

DOCKET NO. 173

Number	Term	Year
426	November	1960

Commonwealth of Pennsylvania

Ex Rel : James W. Leonard

Versus

L. P. Keenan, Superintendant

Allegheny County Workhouse

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

COMMONWEALTH OF PENNSYLVANIA	:	No. 426 November Term, 1960
EX REL: JAMES W. LEONARD	:	
	:	In re: To Illegal Information
-vs-	:	In re: To Illegal Indictment
	:	In re: To violation of the
L. P. KEENAN, SUPERINTENDANT	:	XIV Amendment of the
ALLEGHENY COUNTY WORKHOUSE	:	Constitution of U.S.A.
BLAWNOX, PENNSYLVANIA	:	

O R D E R

This petition for writ of habeas corpus, presented by James W. Leonard November 27, 1960; rule issued to show cause why writ should not issue.

The District Attorney has filed his answer to petition, objecting to the right of the plaintiff, on the record in this action, to have such writ.

The reasons set forth in the petition for writ are without foundation. The information upon which the defendant was arrested was signed by a State Police Officer, whose duty it is to investigate, make information and arrest those persons who have violated the various laws prohibiting crimes and misdemeanors, throughout the Commonwealth of Pennsylvania. A prosecutor need not be the victim of the offence or the crime committed.

The other objection to the failure of private prosecutor is without foundation; similarly is the objection that the indictment contained count for burglary, larceny and receiving of stolen goods. The defendant pleaded not guilty and was tried before a jury who found him guilty of receiving stolen goods. The charge of burglary and larceny not being substantiated by the evidence, and the sentence imposed upon the defendant was for

receiving stolen goods.

The indictment contained therein the exact wording of the Statute in each case provided making the offence charged in each count, an indictable offence, so that the defendant was fully apprised of the offence with which he was charged.

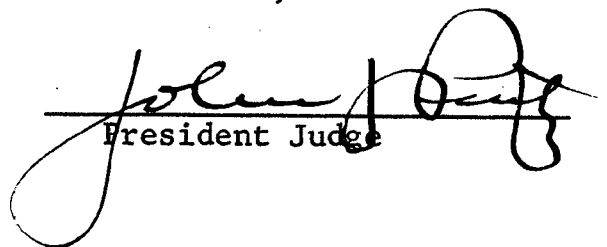
At the time of going to trial, the evidence produced established defendant's guilt only for receiving stolen goods. The sentence imposed inadvertently contained the word "burglary" which has since been eliminated by amendment, so that the sentence was imposed solely for receiving stolen goods.

In addition, all of the questions raised by the defendant in his petition for writ should have been raised either before the trial, or immediately after the verdict of the jury was brought in. Counsel was provided for the defendant to advise him on the procedure.

Therefore, rule to show cause why writ of habeas corpus should not issue is refused.

Exception noted.

BY THE COURT,


President Judge

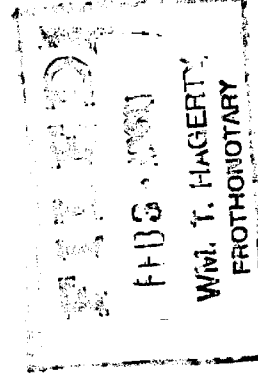
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 426 November Term, 1960

COMMONWEALTH OF PENNSYLVANIA
EX REL: JAMES W. LEONARD

-VS-

L.P. KEENAN, SUPT. ALLEGHENY
COUNTY WORKHOUSE,
BLAWNOX, PENNA.

O R D E R



JOHN J. PENTZ
PRESIDENT JUDGE

CLEARFIELD, PENNSYLVANIA

(1)

(1)

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, CLEARFIELD, PENNSYLVANIA

Commonwealth of Pennsylvania
Ex-Rel: James W. Leonard

No. Term 1960

VS:

L.P. Keenan, Superintendant
Allegheny County Workhouse
Blawnox, Pennsylvania

Inre: To illegal information
Ince: To illegal indictment
Ince: To Violation of the XIV amendment of
the Constitution of U.S.A.

