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September 19, 2003

Hon. Gary L. Sharpe
United States Magistrate Judge
c/o Inmate Litigation Unit
United States District Court
100 S. Clinton Street
Syracuse, New York 13261-7367

Re: Collins v. Division of Parole
Docket No.: 9:03-CV-590

Dear Judge Sharpe:

This letter is in response to the letter from the New York State Attorney General's Office dated September 15, 2003 seeking an additional 60 days to respond to my petition for Writ of Habeas Corpus. I object to any more additional time being given as they have already been given a 60 day extension and they have had the documents for several months and are deliberately stalling this proceeding.

The Attorney General's Office has had the petition since May 30, 2003. The issues raised in the petition are:

1) That I was entitled to judicial immunity for my testimony before the grand jury as I did not waive my right to counsel before the grand jury as there was no judicial inquiry and I did not have counsel present as required by People v. Chapman, 69 NY2d 497, 499 (1987), People v. Valvano, 131 Add 615, 516 N.Y.S.2d 507 (2nd Dept. 1987), People v. Bartok, 209 Add 530, 619 N.Y.S.2d 626 (1994) in order to have waived my right to counsel.

2) That I was entitled to judicial immunity for my testimony before the grand jury as I never submitted a waiver of immunity to the grand jury as required by CPL 190.50(5)(b), People v. Stewart, 92 N.Y.2d 965 (N.Y., 1998) and People v. Higley, 70 N.Y.2d 624 (N.Y. 1987).

3) The other issue before the court is whether or not the Criminal Mischief Statute is constitutional as written as it fails to define what damage is and the courts have held until this case, that there must be physical damage to the property. There was none in this case.

The question before this Court is based upon my testimony before the grand jury which is 14 pages long. Either I had counsel present or I didn't, either there was a judicial inquiry or there wasn't and either I submitted the waiver of immunity to the grand jury or I didn't. The transcript is clear, I did not have counsel present, I did not have a judicial inquiry and I did not submit a waiver of immunity to the grand jury.


The transcripts of my arraignment on January 26, 1998 was 8 pages long and the subsequent appearance on February 3, 1998 was 4 pages long. These transcripts clearly show I was not informed of my rights as required by CPL §180.10(3), (4) and (5).

The Attorney General's Office has had copies of these transcripts since before this petition was filed as I had filed previous writs of habeas corpus and they had been served with all of the transcripts above plus other court documents.

It does not take 60 days to read 26 pages plus my Supplemental Affidavit of May 11, 1998 which is 5 pages long. Further my Brief before the Appellate Court is 72 pages which contains all of the arguments above. At most they would need is two days to review the briefs and the record on appeal. This still gives Ms. Holohan ample time to respond to the September 30, 2003 deadline.

I request that this Court deny their request for an extension of time or in the alternative give them 15 days.

Respectfully yours,


Charles E. Collins, III

CC: Bridget E. Holohan
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