

MARCELLO ORDERED TO JAIL

The U.S. Attorney's office in Houston today ordered rackets figure Carlos Marcello to begin serving a six-month assault sentence tomorrow, but defense attorneys in New Orleans this afternoon asked for a new stay pending a ruling on a request for a new trial.

Marcello was directed to surrender after the U.S. Supreme Court today voted 7 to 2 to reject his appeal for bail.

Defense attorney Cecil M. Burglass Jr. asked the U.S. 5th Circuit Court of Appeals this afternoon to again stay the execution of the sentence until it rules on a request for a new trial.

BURGLASS HAS ASKED for a new hearing on the grounds the government failed to introduce evidence favorable to the 60-year-old rackets boss and be-

cause the government's chief witness committed perjury.

In Washington this morning Justices Hugo Black and William O. Douglas dissented from the majority opinion, saying they had "no doubt the government's conduct in the case raises questions worthy of review."

WITHIN MINUTES of the high court decision, U.S. Attorney Anthony J. P. Farris in Houston told Marcello's Houston attorney Anthony Frilous, Marcello must surrender to federal agents not later than 10:16 a.m. tomorrow to begin serving the prison sentence.

Farris said he was giving Marcello exactly 24 hours from the moment he talked to Frilous in which to surrender.

"I'm relieved the Supreme Court has

apparently put an end to all the delays in the case," Farris said.

The U.S. attorney said he is confident there will be no further delays in the case.

The U.S. Marshal's office in Houston said Marcello's surrender was set "tentatively for here," (Houston) but added he could surrender in New Orleans.

Burglass said, however, Marcello would report to Houston if the courts did not grant a further stay.

He has been free by consent of the government, which won court approval for his surrender in September, but did not insist on locking him up until the Supreme Court ruled.

MARCELLO WAS CONVICTED in a

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Texas federal court in 1968 of technical assault and "intimidating" FBI agent Patrick J. Collins at New Orleans International Airport four years ago. He has been free on \$25,000 bail pending court appeals.

Cecil M. Burglass Jr., another Marcello attorney, said a further appeal for a stay of the prison sentence will be filed with the Fifth Circuit Court of Appeals later today in a last-ditch effort to block Marcello from going to jail.

"There are some things which can and will be done to try and head off Marcello's prison sentence," Burglass said. "This is bad news but we're not finished fighting yet."

Burglass did not disclose what action he plans to take.

IN SEEKING TO remain out on bail and get a new trial Marcello claimed he was trapped illegally by agents who mixed Collins with a group of photographers and reporters Marcello tried to shoo away as he left the airport.

Marcello originally was sentenced to two years in prison but last Friday U.S. District Judge John V. Singleton of Houston reduced the sentence to six months.

Singleton said his action was based on Marcello's age and on a review of the circumstance in the case. The judge placed Marcello on probation for two years and left intact a \$5,000 fine.

In Black's dissent, the justice reviewed testimony at the Houston trial and other statements submitted with the appeal contending the FBI called newsmen to the airport when Marcello arrived on a flight from New York.

BLACK SAID AN unidentified New Orleans FBI agent telephoned the Associated Press, the local newspapers and television stations asking if they intended to cover the arrival of a "prominent person" at the airport that evening.

"When the Delta plane arrived, the press swarmed around Marcello," Black wrote. "With them were FBI agent Collins, who according to the government's brief and the Court of Appeal, was 'posing as a passenger,' and FBI agent Avignone, carrying a camera."

Black then quoted a decision of the Fifth Circuit Court of Appeals: "This crowd followed Marcello through the airport and onto the upper ramp out-

side where Marcello, angrily and with some profanity, inquired whether the photographers had taken enough pictures. Collins, with arms folded, answered in the negative, and Marcello retorted: 'Are you looking for trouble?' which elicited the not unexpected reply from Collins that 'I can handle trouble.'"

Black said Marcello's version of the incident was that Collins actually stated, "I'm always looking for trouble."

IN ANY CASE, Black said, the court of appeals decided the verbal exchange unsettled Marcello, inducing him to take a couple of short jabs at Collins and attempt to hit him with a "hay-maker" but he was restrained by his brother Joseph.

Black noted Collins testified if Marcello touched his body at all, "it was so slight I did not feel it."

Black continued: "The entire case and circumstances shown by the record are highly disturbing. At Marcello's trial in 1968 his counsel suggested government agents themselves were responsible for the crowd of newsmen surrounding Marcello and photographing him at the airport."

"COUNSEL PROSECUTING Marcello expressed resentment at the suggestion the government had entrapped or provoked him. The government then denied it had any evidence favorable to Marcello.

"This denial seems incredible to me in view of the now admitted facts that an agent called the press telling them of the arrival of a 'prominent person' and that the prosecuting counsel were informed before trial of these FBI contacts with the press.

"I have no doubt of the relevancy of this evidence in the eyes of the jury considering Marcello's defense that the FBI was after him and had provoked the incident."

Black briefly reviewed the long history of prosecutions of Marcello by various federal agencies and said all but two ended in dismissal of charges or acquittal. The exceptions were the 1968 conviction now under appeal and a 1938 conviction for selling marijuana.

Other appeals of the case still are pending with the 5th Circuit on grounds the government suppressed evidence favorable to Marcello and that Collins, the government's chief witness, perjured himself on the witness stand.

The Supreme Court's rejection of Marcello's appeals represented the sec-

ond time the high court has refused to review his assault conviction. An earlier appeal also was denied without comment.

"ANYTIME YOU LOSE a battle in the courts, you tend to be pessimistic," said Burglass, "but we're not giving up by any means."

Last Friday's reduction of sentence by Judge Singleton was the first substantial victory for Marcello in his lengthy legal battles against the two-year prison sentence. His jail sentence was delayed twice pending court appeals.

Marcello was indicted on the assault charge Oct. 7, 1966. That indictment was dismissed but he was reindicted by a federal grand jury in New Orleans June 1, 1967.

A series of legal maneuvers followed which delayed the jail term until the Supreme Court ruled.

MARCELLO, MEANWHILE, faces other legal action stemming from government attempts to deport him. The indictment, charging he has been illegally in the country since 1961 when he returned after being deported to Guatemala, was thrown out on Sept. 23 by a federal judge, but it is on appeal to the 5th Circuit.

Marcello has been embroiled in the courts for more than 30 years and because of the deportation procedures — complicated by the fact no country will agree to accept him — became known as the underworld's equivalent of a man without a country.

He spent four years in jail for a 1929 bank holdup and one year in 1938 in a federal prison on a narcotics charge. The narcotics rap has been the basis for deportation attempts.

Marcello has been arrested numerous times since 1938, but never convicted until this ruling.

"ONE OF THE WORST criminals in the country," said the late Sen. Estes Kefauver, 20 years ago.

Marcello has steadfastly denied he is a gangster and earlier this year told the state legislature's rackets probe committee he knows nothing of the Mafia except what he reads in the newspapers.

The committee was formed after Life Magazine reported Marcello gangster influence reaches in high government places in the state.

"Absolutely not," said Marcello when questioned about allegations he is a mobster.