"Petition for the Writ of Habeas Corpus"

To the Honorable Judge John J. Pentz, of the aforesaid Honorable Court:

Comes now; James W. Leonard: Your Relator, who respectfully presents this form of Petition for the Writ of Habeas Corpus. Your Relator respectfully contends and seeks relief from sentences that are illegal, and feels his case and cause merits redress by the Honorable aforesaid Court, and he believes he should be discharged from custody, and that he is being unlawfully restrained of his liberty. Your Relator contends that the technical forms of law, were not observed by the Commonwealth of Pennsylvania. Whereby Your Relator now seeks redress and the protection of the laws, and the Constitution of Pennsylvania, also of these United States of America. Your Relator is illegally confined in the Allegheny County Workhouse, Blawnox, - Pennsylvania, and respectfully presents, to wit:

"Jurisdiction"

Your Relator is within the jurisdiction field Pennsylvania. In the Court of Common Pleas also under the act of May 25, 1951, P.L. 1860 P.L. 427 - Comm. VS: Sect. 203,

Honorable Court of Clearfield County in Clearfield for the aforesaid Court is the Court of record 1-7-12 P.S. 1901-1907. - Act of March 31,

Your Relator believes that he is with in the jurisdiction of the Honorable Court to issue and/or allow a writ to show cause why the Writ should not issue. See the act. Returnable in not more than 20 days

"Case 4 of 4"

Your Relator contends that on or about the 6th day of July 1959, there was information filed against him for the alleged crimes of Burglary and Larceny. By one Daniel J. Jursovich, of Penna. State Police, R.D. 1, Du Bois Penna. He was arrested on the 7th day of July 1959, and was given a hearing at which he plead "Not Guilty", and was then removed to the Clearfield County Jail to await Grand Jury action.

On August 24, 1959, Relator's case was presented to the Grand Jury and a True Bill was brought forth. The Relator was then held for the September term of Criminal Court.

On September 10, 1959, the Relator was tried in the Court of Quarter Sessions at a Jury Trial on the alleged charges of "Burglary and Larceny." The Jury found the Relator "Not Guilty" of "Burglary and Larceny", but did find the Relator "Guilty" of "Having stolen articles in his Possession, or Receiving Stolen Goods."

Relator was sentenced on Sept. 10, 1959 to undergo imprisonment at the Allegheny County Workhouse, Blawnox Pennsylvania, to a term or terms of 2 1/2 to 5 years on two sentences to run consecutively. (totaling 5 to 10 years) also another sentence to run concurrently with the two imposed sentences.

"Statements of importance"

Your Relator respectfully points out the following:

"The Court cannot issue on Prisoners unlearned in law, and often acting as their own counsel in Habeas Corpus proceedings the same standards of the legal art that might be imposed on members of the profession, particularly where such imposition would have a retroaction and prejudicial effect on the prisoners inartistically drawn petition" - See: Price. VS: Johnson, 1947 U.S. Supreme Ct. 334. U.S. 266, 291. 68 S.Ct. 1049 Habeas Corpus 53:

"Clarifying a Statement of fact"

Your Relator respectfully points out he is clarifying a point on indictments for the sole purpose that his indictment was so faulty that it barred him from an impartial Jury trial of the vicinage. Which is guaranteed by the Constitution of the Commonwealth of Pennsylvania. Under - article (1) Section 9. (see article) - He also points out: -

"Title 28. U.S.C.A. Sec. 2243 ch. 153 Note 201, "Sufficiency Generally."

"Defects in indictments not going to jurisdiction of Court which pronounced sentence, may not be raised on Habeas Corpus where question is not whether indictment is vulnerable to direct attack by motion or demurrer, but whether it is so fatally defective as to deprive Court of jurisdiction."

Welch; VS: Hudspeth, C.C.A. Kan. 1942, 132 F2d 434.

see: Gutterman; VS: Hiatt, D.C. Pa. 1946, 65 F Supp. 285

Wilhart; VS: Hiatt, D.C. Pa. 1945. 60 F. Supp. 664.

