

Sentencing Of Magee Is Stayed

Today's scheduled sentencing in San Jose of Russell Magee on a charge of aggravated kidnaping was stayed yesterday by United States Supreme Court Justice William O. Douglas.

Magee pleaded guilty last month to the charge, which stemmed from the 1970 Marin Civic Center shootings in which four persons were killed.

Three days later, however, he asked to withdraw his guilty plea, saying he was so frustrated he pleaded guilty "to get it all over with."

Superior Court Judge William Ingram of Santa Clara county refused to allow Magee to withdraw his plea of guilty and set today at 8:30 a.m. for sentencing.

(Aggravated kidnaping is kidnaping with bodily harm and calls for a sentence of life imprisonment without possibility of parole.)

To forestall today's sentencing, Attorneys Frank Katz and Richard Such appealed to Justice Douglas, who is attending a meeting of the Ninth Circuit Judicial Council in Reno.

After Justice Douglas has studied the appeal, he could decide either that the sentencing should proceed or that Magee should pursue his appeals in the federal courts.

The tangled case, in effect, has once again achieved a kind of limbo status.

Katz handed the appeal

document personally to Justice Douglas on Tuesday. Yesterday, the clerk of the U.S. Supreme Court notified the clerk of the Santa Clara county superior court that Justice Douglas had ordered an indefinite stay.

Attorneys Katz and Such, members of the Santa Clara county public defender's office, said the appeal was based on two principal grounds.

One was that Magee's guilty plea was not freely and voluntarily entered into in accordance with federal standards.

The other ground, they said, involves Magee's endless battle to be allowed to represent himself.

In accepting Magee's guilty plea, Judge Ingram was allowing Magee to act as his own counsel, something previously forbidden him.

Katz said the appeal argues that if Magee was allowed to enter a guilty plea then he should have been allowed to act as his trial counsel.

Finally, Katz said, Magee's guilty plea was entered "out of his continuing and mounting frustration" over not being allowed to serve as his own counsel.

Magee was serving five years to life at San Quentin for a \$10 Los Angeles kidnap-robbery at the time of the Civic Center shoot-out in which Superior Judge Harold Haley and three others were killed.

The 34-year-old Magee was tried for murder and aggravated kidnaping in San Francisco as a result of the Civic Center incident but the trial ended in a hung jury.

Thereafter, the case was moved to Santa Clara county before Judge Ingram.