

Hearing Set on First Magee Case

San Quentin prison warden Louis S. Nelson and State Attorney General Evelle Younger were ordered yesterday to explain why inmate Ruchell Magee should not be released from custody because of judicial improprieties in his 1963 kidnap-robbery trial.

Judge Leonard M. Ginsberg of Tulare county issued the "show cause" order in Marin Superior Court on the basis of a writ of habeas corpus filed by Magee last June 29 and a supporting argument by Magee's attorney, Ernest L. Graves, attempting to have the original conviction throw out.

Graves, currently representing Magee in this murder-kidnap-conspiracy trial with Angela Davis, filed his argument with the court Thursday and spoke on behalf of Magee yesterday.

JAILED

Of course, whether or not Magee's conviction in the kidnap-robbery case is ultimately overturned, he will still remain jailed pending the outcome of his trial on charges stemming from the fatal shootout in the Marin Civic Center on August 7, 1970.

In 1963, Magee and another man were accused in Los Angeles of forcing their way

into a car drive by a Ben Thompson, robbing him of \$10 and forcing him to drive several miles.

Magee was sentenced to life imprisonment. In 1965, however, the conviction was overturned and Magee was retried and convicted.

An assault on a prison official carries a mandatory death penalty. If Magee's life sentence were to be expunged, he would no longer face such a penalty automatically if convicted of an assault on Judge Haley.

The crux of his argument, Graves told the court, was that in the second trial a plea of not guilty by reason of insanity was entered for Magee over Magee's strenuous objections.

PLEA

Furthermore, Graves contended, Magee was not allowed to enter his own double jeopardy plea although he had been judged by two psychiatrists to be mentally competent.

"The conviction and commitment of (Magee) are constitutionally invalid and void in that they rest upon a proceeding where the court and the attorney tried to 'railroad' the defendant," Graves charged.

Ginsberg set November 10 for the hearing.