Your Relator respectfully points out there is no room for doubt that the aforesaid - Court of Clearfield County had jurisdiction in the beginning of Relators case and cause. But do to Relators indictment being so faulty the aforesaid Court has definitely and did lose jurisdiction. Relator respectfully points out:

Denial to accused of rights guaranteed by Constitution is at all times deemed prejudicial.

Fina. VS: U.S. C.C.A. Colo. (1931), 46, F2d 643

Title 28. U.S.C.A. Sec. 2111 ch. 133. Note 40.

"Allegation No. 1"

Your Relator avers and contends that the "Information" which was filed on him on or about the 6th. day of July A.D. 1959, is illegal and faulty. And he respectfully points out the laws governing same:

"Information" or the "Complaint"..... A "Complaint" is the formal accusation made under oath, before a member of the minor judiciary charging a person with having committed a crime: etc..... Also:..... It is well to cite by section and act of law violated: etc.....

Now on the information it is stated that a Mr. Carl Quashnock of near Rt. 219. R.D. 1 Sandy Twp. DuBois Pa. said, Relator did commit a crime.

Also, a Mr. Donald Peace, R.D. 1 (Hands Park District) Sandy Twp. DuBois, Pennsylvania.

Also, a Mr. Lon Beard of Highland Extension, DuBois, Brady Twp. Clearfield - County Pennsylvania.

Now the above indignant persons did not sign the information under oath. The information was signed by a State Police Officer. Why were the parties involved not present at the

time of the hearing and the above named persons sign the said information?

This is indirect violation of the Relators Constitutional Rights under the XIV amendment of the Bill of Rights.

Article XIV

"Due Process of law"

"Equal Protection of law"

"Allegation No.2"

Your Relator avers and contends that the indictment against him is illegal and faulty to such a degree that it deprives him of his Constitutional Rights as guaranteed under the Constitution of the Commonwealth of Pennsylvania under Article I Section 9. (see article). Also Your Relator respectfully points out the Commonwealth of Pennsylvania did not have a private prosecutor or prosecutors. Nor does the indictment at No. 68 May Sessions A.D. 1959, carry the signature of a prosecutor, and respectfully points out:

A public official cannot serve as a Private Prosecutor, such Prosecutor is generally accepted to be the complainant or victim. Unless said public official is the victim.

No signature of any such person appears on the District Attorney's copy of indictment which is contrary to:

.... Act of March 31, 1860, P.L. 427, Sec. 27. 19 P.S. 262 Penal code of Pennsylvania, Section 1104. - "Provisions strictly pursued."

Arresting Officers can of course act as original complainants and as witnesses. But the Commonwealth must have a private prosecutor or victim - who is involved directly with the alleged crime or case.

The conditions in Relators case and cause are in direct violation of his Constitutional Rights as guaranteed by the Bill of Rights, under Article V. -

"Nor shall be compelled in any criminal case, to be a witness against himself"

"Allegation No.3"

Your Relator avers and contends that the Honorable Court erred when it allowed three (3) specific crimes to be presented to the Grand Jury on one indictment. The said three (3) alleged specific and different crimes should have been presented to the Grand Jury for action on three (3) separate indictments. (see indictment at No 68 May Sessions A.D. 1959.)

Your Relator is not contesting counts. But definitely is contesting the three (3) specific and different counts that are listed below. Which is definitely not of form as well as illegal, void, and should be declared as such.

1..... Maliciously and feloniously enter the vehicle of "Donald Peace situate in Sandy Township, Clearfield County, Pennsylvania.
(To commit the felony of larceny therein)

2..... Maliciously and feloniously enter the vehicle of "Lon Beard situate in Brady Twp. Highland Extension, Clearfield County, Pennsylvania.
(To commit the felony of larceny therein)

3..... Maliciously and feloniously enter the building occupied by "Carl Quashnock situate in Sandy Twp. Clearfield County Pennsylvania.
(To commit the felony of larceny therein)

All these named people, places, also specific crimes are all on one indictment, No. 68 May Sessions A.D. 1959, which is contrary to law also Constitutional Rights. Commonwealth. VS: Roberts, 161 Pa. Super Ct. 548:55 A. 2D. 577:

"Consolidation of several indictments for trial in a criminal case is largely within sound discretion of the trial Court, and when the indictments are closely related, the discretion of the Court below will not be reversed on appeal unless it is clearly shown that the complaining defendant has been prejudiced or injured thereby."

