

People v Soloku

2021 NY Slip Op 30782(U)

January 8, 2021

County Court, Yates County

Docket Number: 290-2019

Judge: Barry L. Porsch

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK COUNTY OF YATES
YATES COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Ansumana Soloku,

Defendant/Appellant.

DECISION AND ORDER
YATES # ~~1004~~290-2019

CR-4290

Motion for Contempt of Court or in the alternative, for summary relief pursuant to People v. Feldes, 73 N.Y.2d 661 (1989).

Porsch, J.

This matter comes before the Yates County Court, sitting as an Intermediate Appellate Court, by motion of the attorney of Defendant/Appellant, to hold the Penn Yan Village Court in criminal contempt for willful disobedience to, and offering resistance to, the Decision and Order of this Court dated 11/06/20. The Defendant/Appellant asks in the alternative for summary reversal of the conviction pursuant to People v. Feldes, 73 N.Y.2d 661 (1989).

This appeal was initiated by the Service and Filing of a Notice of Appeal on 08/01/2019. See this Court's Decision and Order dated 02/27/2020. Pursuant to CPL § 460.10(3) the Penn Yan Village Court was required to provide the digital recording to the Appellant for the purposes of creating a transcript but failed to do so. Defendant was required to file a motion to compel the production of the digital recording, which was not opposed by either the People or the Court. Id.

After being served with an Order compelling the production of the digital recording, the Village Court did produce the recording, and Appellant paid for the creation of a transcript, and filed same in the Village Court together with an Affidavit of Errors. See this Court's Decision and Order dated 11/06/2020.

Pursuant to CPL § 460.10(3)(d) the Village Court was required to serve and file a Court's Return within 10 days, however, the Village Court failed to do so. Appellant once again filed a motion to compel compliance with CPL § 460.10(3), and once again neither the People, nor the Village Court filed an opposition to the motion. *Id.* Accordingly, this Court ordered the Village Court to serve and file a Court's Return within 30 days pursuant to CPL § 460.10(3)(e).

It is upon this history that this Court considers Appellant's motion to hold the Penn Yan Village Court in contempt. Attached as an exhibit is an affidavit of service showing that the Penn Yan Village Court was served. In addition, attached as an exhibit are emails from a Judge of Penn Yan Village Court, in which he stated that he and his clerks have searched the Penn Yan Village Court's files, but have not found any records, except a computer record showing the case was disposed of. The Penn Yan Village Court Judge proceeded to explain that he would not be looking any further for the records "And again I don't care if this hurts you!"

This Court recognizes that Appellant has indeed been harmed by the Village Court's failure to produce its records, as over a year has passed without Appellant being able to file a Perfected Appeal Brief. See CPL § 460.70 and UJCA § 107. Likewise, this Court cannot consider the appeal without a record on appeal.

As a general matter, Contempt of Court is only available where the statutory scheme does not provide a remedy. See Gadomski v. Gadomski, 256 A.D.2d 675; (3rd Dept, 1998), Matter of Naquan J., 284 A.D.2d 1 (2nd Dept, 2001), James v. Sandra, 44 A.D.3d 423 (1st Dept 2007). The Criminal Procedure Law does not say what happens when an Order compelling a Court's Return is not complied with. See CPL § 460.10(3)(e). Accordingly, Appellant can move for Contempt of Court pursuant to Judiciary Law § 750.

A Court of Record has power to punish for a criminal contempt, a person guilty of any of the following acts ...

3. Wilful disobedience to its lawful mandate.
4. Resistance wilfully offered to its lawful mandate
Judiciary Law § 750

Here, the Penn Yan Village Court Judge stated that he and his staff will no longer take any action to comply with the lawful order of this Court. This appears to be both wilful disobedience to its lawful mandate, and resistance wilfully offered to its lawful mandate.

Impossibility is a defense to Contempt of Court. Likewise, attempting but failing to accomplish compliance is a defense. However, here the Penn Yan Village Court Judge

made clear that he feels he tried hard enough, and is therefore not going to take any further action to comply with this Court's Order. That is not a decision one subject to a Court Order gets to make unilaterally.

Appellant asks this Court to render another remedy instead of holding the Penn Yan Village Court in contempt. In People v. Feldes, 73 N.Y.2d 661 (1989) an Appellant filed motions to compel compliance pursuant to CPL § 460.10(3)(d), and the Town Court failed to comply, the County Court summarily reversed the conviction, and dismissed the charges. Feldes at 662.

After the Sullivan County Court granted the appeal, the People filed an appeal to the New York Court of Appeals in Albany, arguing that the County Court did not have authority to reverse the conviction without explicit statutory authority. Feldes at 663. The Court of Appeals found there, as here, that the People had failed to take any action in settling the record on appeal, whereby the People could not complain that the conviction was being overturned. Feldes, at 664

Here, Appellant already filed three motions in this Court to compel compliance with the CPL. As the Court of Appeals found in Feldes,

“The Criminal Procedure Law requires that a return be filed within 10 days of service of an affidavit of errors; it then provides for an order to issue in the instance — which should be rare — where the local court does not comply with its statutory obligation. That is sufficient. It is not incumbent upon an appellate court absent unusual circumstances not present

here, to provide a further opportunity for the town trial court to fulfill its duty...”

Indeed, it should be rare that an Appellant should ever have to file for an order compelling a Court to follow the law. Likewise, one expects that a Court served with an Order to Compel would comply voluntarily.

Here, the Village Court has repeatedly failed to comply with the CPL and has seemingly ignored all three motions filed by Appellant. This Court's order dated 11/06/2020 expressly warned that failure to timely serve and file a Court's Return would result in a dismissal. After being served with the order, the Village Court could have moved to be excused based on impossibility, or could have asked for more time, or could have attempted to recreate the record. Likewise, the People could have moved for a remedy. Instead, a Judge of the Penn Yan Village Court put in writing that he would not comply with this Court's Order. Under these circumstances, this Court cannot review the proceeding in the Village Court and cannot have confidence that the conviction of the Penn Yan Village Court was lawful. People v. Feldes, 73 N.Y.2d 661 (1989). Accordingly, it is

ORDERED, that the conviction of VTL § 1110-a is vacated, and it is further

ORDERED, that the ticket filed in this matter is dismissed, and it is further


ORDERED that the fine of \$200 shall be returned, and it is further

ORDERED that the Penn Yan Village Court shall file this Decision and Order with the DMV, along with DMV form UT-20, within 10 days.



HON. BARRY L. PORSCHE
ACTING YATES COUNTY COURT
JUDGE

DATED: January 8, 2021

FILED & ENTERED
2/11/21 11:30 AM

YATES COUNTY CLERK
Deary