a term to be held at the United States District Court, 10 Broad Street, Utica, New York 13501 or at any adjourned date for an order granting the petitioner a certificate of appealability in the above matter and for such other, different and further relief as this Court may deem just and proper.

Dated: December 5, 2000
Troy, New York

Respectfully yours,


Charles E. Collins, III
108 Brunswick Road
Troy, New York 12180
(518) 274-0380

New York State Attorney General,
The Capitol
Albany, New York 12224

Herbert McLaughlin, Superintendent
Hudson Correctional Facility
P.O. Box 576
Hudson, New York 12534

UNITED STATES DISTRICT COURT
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AFFIDAVIT

Herbert McLaughlin, Superintendent

Respondent.


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

Charles E. Collins, III, being duly sworn, deposes and says:

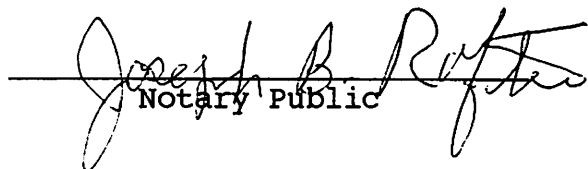
1. That I am the petitioner in the above-entitled proceeding and make this Affidavit in support of my motion for a certificate of appealability.
2. That I have made a substantial showing of the denial of my constitutional rights to due process, equal protection of the law and of my right to counsel at all stages of the criminal proceeding.
3. That I have documented that I never requested or stated that I was waiving my right to counsel and was never informed by the judge that I had waived my right to counsel.
4. That as I never signed a valid waiver of immunity before the grand jury as I did not have counsel present and there was no judicial inquiry by a judge as required by law.
5. That I was entitled to transactional immunity and could not there after be prosecuted for any matter or thing upon which I gave testimony before the grand jury.
6. I further made the argument that the statute upon which

I was convicted was unconstitutional as the statute fails to define the term "damage" a major element of the offense. Further, there is case law supporting my position that I did not damage real property within the meaning of the statute.

WHEREFORE, Charles E. Collins, III prays that this court issue a certificate of appealability and for such other and different relief as this Court may deem just and proper.


Charles E. Collins, III
108 Brunswick Road
Troy, New York 12180
(518) 274-0380

Sworn to before me this
5th day of December, 2000


Notary Public

Joseph B Rafter
Notary Public, State of New York
Qualified in Rensselaer County
Reg. No 02RA6048963
Commission Expires 10-02-02