In the case at bar, the indictments charged the defendant with three (3) separate crimes. This condition is definitely placing him in prejudice and Relator was injured by such action.

Now this decision is on consolidation of more than one indictment together. But to charge a defendant with three (3) separate crimes on one indictment is strictly against the Common Law. And especially against the Constitutional Rights of Relator under article XIV of the Constitution of the United States of America.

Article XIV

"Due Process of Law"

"Equal Protection of the Law"

"Allegation No. 4"

Your Relator avers and contends that the indictment at No. 68 May Sessions A.D. 1959, is illegal and void for it is too general also does not carry the act of assembly that was alleged to have been violated. Also has three (3) specific alleged crimes on one indictment. Indictment is too general in coverage of words. And Relator respectfully points out:

"It is improper to charge a defendant under a general section other than the specific section of Statute."

"Com. VS: Moyer, 83 D.C. 271, 68, Montz 124 (1952)"

The said indictment, does not carry an Act of Assembly and does not specify what section that was specifically violated.

"Allegation No. 5"

Your Relator avers and contends that the Honorable Court did not follow strictly the Criminal Statute. And these statutes are to be strictly followed and construed, and and the requirements contained therein demand strict compliance. — In this matter Justice Walling stated:

"Com. Ex-Rel: Wilhelm, VS: Morgan 278. Pa. 395.

"In all cases where a remedy is provided or duty enjoined or anything directed to be done by any act or acts of Assembly of the Commonwealth, the directions of said act should be strictly pursued; and no penalty shall be inflicted or anything done agreeably to the provisions of the Common Law in such cases, further than shall be necessary for carrying such act or acts into effect."

also:

Comm. of Pa. Smith No. 116. Pa. Superior Ct. 134.

"Indictment must not be vag, or general and when it fails to state in what capacity defendant acted. It should be raised on motion to quash."

"Allegation No.6"

Is it legal and lawful for the Court to have defendants indictment different than the Bill of Information charged by the Justice of the Peace " ?

see: White VS: State A 569 67 S.E. 705

"One person cannot be both the thief and the receiver, he cannot receive stolen property from himself."

Sup.Ct. ILL. 310 ILL. 483, 142 N.E. 175

"Allegation No.7"

Your Relator contends and avers that the Court Commitment Order is in error as it shows he was sentenced on three counts of Receiving Stolen Goods from three (3) different Robberies, and respectfully points out:

He was arrested and charged with "Burglary and Larceny". He plead "Not Guilty" to these charges at his hearing. He had a Jury Trial, and was found "Not - Guilty" as charged, but was found "Guilty" of "Having Possession of Stolen articles" or "Receiving Stolen Goods".

At no time was Relator charged with "Robbery" or any portion thereof. The records as they now stand are causing Relator undue and unnecessary punishment. This is indirect violation of the Relators Constitutional Rights under the XIV amendment of the Bill of Rights.

Article XIV "Due Process of Law" - Equal Protection of the Law."

"Challenge of Statement of Fact"

Your Relator respectfully points out the following statement of which he wishes to challenge:

Prior to trial the Relator was asked by the County Detective if he would plead "Guilty" to the charges against him if leniency were considered. Relator stated that he would plead "Guilty" to "Receiving Stolen Goods" and nothing else, as he was "Not Guilty" of any other crime. The District Attorneys Office refused to accept said Plea. Later at his trial, Relator was found "Not Guilty" of "Burglary and Larceny", but was found "Guilty" of "Having Possession of Stolen Articles" or "Receiving Stolen Goods".

