

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
v.)
)
WEN FENG CHEN,)
)
Defendant.)
_____)

Criminal Case No. 99-0339

ORDER

I. PROCEDURAL BACKGROUND

This matter came before the court on March 29, 2000 in Courtroom 223A at 9:00 a.m. on Defendant's motion for a jury trial. Assistant Attorney General Marvin J. Williams, Esq., appeared on behalf of the Commonwealth. Chief Public Defender Masood Karimipour, Esq., appeared on behalf of the Defendant, Wen Feng Chen. The court, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision.

II. FACTS

On July 16, 1999, the Commonwealth filed an Information charging Defendant with two counts of Promoting Prostitution in the second degree, in violation of 6 CMC § 1344(a) and one count of Prostitution Loitering, in violation of 6 CMC § 1342.

FOR PUBLICATION

[p. 2] On March 7, 2000, Defendant filed the present motion for a jury trial asserting that the \$2,000 mandatory fee assessment imposed by 6 CMC § 1346(e)(2) is punitive in nature and is actually a “fine” which then entitles Defendant to demand a jury trial pursuant to 7 CMC § 3101(a).

III. ISSUE

Whether the court should grant Defendant’s motion for a jury trial on the ground that the \$2,000 mandatory fee assessment imposed by 6 CMC § 1346(e)(2) is punitive in nature and is actually a “fine” which then entitles Defendant to demand a jury trial pursuant to 7 CMC § 3101(a).

IV. ANALYSIS

A. Statutory Right to Jury Trial.

The right to a trial by jury in the Commonwealth is statutory, not constitutional. *See* N.M.I. Const. art. I, § 8. The statutory right to a jury trial in a criminal matter is set forth at 7 CMC § 3101(a), which states:

Any person accused by information of committing a felony punishable by more than five years imprisonment or by more than \$2,000 fine, or both, shall be entitled to a trial by a jury of six persons.

7 CMC § 3101(a). The limited right to a jury trial set forth at 7 CMC § 3101(a) has withstood constitutional scrutiny. *See Commonwealth v. Atalig*, 723 F.2d 682, 690 (9th Cir. 1984), *cert. denied*, 467 U.S. 1244, 104 S. Ct. 3518, 82 L. Ed. 2d 826 (1984), *see also Commonwealth v. Peters*, 1 N.M.I. 468, 471-74 (1991) (The fact that the Commonwealth is no longer a trust territory does not affect the reasoning set forth in *Atalig*).

Here, Defendant is charged with two counts of Promoting Prostitution in the second degree, in violation of 6 CMC § 1344(a) and one count of Prostitution Loitering, in violation of 6 CMC § 1342. Pursuant to 6 CMC § 1346(c):

Every person who is found guilty of promoting prostitution in the second degree . . . shall be subject to imprisonment for no more than five years or a fine of not more than \$1,000 or both, for each violation.

6 CMC § 1346(c), as amended by Public Law 11-19, § 6. In addition, pursuant to 6 CMC [p. 3] § 1346(e)(2):

In addition to other penalties set forth in this Article, a person who is either convicted or given a deferred sentence as a result of an arrest for promoting prostitution . . . shall be assessed a fee of two thousand dollars (\$2,000).

6 CMC § 1346(e)(2), as amended by Public Law 11-19, § 6.

Defendant contends that he is entitled to a jury trial because the \$2,000 mandatory fee assessment imposed by 6 CMC § 1346(e)(2) is punitive in nature and is actually a “fine” which when added to the \$1,000 fine set forth at 6 CMC § 1346(c), exceeds the “fine” required to be entitled to a jury trial under 7 CMC § 3101(a).

B. Characterization of the \$2,000 Mandatory Fee Assessment.

In order for Defendant to prevail, the \$2,000 mandatory fee assessment imposed by 6 CMC § 1346(e)(2) must be deemed the imposition of a “fine” as contemplated by 7 CMC § 3101(a). Neither “fee” nor “fine” is defined by the Commonwealth Code or by Commonwealth case law. As such, the court turns to statutory construction and to interpretations of a federal criminal statute imposing a similar mandatory fee assessment.

1. Statutory Construction.

“The question whether a particular statutorily defined penalty is civil or criminal is a matter of statutory construction.” *One Lot Emerald Cut Stones v. United States*, 409 U.S. 232, 237, 93 S.Ct. 489, 493, 34 L. Ed.2d 438 (1972). A “fine” is a pecuniary form of punishment or sum of money exacted from a person guilty of an offense.” *State v. Sheaves*, 747 (Ariz. Ct. App. 1987), citing 36A C.J.S. Fines § 1 (1961), *see also* Blacks Law Dictionary, at 437 (6th ed. 1990) (A “fine” is a pecuniary punishment or penalty imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor). A “fee,” however, is a charge fixed by law for services of public officers or for use of a privilege under control of government. Blacks Law Dictionary, at 426 (6th ed. 1990). Here, the mandatory fee assessment fits the definition of a “fine” as it is a sum of money exacted from persons convicted of prostitution related offenses. *See* 6 CMC §

1346(e). Only those convicted of [p. 4] prostitution related offenses are subjected to the assessment, it is not a charge imposed on the general public or on a few citizens for a service provided to them by the government. The court finds, therefore, that the imposition of the mandatory fee assessment is the imposition of a “fine” as contemplated by 7 CMC § 3101(a).

2. Federal Interpretations of Similar Mandatory Fee Assessments.

Further support for the conclusion that the mandatory fee assessment imposed by 6 CMC § 1346(e)(2) is punitive in nature and is a “fine” is found in federal interpretations of a similar statute, the Special Assessment on Convicted Persons Bill, codified at 18 U.S.C. § 3013, which imposes a special assessment against any individual convicted in federal court of a felony, misdemeanor or infraction.

In *United States v. Smith*, the Ninth Circuit examined 18 U.S.C. § 3013 and found that the special assessments were a form of punishment. *United States v. Smith*, 818 F.2d 687, 690 (9th Cir. 1987). The court concluded that despite the revenue raising purposes of the statute, “[a] punitive measure designed to raise revenue is still a punitive measure.” *Id.*

In *United States v. King*, the Tenth Circuit examined 18 U.S.C. § 3013, and found that Congress intended to treat the special assessments as “penalties” and that the assessments were “punitive” in nature. *See United States v. King*, 891 F.2d 780, 783 (10th Cir. 1989), *see also United States v. Mayberry*, 774 F.2d 1018 (10th Cir. 1985).

The court finds the reasoning of the Ninth and Tenth Circuits to be compelling. As such, the court adopts the reasoning of the *Smith* and *King* decisions and finds that the \$2,000 mandatory fee assessment imposed by 6 CMC § 1367(e)(2), like the assessments imposed by 18 U.S.C. § 3013, are punitive in nature and constitute a “fine” as contemplated by 7 CMC § 3101(a).

Defendant, therefore, is entitled to a jury trial because the \$2,000 mandatory fee assessment imposed by 6 CMC § 1346(e)(2), combined with the \$1,000 fine imposed by 6 CMC § 1346(c), exceeds the \$2,000 threshold requirement of 7 CMC § 3101(a). [p. 5]

V. CONCLUSION

For the foregoing reasons, the court finds that the \$2,000 mandatory assessment fee imposed by 6 CMC § 1646(e)(2) is punitive in nature and is a “fine.” Defendant, therefore, faces a cumulative fine in excess of the \$2,000 threshold requirement of 7 CMC § 3101(a) and is entitled to demand a jury trial. As such, Defendant motion for a jury trial is hereby **GRANTED**.

So ORDERED this 26 day of April, 2000.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge