

STATES-ITEM

New Ruling To Be Asked For Marcello

Attorneys for Carlos Marcello said today they will ask the U.S. Fifth Circuit Court of Appeals to reconsider a ruling denying their client a new trial on federal assault charges.

Cecil M. Burglass Jr., an attorney for the jailed rackets figure, said he will ask the appellate court for a new hearing on its ruling yesterday which upheld Marcello's conviction on charges of attempting to punch an FBI agent.

It was the second time the appellate court has upheld the 1968 conviction, which has been long entangled in court proceedings.

"WE FEEL the court was in error in its ruling," Burglass said, "and has ignored several sections of our original appeal."

Marcello is currently serving a six-month sentence on six points including charges the assault statute under which he was convicted is unconstitutional and that he was "trapped" by the FBI into taking a punch at agent Patrick J. Collins Jr.

Marcello is currently serving a six-month sentence at the Federal Medical Center, Springfield, Mo., on the charge.

"The court completely ignored the question of the constitutionality of the law," Burglass said.

BURGLASS SAID if his request for a rehearing is denied, he will appeal the case to the U.S. Supreme Court, which twice already has turned down a ruling in the case.

Meanwhile, court sources said further appeals in the case may be "meaningless" because Marcello is due to be released from prison March 14.

"Even if a rehearing was granted, by the time it could be scheduled, heard and then ruled upon by the court, Marcello may already be out of jail," said one source.

THE FIFTH Circuit heard arguments on Marcello's motions Nov. 23 in Tampa and took more than a month to hand down its decision of yesterday.

Going into that Tampa hearing Burglass said if the motions were turned down, further appeals may be pointless because of the limited time involved before Marcello is freed.

Marcello is scheduled to be released March 14 under federal prison rules which credit him with five days a month "good time." Ordinarily he would be released April 14.

In its decision denying Marcello's second appeal, the court said, "it borders on the frivolous to claim, as does Marcello, that it was a scheme by the FBI to 'set up' an incident at the airport or to invade Marcello's right of privacy."

Marcello's previous appeal of his conviction was affirmed by the Fifth Circuit and the U.S. Supreme Court denied writs. Marcello's attorneys then filed a second appeal attacking the denial of a motion for a new trial and making other technical pleas.

Yesterday's opinion denying the second appeal was rendered by an appellate panel consisting of Chief Judge John R. Brown, Circuit Judge David W. Dyer, and Circuit Judge Bryan Simpson.

The court said in its opinion, "We are firmly convinced that no favorable or material evidence was suppressed by the prosecution and that the trial judge properly denied Marcello's motion for a new trial."