

High Court Ruling Awaited

Marcello Wins Delay

Carlos Marcello will not go to jail until the U.S. Supreme Court rules on his motions for a new trial, attorneys for the rackets figure said late this morning.

A last-minute compromise between Marcello's battery of lawyers and U.S. Justice Department officials has been worked out to keep the 61-year-old millionaire out of prison until the high court rules.

The agreement was hatched hours before Marcello was scheduled to surrender to a U.S. marshal in Houston and begin serving a two-year prison sentence for attempting to punch an FBI agent.

Meanwhile, Marcello's attorney's filed a new appeal in Fifth Circuit Court of Appeals to vacate his two-year sentence.

The motion to vacate the sentence was denied by Federal District Judge John V. Singleton of the district court at Houston where Marcello was convicted.

CECIL M. BURGLASS JR.,

a Marcello attorney, said the compromise was worked out late this morning by himself, Marcello's Washington lawyer, Jack Wasserman, and Justice Department lawyers in Houston and Washington.

Supreme Court Justice Hugo L. Black is considering two motions for a new trial on the charges, which claim Marcello was "harassed and provoked" into taking a swipe at agent Patrick Collins in 1966 and that Collins perjured himself during Marcello's 1968 trial.

Wasserman filed the motions with the court yesterday and Black asked the Justice Department for an opinion on the appeals and a request for a stay of the sentence.

Justice Department attorneys working on the case said they will oppose motions for a new trial but will need time to prepare a brief. They said the brief will not be filed with the high court until late tomorrow or early next week.

Once the brief is filed, the court will rule on the motions.

In the meantime, Marcello will stay out of prison.

"IF JUSTICE Black rules against the motions we've filed," Burglass said, "then we'll arrange a new reporting date for the prison term; until then, Mr. Marcello will positively not go to jail."

A spokesman for the Justice Department stated the delay is a normal "administrative formality" used in cases before the Supreme Court to hold prison terms in abeyance until the court rules.

"This agreement gives us a little more room to breathe in . . ." said Burglass. "It has taken a little of the pressure off Marcello."

When Justice Black does rule on the motions it will probably not represent the end of Marcello's attempts to avoid prison. Burglass hinted if the appeals are rejected he has still other motions to file before the 5th Circuit Court of

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Appeals, which could delay the prison term further.

Last week Judge John Minor Wisdom of the 5th Circuit granted Marcello a delay in his prison term until a three-judge panel was able to consider an appeal of the prison sentence on grounds Marcello was in ill-health and unable to go to jail.

Tuesday the panel turned down the request and ordered Marcello to surrender today.

The delay allowed him to testify before the legislative committee probing organized crime. He told the committee he is "positively not" the head of organized crime in Louisiana.

MARCELLO WAS sentenced to the two-year term on a 1968 conviction of attempting to take a punch at FBI agent Patrick J. Collins at New Orleans International Airport four years ago.

In addition, Marcello was fined \$5,000 by Houston federal Judge John V. Singleton. Since the trial he has been free on \$25,000 bail.

Under Judge Singleton's order, Marcello will report to the U.S. marshal for the Southern District of Texas at Houston to begin his sentence. Court attaches said however, he could probably surrender to any U.S. marshal.

If he fails to show up in Houston or surrender elsewhere, a warrant could be issued for his arrest.

MEANWHILE, THE Mafia probe committee which heard Marcello Tuesday has said it will call several members of the state Revenue Department to testify before the committee when it resumes its hearings Oct. 1.

Committee Chairman Sen. Adrian G. Duplantier said the hearings will be held in Baton Rouge.

Duplantier said yesterday the tax workers would be called to testify about allegations of criminal influence in the state tax department.

A court ruling last week cleared the way for committee access to revenue department records concerning legislators who allegedly were late in filing state income tax returns.