

Petition for Writ of Error.

409

SUPREME COURT
OF THE UNITED STATES.

BENJAMIN GITLOW,
Plaintiff-in-Error,

against

THE PEOPLE OF THE STATE OF
NEW YORK,
Defendants-in-Error.

410

Now comes Benjamin Gitlow, the defendant below, by Walter Nelles, his attorney, and says that on or about the 13th day of July, 1922, a judgment and order was made in the Court of Appeals of the State of New York and remitted to and entered and filed in the Supreme Court of the State of New York, County of New York, and a judgment and order entered thereon accordingly in said Supreme Court on July 21, 1922, affirming the judgment and order of the Appellate Division of the Supreme Court of the State of New York for the First Judicial Department entered and filed on or about the 1st day of April, 1921, affirming a judgment of conviction made and entered in the Supreme Court of the State of New York on or about the 11th day of February, 1920, finding said defendant guilty of Criminal Anarchy and sentencing him to be imprisoned in the State Prison at hard labor for a term of not less than five and not more than ten years, in which judgment and

411

412

Petition for Writ of Error.

the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of said defendant involving the construction and application of the Constitution of the United States, all of which more fully appears in the assignment of errors filed herewith.

413

WHEREFORE said defendant prays that a writ of error may issue in his behalf out of the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record and proceedings in this cause duly authenticated may be sent to the Supreme Court of the United States; and that said writ of error may be made a supersedeas and that your petitioner be released on bail pending the final disposition of said writ of error.

Dated, New York, July 22, 1922.

BENJAMIN GITLOW,
Petitioner.

By WALTER NELLES
His Attorney
80 East 11th Street
New York City.

414

Order of Mr. Justice Brandeis Referring Application to the Full Court. 415

This application for writ of error was presented to me the 22nd day of July, 1922. Thereafter, while it was under consideration, the copies of the remittitur and order thereon were submitted under date of August 12, 1922. And on this 19th day of August, 1922, I refer the application to the full Court and direct that notice be given to the Attorney General of New York.

LOUIS D. BRANDEIS
*Associate Justice of the Supreme Court
of the United States*

416

Assignment of Errors.

SUPREME COURT
OF THE UNITED STATES.

BENJAMIN GITLOW, Plaintiff-in-Error, against THE PEOPLE OF THE STATE OF NEW YORK, Defendants-in-Error.	}
---	---

417

Now comes Benjamin Gitlow, defendant below, by Walter Nelles, his attorney, and files the following assignment of errors on which he will rely

in the prosecution of a writ of error to review the judgment and order of the Court of Appeals of the State of New York made and remitted to the Supreme Court of the State of New York on or about the 13th day of July, 1922, and made the judgment of said Supreme Court by an order entered and filed therein on or about the 21st day of July, 1922, which judgment affirms the judgment and sentence rendered and pronounced against said defendant in said Supreme Court of the State of New York on or about the 11th day of February, 1920:

FIRST: That the Trial Court erred in overruling the objection of the defendant's counsel to the taking of any evidence under the indictment upon the ground that the so-called Criminal Anarchy laws of the State of New York, under which the indictment purported to be framed, are in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States that no state shall deprive any person of life, liberty or property without due process of law.

SECOND: That said Court erred in denying the motion made by defendant's counsel at the close of the evidence that the Court instruct the jury to return a verdict of not guilty upon the grounds

stated in said objection to evidence.

THIRD: That said Court erred in denying the motion made by defendant's counsel at the close of the evidence that the Court dismiss the indictment and direct an acquittal upon the same ground and upon the further grounds that the indictment

Assignment of Errors.

421

does not charge an offense and the evidence does not show an offense.

FOURTH: That said Court erred in denying the motion in arrest of judgment made by defendant's counsel after verdict and before sentence upon the ground that the statute under which the indictment was framed is unconstitutional and void upon the ground heretofore stated and as legislation upon a subject solely and exclusively in the jurisdiction of Congress and not of the State Legislature.

FIFTH: That said Court erred in not holding that the conviction of the defendant deprived him of liberty without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States. 422

SIXTH: That said Court erred in denying the defendant's second request to charge, which was as follows:

"Advocating, advising or teaching the duty, necessity or propriety of overthrowing organized government by force or violence, or by any unlawful means, within the meaning of the criminal anarchy law, means the advocacy, teaching or advising, or the publication of articles advising, teaching or advocating some definite and immediate act or acts of force or violence, or of other definite and immediate unlawful acts directed towards the overthrowing of organized government." 423

SEVENTH: That said Court erred in denying the defendant's third request to charge, which was as follows:

"Any person, under the laws of the State of New York, has the right to advocate the complete change of the structure and policies of government, or to advocate the abolition of all government, unless that advocacy includes also the teaching or advising of the duty, necessity, or propriety of doing some immediate and definite act or acts which constitute force, violence, or other unlawful means."

EIGHTH: That said Court erred in denying the defendant's eighth request to charge, which was as follows:

"Unless you find that the defendant intentionally put into writing language reasonably and ordinarily calculated to incite certain persons to acts of force or violence, or to other acts of unlawfulness, with the object of overthrowing organized government, you must find the defendant not guilty under the first count of the indictment."

NINTH: That said Court erred in denying the defendant's ninth request to charge, which was as follows:

"Unless you find that the defendant intentionally published or issued, or circulated with knowledge of the nature of the publication, language reasonably and ordinarily cal-

Assignment of Errors.

427

culated to incite certain persons to acts of force or violence or to other acts of unlawfulness, with the object of overthrowing organized government, you must find the defendant not guilty under the second count of the indictment."

TENTH: That said Court erred in charging the jury as follows:

"In this organized government there is a lawful means to overthrow it, the means provided in the constitution, the means recognized by law, the means which do not in any way violate the law of the land. If means advocated, advised or taught for the overthrow of organized government are other than those recognized by law, they are unlawful, and under the statute of this state, the teaching of such a doctrine is a crime." 428

ELEVENTH: That said Court committed numerous other errors to the prejudice of the defendant.

WHEREFORE the defendant prays that the judgment and sentence herein and the judgments affirming the same be reversed and held for naught.

Dated, New York, August 10, 1922.

BENJAMIN GITLOW, 429
Plaintiff-in-Error

By WALTER NELLES,
his attorney
80 E. 11th Street,
New York