How can said Plea of Guilty to a specific charge be refused by the District Attorneys Office, and said Relator is charged with a specific crime under indictment of Burglary, Larceny and Receiving Stolen Goods? And then the Jury returns their verdict of "Not Guilty" as charged, but "Guilty" of "Possession of Stolen Articles" or "Receiving Stolen Goods" the charge of which Relator wanted to Plead Guilty to.

Your Relator wishes to point out further that he wanted to save the Court and himself time and money by entering a plea of "Guilty" to a specific crime. He knew then and still knows that he has to pay Court costs.

" Prayer "

Wherefore Your Relator Prays that the Honorable Court will disregard this form and composition of this Petition for the Writ of Habeas Corpus in Forma Pauperis, being to the disadvantage of Your Relator in not having funds to secure the services of an Attorney to conform an adequate Petition.

He has done the best he knows how for the sole purpose of regaining his freedom from arbitrary restraint by illegal acts of "Hearing, indictments, information and Commitment and other illegal acts in his case and cause.

Your Relator Prays the Honorable Court to issue a show cause order, why his sentence should not be declared illegal and void. And prays the Honorable Court to consider other facts as set forth in the foregoing Petition, and to produce the Relator in open Court to hear his personal argument. Your Relator Prays for relief from detention by reasons in attached Petition. - He Prays and ever will Pray:

Respectfully Submitted

James W. Leonard
Relator in Person

" Affidavit "

Commonwealth of Pennsylvania
County of Allegheny

} ss:

Before me a Notary Public in and for the Commonwealth and County aforesaid personally appeared James W. Leonard; who after being duly sworn according to law deposes and says:

- 1..... That he is a poor person without the necessary funds to prosecute or defend his case and cause to the conclusion and asks that this Court may certify and notify the Clerk of Courts to accept and file Relators Petition without any whatsoever to the Relator, because he is destitute, and without funds and considers himself as a Pauper.
- 2..... That the facts and statements in the foregoing Petition for a Writ of Habeas Corpus are true and correct to the best of his knowledge and belief.

James W. Leonard
Relator in Person

Subscribed and Sworn to before me a Notary Public this 12 day of December -- 1960 AD

Michael J. Quinlan
Notary Public
Michael J. Quinlan
Blawnox, Allegheny County Pa.
my Commission expires
February 1-1961

(7)

(7)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, CLEARFIELD PENNA.

Commonwealth of Pennsylvania
Ex-Rel: James W. Leonard

VS:

L.P. Keenan, Superintendant
Allegheny County Workhouse
Blawnox, Pennsylvania

No. _____ Term _____ 1960

Inre: Writ of Habeas Corpus

Inre: Constitutional due process clause

"Motion to file a Petition on a Forma Pauperis Oath"

To the Honorable Judge John J. Pentz, of the aforesaid Honorable Court:

Comes now; James W. Leonard; the Petitioner and Relator in and for the above entitled case and cause for action who now pleads to this Honorable Court for permission to enter this Court on a Forma Pauperis Oath so that he may present his Petition of Habeas Corpus.

He also seeks this Courts approval for the Court to order the Clerk of Courts of said County to accept and file this Motion and his Petition without the necessary filing fees and costs of Court.

The Petitioner states that he is a citizen of these United States of America. And that he is a poor person without funds and considers himself a pauper. Having no funds to pay filing fees and costs of Court to commence, prosecute or defend his suit for action. Nor does he have any personal or real property of any kind, and therefore prays that this Petition may be granted. And he will ever Pray

Respectfully Submitted

James W. Leonard
Petitioner in Person

"Affidavit"

Commonwealth of Pennsylvania
County of Allegheny

} SS:

Before me a Notary Public appeared, James W. Leonard, the Petitioner who, being duly sworn according to law deposes and says that all facts stated herein this - Petition are true and correct.

James W. Leonard
Petitioner in Person

Subscribed to, and Sworn before me this 12 day of December _____ 1960 A.D.

