

KOHN CLEARED BY HIGH COURT

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Ruling Voids Contempt of Court Judgment

The Supreme Court of Louisiana in an unusual action Monday cleared Aaron M. Kohn, managing director of the Metropolitan Crime Commission, of a contempt of court judgment and parish prison sentence.

Kohn was sentenced to jail by Criminal District Court Judge Matthew S. Braniff after refusing to disclose to a grand jury the name of a confidential informer who had given him information concerning gambling operations in New Orleans.

The sentence was to end when Kohn decided to answer the question.

After spending the night of Dec. 14, 1967, in jail, Kohn was freed by a stay of sentence issued by the Supreme Court.

The unusual part of the court's Monday decision was that the state as defendant maintained this proceeding was moot because the grand jury seeking the information was discharged on March 6, 1968.

DISMISSAL EXPECTED

Normally in such a case, the court would have been expected to dismiss the suit.

Associate Justice Joe W. Sanders, author of the opinion, said that insofar as the record shows, Kohn could have complied by furnishing the information to a succeeding grand jury.

"Hence, we reject the allegation that the case is moot."

Justice Sanders said a stay order from a prior case involving Kohn and the commission was in effect during the present proceeding, and raised the first barrier to the contempt sentence.

"We decline to accept the proposed technical distinction between the proceedings," he said.

"The subpoena duces tecum (for commission records) in the first proceedings was directed to Kohn. He was a party to that proceeding and raised

constitutional objections to the disclosure of the names of confidential informers.

"At the time of his present sentence for contempt, his attorneys were still before this court urging that the state and federal constitutions barred the

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compulsory disclosure of such names.

SAME OBJECTIVE

"It is true the grand jury in the former case sought the names from Kohn's writings in Kohn's possession and in this case from his memory. But this circumstance did not alter the real thrust of the proceeding. The objective remained the same: to compel the disclosure of the names of the confidential informers.

"We conclude the stay order barred the grand jury proceeding against relator (Kohn) to compel the disclosure of the name of the confidential informer. Hence, relator's position is well founded.

"Since this conclusion requires a reversal of the contempt judgment, we do not reach the substantial constitutional question posed by this case."

SEPARATE REASONS

Chief Justice John B. Fournet concurred in the decision, but gave separate reasons, holding that the proceeding was moot.

He said that since Kohn was sentenced to jail until he answered the question, it became impossible for him to purge himself of the contempt when that particular grand jury's term expired.

Concurring in the result of the opinion were Associate Justices Joe B. Hamiter and E. Howard McCaleb.

The fifth and sixth members of the court who heard the matter, Associate Justices Mack E. Barham and Frank W. Summers, dissented.

Justice Barham wrote, "The majority is viewing with too much concern the record rather than the law for the answer to the question of

whether this case is moot.

He said the trial court had only one purpose in imposing the sentence upon Kohn and used the appropriate means.

"It has been repeatedly held that this type of proceeding is a civil contempt proceeding, and that the sentence is prospective and is imposed as coercion to act, as opposed to punishment for wrongful act or omission," he said.

Justice Barham pointed out that under constitutional and statutory limitations, neither judge nor grand jury may bind a succeeding grand jury.

"The subpoena for Mr. Kohn has no validity now; the order to answer the question is no longer effective; relator cannot purge himself of contempt; and the sentence for contempt cannot be executed."

Justice Barham said since the sentence cannot be executed, that sentence is no longer before this court.

"When neither party nor subject matter is before the court, there is no longer a case in which the issues can be raised, and therefore the matter is moot."