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CRIMINAL CONTEMPT PROCEEDINGS

Contempt: Written order is essential to validity of a summary contempt citation.

A criminal contempt committed in the court's presence may be punished summarily, but the citation must be accompanied by a written order setting forth the facts constituting the contempt and the punishment imposed.¹⁷⁴ This requirement is designed to protect an alleged offender's appellate rights¹⁷⁵ and to prevent a subsequent conviction for the same act.¹⁷⁶

In *Lynch v. Derounian*,¹⁷⁷ the petitioner, an attorney, had been summarily adjudged in contempt by the lower court. However, the judge had failed to issue the required written order, the only evidence of record being his statement to the petitioner: "I will fine you fifty dollars for contempt of court." The Appellate Division, Second Department, held that in the absence of the requisite written order, there was nothing before the court to review.¹⁷⁸ Since the statutorily mandated right to review could not be vindicated, the oral citation was deemed to be fatally defective.

Lynch illustrates the practice of applying the rule of *strictissimi juris* to contempt matters.¹⁷⁹ The bench should be aware that reviewing courts will require literal compliance with the provisions of contempt statutes.

¹⁷⁴ N. Y. JUDICIARY LAW § 755 (McKinney 1968). See *Matter of Boasberg*, 286 App. Div. 951, 143 N.Y.S.2d 272 (4th Dep't 1955); *People v. Truesdel*, 79 N.Y.S.2d 413 (Sup. Ct. Orange County 1948). See generally 23 CARMODY-WARR 2d § 145:24 (1968).

¹⁷⁵ A citation for a contempt committed in the immediate view of the court is reviewable by a special proceeding under article 78 of the CPLR. N. Y. JUDICIARY LAW § 755 (McKinney 1968). The present proceeding was brought pursuant to CPLR 506(b)(1).

¹⁷⁶ In a proceeding where the petitioner has summarily been held in contempt, it is the written order which is under review. In such a proceeding, the judge's own knowledge takes the place of proof. It is his litany of the facts, as set forth in the written mandate, which becomes the record on review. Without such a formal disclosure it would be impossible to determine on appeal whether or not a contempt was committed. The accused would have nothing upon which to build a defense, thus making review impossible. In addition, without documentation there would be no *res judicata* defense to a subsequent charge based on the same facts. *In re Cleary*, 237 App. Div. 519, 262 N.Y.S. 288 (1st Dep't 1933); *Borden v. Tobias*, 42 Misc. 2d 1069, 249 N.Y.S.2d 891 (Sup. Ct. Queens County 1964); *People v. Truesdel*, 79 N.Y.S.2d 413 (Sup. Ct. Orange County 1948).

¹⁷⁷ 41 App. Div. 2d 740, 341 N.Y.S.2d 145 (2d Dep't 1973).

¹⁷⁸ *Id.* at 741, 341 N.Y.S.2d at 146. Having held that the absence of the requisite order precluded review, the court nevertheless examined the record and determined that there was nothing to justify the contempt citation in any event. This digression was unnecessary. In light of the court's holding that the oral citation was void, nothing in the record could have changed the result.

¹⁷⁹ *Borden v. Tobias*, 42 Misc. 2d 1069, 1071, 249 N.Y.S.2d 891, 894 (Sup. Ct. Queens County 1964).