Michael J. Quinlan
Blawnox, Allegheny County Pa.
My Commission expires
February 1-1961

Michael J. Quinlan
Notary Public

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

Commonwealth of Pennsylvania

VS:

James W. Leonard

No. 68 May Sessions, 1959

SENTENCE

Now, September 10, 1959, the defendant having been found guilty of receiving Stolen goods, on three counts on three different robberies, the sentence of the Court is, on Count No. 3, that defendant shall pay a fine of \$500.⁰⁰ and costs of prosecution, and undergo imprisonment in the Allegheny County Workhouse for a period the maximum of which shall be five years and the minimum two and one half years. Sentence to begin as of July 7, 1959

On Count No. 6, the sentence of the Court is that defendant shall pay a fine of \$1.⁰⁰ and costs of prosecution, and undergo imprisonment in the Allegheny County Workhouse for a period the maximum of which shall be five years and the minimum of which shall be two and one half years. Sentence on Count 6 to be served to be served consecutive to the sentence on Count No. 3.

On Count No. 9 the sentence of the Court is that defendant shall pay a fine of \$1.⁰⁰ and costs of prosecution, and undergo imprisonment in the Allegheny County Workhouse for a period the maximum of which shall be five years and the minimum of two and one half years. Sentence on Count No. 9 to begin as of July 7, 1959, and be served concurrently with the sentence imposed on Counts 3 and 6. Stand committed until sentence is complied with.

All fines and costs to be paid through the Probation Office of Clearfield County.
By the Court, John J. Pentz, President Judge.

Certified from the record this 8th. day of February, A.D. 1960

s/ W^m. T. Hagerty
Clerk of Courts

EXHIBIT - A

(9)

(9)

Commonwealth of Pennsylvania

September 18, 1959

subject : Your letter to Governor Lawrence
Dated September 11, 1959

To: James W. Leonard
Clearfield County Jail
Clearfield Pennsylvania

From: Paul J. Gernert s/ Paul J. Gernert
Chairman
Pennsylvania Board of Parole

Your letter dated September 11, 1959 and addressed to the Honorable Governor Lawrence has been referred to this office for reply.

The record indicates that you were tried before the Honorable Judge John J. Pentz, of Clearfield County, on three counts of robbery. The Court sentenced you to undergo imprisonment at the Allegheny County Workhouse for a period of 2 1/2 to 5 years, the sentence to begin as of July 7, 1959. In addition, you have been sentenced on count six, by the same Court, on the same date, to undergo imprisonment in the Allegheny County Workhouse for a period of 2 1/2 to 5 years, to be served consecutive to the sentence imposed under count three. Therefore your total sentence is 5 to 10 yrs.

The Court imposed this sentence, according to the testimony, because you have had a bad juvenile record and were considered to be the leader in the criminal activities in which your younger brother participated. This agency is not authorized by law to change the sentence imposed by the Court.

The record shows that you were ably defended at the trial by Court appointed counsel. Any request for a reduction of sentence should be instituted through your counsel and directed to the Court that tried you.

PTG: dk

EXHIBIT - B

cc - Hon. Otis B. Morse
Secretary to the Governor

No. 68

Sessions May 1959

426 Feb 1960

IN THE COURT OF COMMON PLEAS

OF

CLEARFIELD, COUNTY

CLEARFIELD, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

PETITION

for a

WRIT OF HABEAS CORPUS

FILED

DEC 27 1960

WM. J. HAGERIM
CLERK

Ex-Rel: James W. Leonard

VS:

L.P.K. Keenan, Supt.

Allegheny COUNTY Workhouse

and the

Commonwealth of Pennsylvania

Prothonotary's Copy

12/20/60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
EX REL: JAMES W. LEONARD

VS.

L.P. KEENAN, SUPERINTENDANT
ALLEGHENY COUNTY WORKHOUSE
BLAWNOX, PENNSYLVANIA

) NO. 426 TERM 1960
(
) INRE: TO ILLEGAL INFORMATION
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) INRE: TO VIOLATION OF THE XIV
(AMENDMENT OF THE CONSTITU-
) TION OF U.S.A.
(

ANSWER TO PETITION FOR THE WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE JOHN J. PENTZ, OF THE AFORESAID HONORABLE COURT:

NOW comes the Commonwealth of Pennsylvania by the District Attorney's Office and makes answer to the Petition for the Writ of Habeas Corpus as follows:

1. It is denied that the information made against the petitioner on the 6th day of July 1959 is illegal and faulty in that the information was not signed under oath by the victim but was signed by a State Police Officer and on the contrary it is averred that it is not necessary that the prosecutor be the victim of a crime and that anyone can be a prosecutor especially a law enforcement officer whose duty it is to investigate crimes and bring prosecutions for the same.

