

Epton's Conviction In '64 Riots Stands

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WASHINGTON, Jan. 22 — The Supreme Court refused today to hear the appeal of William Epton, the leader of the Harlem Progressive Labor Movement, who was convicted of encouraging Negroes to riot in Harlem in July, 1964.

In a brief, unsigned order the Court dismissed Epton's appeal "for want of a substantial Federal question."

Many lawyers had thought the appeal might become the vehicle for Supreme Court consideration of the free speech problems posed by prosecutions against agitators who operate in the tinderbox conditions of urban "long, hot summers."

Epton, who was sentenced to one year in prison, had con-

Continued on Page 21, Column 2

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High Court Refuses to Consider Epton Appeal in '64 Riots Case

Continued From Page 1, Col. 2

tended that his convictions on charges of conspiring to commit criminal anarchy, advocating criminal anarchy and conspiring to riot violated his right to freedom of speech guaranteed by the First Amendment.

He protested that he had been convicted solely on the basis of speeches and pamphlets he had used to protest the plight of Harlem's Negroes.

Douglas Issues Dissent

Justice William O. Douglas agreed in a dissenting opinion that the case raised questions of free speech that the Supreme Court should settle and that the Court should have granted the appeal.

One of the key undecided points posed by such prosecutions, Justice Douglas said, was whether a person can be convicted of conspiracy without proof that he took some overt act other than making speeches, issuing pamphlets or other forms of expression.

If so, Justice Douglas said, "the use of constitutionally protected activities to provide the overt acts for conspiracy convictions might well stifle dissent and cool the fervor of those with whom society does not agree at the moment."

He also called on the Court to decide if New York's 67-year-old law on criminal anarchy violated the First Amendment. The law, which is similar to the Federal Smith Act, which has been used to convict top Communist party leaders, makes it a crime to conspire to advocate "by word of mouth or otherwise" the overthrow of organized government by force or violence.

The Epton conviction marked the first time that the law had been invoked since 1919, when it was used to jail Benjamin Gitlow, a Communist leader, for distributing copies of a Socialist manifesto. At that time, the Supreme Court upheld the New York law, over the dissents of Justices Oliver Wendell Holmes and Louis D. Brandeis, who said there was no clear and present danger that Gitlow's publications would cause the Government to fall. Yesterday Justice Douglas said the Court should consider again if the law violates the First Amendment.

Justice Potter Stewart agreed in a concurring opinion that the Supreme Court should resolve the two questions raised in the Douglas dissent.

The conviction grew out of the race riot that was triggered when a white police lieutenant, Thomas R. Gilligan, shot and killed a 15-year-old Negro, James Powell, on July 16, 1964. Lieutenant Gilligan was later cleared of any wrongdoing in



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William Epton

the slaying, which grew out of a street disturbance.

According to the evidence at the trial, Epton attempted to keep the riots going by making inflammatory sidewalk speeches. In one, which was secretly recorded by the police, he said: "We're going to have to kill a lot of cops, a lot of the judges and we'll have to go up against their Army." He also distributed handbills bearing Lieutenant Gilligan's picture and large black letters that read: "Wanted for Murder."

The evidence that Epton directed riot gangs and gave instructions in firebombing was sketchy, and a fourth charge against him for actually taking part in the riot was dismissed by the trial judge.

Epton, a 35-year-old electrical worker, has been free on \$25,000 bail pending the appeal. His conviction was upheld last May by a 5 to 1 vote of the New York Court of Appeals.

He is vice president of the Progressive Labor Movement and chairman of its Harlem branch. The movement is a small Marxist group that usually follows the Chinese Communist line.

Epton 'Not Surprised'

Epton said last night that he "was not at all surprised, in any way, at the Court's decision, since it has to carry out the dictates of its master, the Government, which is preparing to intimidate and attack the Afro-American people on every front."

He said the Court has not yet ruled on another appeal he has filed, in which he claims the grand jury that indicted him was illegally impanelled "because grand juries in New York State, like those in the South, systematically exclude black people."