

JUN 3 1972

3  
J  
72

N.Y. STATE NEWS-ITEM

# Kunstler Fails to Halt

Black militant H. Rap Brown's two-day trip to New Orleans for a federal court appearance ended yesterday the way it began—with his attorney trying to halt the journey.

Shortly after a five-year prison sentence and a \$2,000 fine was reimposed, Brown was flown from his native Louisiana. Government officials in New Orleans said Brown was put on a twin-engine government plane to be returned to a New York jail.

Defense attorney William Kunstler unsuccessfully sought to have a court order served that would have delayed Brown's departure for a few hours. However, government sources said Brown was already airborne.

AS BROWN stood before the bench for sentencing with his

head down and his hands in his pockets, Kunstler begged Judge Mitchell for an additional ten minutes until Judge J. Minor Wisdom of the Fifth Circuit Court of Appeals could be reached by telephone.

The request was denied by Mitchell.

Kunstler then asked Mitchell for a reconsideration of the maximum sentence he had previously imposed—five years and \$2,000—saying, "in all fairness, Mr. Brown was convicted on a highly technical violation."

Judge Mitchell then reimposed the maximum sentence. He also reset federal bail at \$100,000 and denied a down payment of \$10,000.

HE ALSO said that payment of the bond would not release Brown from the custody of the State of New York, where he is being held on another

count.

Judge Mitchell ruled that Brown's sentence was not to commence at this time, pending the outcome of the New York case. He gave Brown credit for all time served while in federal custody.

It was Kunstler's second rebuff over the movement of Brown.

On Wednesday, Kunstler also failed in his efforts to serve a court order to keep Brown from being taken from the Riker's Island Prison in New York. However, authorities said Brown already had been removed for the flight to New Orleans.

U.S. DIST. Court Judge Lansing Mitchell sentenced Brown yesterday for the third time on a charge of illegally transporting a rifle in interstate commerce while under indict-

## Brown's Return to New York

ment on arson and riot charges in Dorchester County, Md.

The first sentence on the 1968 conviction had been voided by an appeals court on a technicality, dealing with wire-tap evidence. Brown, who disappeared in May 1970, was sentenced again in September 1970 "in absentia." However, an appeals court also voided the sentence, saying Brown had to appear in person.

Brown emerged from seclusion last October, when he was wounded and arrested in the New York holdup.

Kunstler argued that the newest sentencing of Brown was illegal because a "crime of kidnaping" had been committed by authorities in New York in sending Brown to New Orleans.

THE ATTORNEY, who alleges authorities gave him the

runaround in not letting the original court order to be served in New York to prevent the trip, said "it was a gross violation of Rap Brown's rights. It was criminal, illegal, fraudulent, and unconstitutional.

"It was arrogant and unlawful action on the part of both state and federal officials," he said.

He appealed the sentencing immediately to a U.S. 5th Circuit Court of Appeals judge, who issued a temporary order staying Brown's departure. However, government sources said the order came 15 minutes after Brown's plane took off and that officials could not get in communication with the plane.

Three appeals judges later Friday denied the defense attorney's request to stay the execution of the sentence and

keep Brown here on the grounds Judge Mitchell improperly denied motions. The appellate court's action also superseded the earlier, unserved temporary order that would have held Brown in New Orleans.

The defense also had unsuccessfully asked Mitchell for further disclosures on electronic surveillance in the case and also that Mitchell be excused on the allegations he was biased toward Brown.

Defense attorneys also attempted unsuccessfully to get the appeals court to vacate Mitchell's order returning Brown to custody of the state of New York. They said they would rather have him sent to Maryland for charges there.

Kunstler claimed Brown would remain in Ricker's Island Prison all summer without going to trial.