

that the agency adequately defined or presented a consistent plan to the respondent. The agency's plan, as clearly demonstrated in the record, was to return Marlon to the respondent if she made some progress in her parental and family planning skills, if she showed more interest in and responsibility toward Marlon in her weekly visits, and if she obtained a crib so that he could stay overnight with respondent and thus gradually be familiarized with respondent and her family.

All concur.



121 A.D.2d 324

**In re Jerome H. BARR, et al., as
Executors of Will of Milton
Kaufman, etc., Petitioners,**

**For the Dissolution of Puccini
Clothes, Ltd.**

**Lee Feltman, etc.,
Appellant-Respondent,**

and

George Sassower, Respondent-Appellant.

Supreme Court, Appellate Division,
First Department.

June 24, 1986.

Receiver's motion to confirm official referee's report and punish respondent for contempt was denied by the Supreme Court, New York County, Martin Evans, J., and appeal was taken. The Supreme Court, Appellate Division, held that special term abused its discretion by failing to impose sanction for contempt.

Modified and affirmed.

Contempt §39

Special term abused discretion by failing to impose sanction for contempt in light of continuing contempts and respondent's stated intention to continue to do so.

D.F. Schneider, New York City, for appellant-respondent.

George Sassower, pro se.

Before KUPFERMAN, J.P., and FEIN,
LYNCH, MILONAS and ELLERIN, JJ.

MEMORANDUM DECISION.

Order of Supreme Court, New York County (Martin Evans, J.), entered January 21, 1986, denying renewal of the receiver's motion to confirm the Official Referee's report and to punish respondent Sassower for contempt is unanimously reversed, on the law and the facts, without costs, renewal is granted and upon renewal the underlying order of November 22, 1985 is modified only to the extent of imposing a sentence of thirty days incarceration and directing that a warrant of commitment issue forthwith, and is otherwise affirmed.

The appeal from order of the same court and justice, entered November 22, 1985, confirming the Official Referee's report to the extent that it found respondent guilty of contempt but denying (with leave to renew) the Referee's recommendation for imposition of a jail sentence and fines, is dismissed as subsumed in the appeal from the order denying renewal.

We agree with the Justice at Special Term that the report of the Referee should be confirmed. That report finds George Sassower guilty of 63 counts of criminal contempt in violating and continuing to violate an order of disqualification. However, in our opinion Special Term abused its discretion by its failure to impose a sanction in the light of the continuing contempts and respondent's stated intention to continue to do so.

Accordingly, we have directed that respondent be incarcerated for thirty days,

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and that a warrant of commitment issue forthwith.



121 A.D.2d 326

The PEOPLE of the State of New York, Respondent,

v.

Louis BROWN, a/k/a Lewis Brown, Defendant-Appellant.

Supreme Court, Appellate Division, First Department.

June 24, 1986.

Defendant was convicted by jury in the Supreme Court, New York County, Francis N. Pecora, J., of grand larceny in the third degree, and defendant appealed. The Supreme Court, Appellate Division, held that failure to inform both counsel before summation that court intended to submit petit larceny as lesser included offense was plain error.

Reversed and remanded for new trial.

Criminal Law §804(9), 1038.1(6)

Failure of trial court to inform both counsel before summation that court intended to submit petit larceny as lesser included offense was plain error in trial for grand larceny in the third degree, even though jury convicted defendant of grand larceny in the third degree, particularly where issue of whether defendant had committed grand larceny, petit larceny, or neither offense, involved conclusions to be required that jury resolve conflict between testimony of People's witnesses and testimony of defendant, and trial court compounded error by indicating to jury that if they believed defendant's testimony, defendant would nevertheless be guilty of petit larceny.

J.G. Martin, New York City, for respondent.

H. Grun, New York City, for defendant-appellant.

Before SULLIVAN, J.P., and CARRO, FEIN, MILONAS and ELLERIN, JJ.

MEMORANDUM DECISION.

Judgment, Supreme Court, New York County (Francis N. Pecora, J.), rendered October 4, 1984, convicting defendant after a jury trial of grand larceny in the third degree, and sentencing him as a predicate felon to an indeterminate term of from 2 to 4 years imprisonment, is unanimously reversed, on the law, and the matter is remanded for a new trial.

Defendant was charged with grand larceny in the third degree arising as a result of his actions in New York County on April 5, 1984 when he allegedly stole a sum of money from Maureen DeRidder and her friend Marcella Smith. Both women testified that on April 5, 1984, at approximately 5 p.m., while they were standing in front of 30 Rockefeller Plaza planning to attend a concert that evening at Radio City Music Hall, DeRidder took two \$20 bills out of her purse and handed the money to Smith to pay her back for purchasing two tickets for the concert. Defendant, who was unknown to either DeRidder or Smith, grabbed the money from DeRidder's hands, ran through a store and out to the street and through a parking lot. Both women and a group of bystanders gave chase. Police Officer Kamin testified that while he was on patrol, he noticed the crowd and joined in pursuit of defendant whom he apprehended in the doorway of a shoe store. During the officer's attempt to restrain defendant, Smith took her \$40 from defendant's hand. Kamin handcuffed defendant, placed him under arrest and took him to the precinct after obtaining the details of the theft from DeRidder and Smith.

Kamin further testified that defendant told him that he was scalping tickets that