2. It is denied that the indictment is illegal and faulty because no private prosecutor appeared on the indictment and on the contrary it is averred that the prosecutor is a police officer whose duty it is to act as such and the said prosecutor's name did appear endorsed on the indictment.

3. It is denied that the indictment is void because more than one specific crime was incorporated in one indictment under separate counts and on the contrary it is averred that separate crimes may be incorporated in one indictment where the crimes are similar in nature and show a plan or design of conduct. Further it is averred that at this stage of the procedure the defendant cannot

take advantage of any alleged error in the indictment if one there be as misjoinder of counts must be taken advantage of on a motion to quash the indictment.

4. It is denied that the indictment is illegal and void for being too general and in not carrying an act of assembly and on the contrary it is averred that the counts in the indictment are framed in words of the statute involved and said counts specifically by their words set forth sufficient information to permit the defendant to determine what charges he had been indicted for. The law does not provide that an indictment must set forth the Act of Legislature by its Public Law number or by its Purdons Statute number and, in fact, this is rarely if ever done. Further if the petitioner had needed additional information he could have received the same by asking for a bill of particulars on the indictment.

5. It is difficult to determine what the complaint of the petitioner says in his Allegation No. 5 but it is averred by the Commonwealth that the indictment was not vague or general but was framed in the wording of the statutes and did state in what capacity the defendant acted. Counts 1, 4 and 7 alleges the defendant acted as a person who entered automobiles with the intent to commit a felony therein. Counts 2, 5 and 8 alleges that the defendant did from said automobiles steal, remove and carry away articles belonging to another and counts 3, 6 and 9 alleged that the defendant did receive goods, that had been stolen from another knowing the same to have been stolen.

6. It is denied that the defendant's indictment differed from the bill of information but on the contrary it is averred that the information set forth facts upon which an indictment could be framed alleging counts of Burglary, Larceny and Receiving. It is entirely proper in one indictment to have a count for burglary, a count for larceny and a count for receiving stolen goods arising from the same transaction.

7. Allegation No. 7 has previously been considered by the Court and the error in the sentence has been corrected.

WHEREFORE, the Commonwealth respectfully asks your Honorable Court to deny a writ of habeas corpus without hearing.

Respectfully submitted,

Eugene G. Kitko

EUGENE G. KITKO
Ass't District Attorney

COMMONWEALTH OF PENNSYLVANIA)
 (SS:
COUNTY OF CLEARFIELD)

EUGENE G. KITKO, being duly sworn according to law, deposes and says that the facts set forth herein are true and correct to the best of his knowledge and belief.

Eugene G. Kitko

Sworn to and subscribed before me
this 17th day of January, 1961.

Wm. L. Hagerty

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
NO. *426 New* TERM 1960

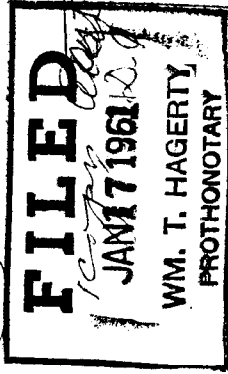
COMMONWEALTH OF PENNSYLVANIA
EX REL: JAMES W. LEONARD

VS.

L.P. KEENAN, SUPERINTENDANT
ALLEGHENY COUNTY WORKHOUSE
BLAWNOX, PENNSYLVANIA

ANSWER TO PETITION FOR
THE WRIT OF HABEAS CORPUS

(179)



JOSEPH S. AMMERMAN
DISTRICT ATTORNEY
COURT HOUSE ANNEX
CLEARFIELD, PA.