



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

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

IN RE THE MATTER OF)	FCD-FP CIVIL ACTION NO. 11-0153
)	FCD-FP CIVIL ACTION NO. 10-0069
ROBERT JAKE PALACIOS,)	
)	
Petitioner.)	ORDER DENYING PETITIONER'S
)	WRIT OF HABEAS CORPUS
_____)	

I. INTRODUCTION

THIS MATTER came before the court on the Writ of Habeas Corpus filed by Petitioner Robert Jake Palacios (“Petitioner” or “Palacios”). Petitioner is represented by Matthew Meyer, Assistant Public Defender.

The Court notes procedural flaws with the filing of the writ in that it is not filed as an original action and is not directed at the person who holds the prisoner in custody. The writ is incorrectly captioned to reflect the nature of the habeas corpus proceeding and the Court has amended the caption referring to Palacios as Petitioner to better reflect the nature of these proceedings.

Despite the procedural flaws with Petitioner’s writ, the Court, having read the written submission from Petitioner **DENIES** the writ based on a reasoned analysis of its merits.

II. FACTUAL AND PROCEDURAL BACKGROUND

On April 20, 2011, an Order of Protection (“OP”) issued from the Court that was personally

1 served on Petitioner restraining him from molesting, attacking, striking, threatening, sexually
2 assaulting, battering or disturbing the peace of the Desiree B. Masga (“Masga”) and her four-year-old
3 son.

4 Petitioner continued to engage in acts in violation of the OP, and thus, an Order to Show Cause
5 hearing was held on November 16, 2011. The Court, however, noted that the proceedings could result
6 in jail time, and therefore, ordered and noticed to the Petitioner that the hearing will be rescheduled
7 allowing him to be represented by counsel. Mr. Meyer was, thus, appointed as counsel and a new
8 hearing was noticed and held on November 23, 2011. Petitioner appeared in custody, as he was being
9 held on pending criminal charges, and was represented by Mr. Meyer as appointed counsel. At the
10 hearing, the Court heard testimony from Masga regarding the violations of the OP which included
11 numerous harassment and threats to the life and safety of herself and child. Petitioner did not present
12 any evidence nor objections at the hearing.

13 On November 28, 2011, the Court issued its Order Re: Contempt, finding beyond a reasonable
14 doubt that Petitioner violated the OP through his repeated harassment of Masga and her child and the
15 repeated disrespect towards the Court by failing to appear. Through said Order, the Court sentenced
16 Petitioner to a term of four months imprisonment on criminal contempt charges.

17 On February 1, 2012, Petitioner filed a Writ of Habeas Corpus.

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19 **III. DISCUSSION**

20 Petitioner has filed a Writ of Habeas Corpus asking for the sentence to be terminated
21 immediately. Petitioner agrees the sentence imposed is criminal in nature and therefore requires the
22 strictures of due process; however, Petitioner argues due process was not afforded and thus the sentence
23 is illegal.

24 **A. THE WRIT OF HABEAS CORPUS IS PROCEDURALLY FLAWED**

25 "[H]abeas corpus [is] an original . . . civil remedy for the enforcement of the right to personal
26 liberty, rather than . . . a stage of the state criminal proceedings . . . or as an appeal therefrom."
27 *Woodford v. Ngo*, 548 U.S. 81, 91 (2006) (quoting *Fay v. Noia*, 372 U.S. 391, 423-424 (1963)). The
28 essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and the

1 traditional function of the writ is to secure release from illegal custody. *Goto v. Lane*, 265 U.S. 393
2 (1924). A writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person
3 who holds the prisoner in what is alleged to be unlawful custody. *Braden v. 30th Judicial Circuit Court*
4 *of Kentucky*, 410 U.S. 484, 494 (1973).

5 The current writ is procedurally flawed in two respects. First, the writ is not filed as an original
6 action, but is filed as a continuation of the family court cases 11-0153 and 10-0069. Second, the writ
7 is not directed at the person who holds the prisoner in custody, and therefore, there is no Respondent
8 to the writ. Petitioner's writ, in fact, makes no mention of the persons who hold him. The writ is
9 captioned by Petitioner as "Commonwealth of the Northern Mariana Islands, Plaintiff, v. Robert Jake
10 Palacios, Defendant." The Petitioner's caption as submitted indicates a criminal case which cannot be
11 commenced by Petitioner. As a result of these procedural errors, the Court has amended the caption
12 referring to Palacios as Petitioner to better reflect the nature of the habeas corpus proceedings.

13 The Court suggests Petitioner obtain a better understanding of the purpose and weight behind
14 a habeas corpus writ before filing any such document in the future. Despite Petitioner's procedural
15 flaws, the Court examines the merits of the writ due to strong policy regarding freedom, liberty and
16 protecting the right to be free from unlawful incarceration. *See e.g. Harris v. Nelson*, 394 U.S. 286
17 (1969).

18 **B. NOTWITHSTANDING THE PROCEDURAL FLAWS THE WRIT IS DENIED ON ITS MERITS**

19 The Court has the power to grant writs of habeas corpus pursuant to 6 CMC § 7101 for persons
20 unlawfully imprisoned or restrained. Here, Petitioner was imprisoned as a result of criminal contempt
21 charges stemming from the violation of the OP. Criminal contempt is governed by the Commonwealth
22 Rules of Criminal Procedure Rule 42. Where, as here, the conduct constituting the contempt did not
23 occur before the judge the proceedings are governed by Rule 42(b) which require disposition upon
24 notice and hearing. Rule 42(b) provides in relevant part:

25 The notice shall state the time and place of hearing, allowing a reasonable
26 time for the preparation of the defense, and shall state the essential facts
27 constituting the criminal contempt charged and describe it as such. ***The***
notice may be given orally by the judge in open court in the presence of the
28 ***defendant*** or, on application of the government attorney or an attorney
appointed by the court for that purpose, ***by an order to show cause*** or an
order of arrest.

1 NMI R. Crim. P. 42(b) (emphasis added).

2 Here, Petitioner was given notice orally at the hearing on November 16, 2011. At the hearing
3 the court stated - because a finding of contempt by the court in this matter could result in possible jail
4 time, Petitioner is entitled to have his attorney present - to which Petitioner informed the Court that Mr.
5 Meyer was representing him in his criminal matters. The Court appointed Mr. Meyer to represent
6 Petitioner and set a subsequent Order to Show Cause hearing for November 23, 2011. The Court also
7 effected further notice to Petitioner of the November 23, 2011 hearing.

8 At the November 23, 2011 hearing, Petitioner was represented by Mr. Meyer as appointed
9 counsel. Masga presented evidence to the Court regarding Petitioner's violations of the OP. Petitioner
10 presented no evidence and defense counsel did not object, protest, or ask for more time to prepare a
11 defense. The Court found, beyond a reasonable doubt, that Petitioner violated the OP. The Court,
12 therefore, found Petitioner in criminal contempt and issued the Order Re: Contempt which sentenced
13 Petitioner to four months in custody.

14 Petitioner was given "notice, an opportunity to respond, and a hearing." *See Commonwealth*
15 *of the Northern Mariana Islands v. Borja*, 3 NMI 156, 169 (1992). Petitioner chose to present no
16 defense at his hearing, and was found to be in criminal contempt beyond a reasonable doubt by the
17 Court.

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19 **IV. CONCLUSION**

20 Consistent with the foregoing opinion Petitioner's Writ of Habeas Corpus is **DENIED**.

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22 So ORDERED this 8th day of February, 2012,

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David A. Wiseman, Associate Judge

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