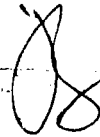


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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN)	CRIMINAL CASE NO. 92-184
MARIANA ISLANDS,)	
Plaintiff,)	
)	
vs.)	
)	
JULIO M. SANGALANG,)	
Defendant.)	
_____)	
)	
IN RE THE MATTER OF)	ORDER AND OPINION
PAMELA O'LEARY TOWER)	
_____)	

Defense counsel, Deputy Public Defender Pamela O'Leary Tower, moves the Court for reconsideration of the Court's order holding her in contempt.

I. FACTUAL BACKGROUND

The contempt charge arose out of Ms. Tower's representation of the Defendant, Julio M. Sangalang, in the above-named case. The Defendant was charged with unlawful possession of methamphetamine on or about November 13, 1992. On December 2, 1992, the Government sent the methamphetamine to the Guam Crime Laboratory to be analyzed. The lab, however, did not analyze the evidence until March 5, 1993.

On the morning of March 9, 1993, the Defendant received the results of the analysis. On the following day, the Defendant obtained a complete chain of custody for the methamphetamine.

II. PROCEDURAL HISTORY

Pursuant to an order of the court, the trial of the Defendant in the above-captioned case was scheduled to begin on March 11, 1993. On that date, Ms. Tower appeared as defense counsel.

At the outset of the trial, Ms. Tower moved to dismiss the case with prejudice or alternatively to suppress the methamphetamine for two reasons. First, the Defendant argued that the Government violated his constitutional right to speedy trial because of the four month delay between the time the Government seized the methamphetamine and the time the Defense Counsel received the results of the lab report. Given that the Defendant did not receive the results until two days before the trial was scheduled to commence, he contended that he had an insufficient amount of time to conduct an independent analysis of the methamphetamine. Second, the Defendant claimed that nearly seventy-five percent of the methamphetamine that the C.N.M.I. Government seized was unaccounted for.

The Prosecution explained the delay in the following manner. First, the trial had to be re-scheduled because of a conflict. Second, given that the Commonwealth does not have its own crime lab, the Government must depend on Guam to conduct analyses of

evidence seized in the Commonwealth.¹ Third, the Prosecution claimed that the Defendant cannot show that he was prejudiced by the delay; he can cross-examine Government witnesses, and if he was concerned about the delay, he could have filed a motion to compel discovery, which the Defendant did not do.

Ms. Tower then asked if she could approach the bench. She made an ex parte motion for the appointment of an independent expert to test the methamphetamine and to weigh the evidence. In making this motion, Ms. Tower virtually threw the paper on which the motion was written at the bench.

The Court denied the Defendant's motions to dismiss or alternatively to suppress the evidence. The Court reasoned that the defense could cross-examine the officers who confiscated the evidence and the lab technician in an effort to explain the reason why the weight of the evidence had significantly decreased. The Court explained that the Defendant had two alternatives: (1) the case could be continued in order to enable the defense to hire an expert to analyze the evidence; or (2) the Government could call its first witness and proceed with the trial as scheduled.

Ms. Tower contended that her client was entitled to an independent analysis under the law. She claimed that the continuance should be by court order or it should be "credited against the government."

When the Court asked defense counsel, point blank, whether the

¹ The Territory of Guam gives priority to its own drug cases.

Defendant wanted a continuance, she objected, stating that she was being forced into a continuance. In light of Ms. Tower's objection to a continuance, the Court ruled against the Defendant's ex parte motion for an independent analysis.² At this juncture, Ms. Tower and the Court engaged in the following colloquy:³

THE COURT: If you don't want a continuance, the government is ready. We'll proceed to trial.

MS. TOWER: Without ruling and giving me an independent hearing on my ex parte motion, Your Honor?

THE COURT: Ex parte motion denied. Untimely. Not on an eve of trial.

MS. TOWER: I provided it as soon as possible, as soon as I had the lab results. I provided it this morning to the court. I did all the calculations yesterday, Your Honor.

THE COURT: Objection noted. Ex parte motion denied.

. . . .

MS. TOWER: Your Honor, are you saying that the court won't appoint independent expert to do the analysis?

THE COURT: I don't know yet. That's the next question whether I'm going to grant it or not. But at this time, the ex parte motion is denied. It doesn't mean that you cannot bring it back. All I'm asking at this time is do you -- in view of the time frame that you received the analysis and the chain of custody, you're entitled to a reasonable continuance....

² Given that the Defendant brought the motion on the *day of the trial*, the Court found the motion to be untimely. The Defendant should have brought this motion immediately after the results from the lab were received, and should not have waited until the trial was scheduled to begin. The Court stated that she could move, at a later time, for an independent analysis.

³ For a full text of the pertinent portions of the transcript, see the Appendix to this decision.

. . . .

RECESS

MS. TOWER: Thank you, Your Honor. With all due respect to this court's ruling and conditions placed upon defense counsel, at this time, Your Honor, *I must respectfully refuse to either continue this case or try it.*⁴

THE COURT: Anything further?

MS. TOWER: No, Your Honor.

THE COURT: Prosecution?

MR. PIXLEY: The government will further proceed, Your Honor.

THE COURT: We shall then proceed. Opening statement, please.

MR. PIXLEY: Yes, Your Honor. Thank you.

MS. TOWER: With all due respect, Your Honor, defendant is entitled to representation of counsel. *I've just informed the court that I will not proceed to trial today. Nor will I waive his speedy trial rights. I am not going to go forward.*

THE COURT: I'm confused. Let me get it straight.

MR. PIXLEY: Your Honor, I believe the Court should find Ms. Tower in contempt of court.

THE COURT: What is your position, ma'am?

MS. TOWER: My position is that my client is being denied due process by the failure of the government to expedite or in any reasonable time which Your Honor says four months is not reasonable for me....

THE COURT: No, I'm not saying -- I said reasonable time.

⁴ Given that the contempt power is intended to punish disobedience of court orders, the politeness of the contemnor is irrelevant. *Commonwealth of Pa. v. Local Union 542, Int'l Union of Operating Eng'rs*, 552 F.2d 498, 503 (3d Cir. 1977).

MS. TOWER: I'm not going to -- well, Your Honor, ask me to -- was to seek a continuance, a reasonable continuance and waives (sic) speedy trial. I've said it. Had (sic) to be a court continuance or credited against the government. I will not continue this case unless the continuance is credited against the government or a court continuance. . . . And I am not gonna try this case today because it's per se ineffective. . . .

. . . .

THE COURT: I've just denied the ex parte motion. What I said is that it could be brought in open court.

MS. TOWER: Then it's your position that you're gonna deny an ex parte motion.

. . . .

THE COURT: It does not preclude you to argue . . . that if there is a motion for a continuance before the court....

MS. TOWER: It's not, I am not moving for a continuance, Your Honor.

THE COURT: You can't have your cake and eat it too, ma'am.

MS. TOWER: Then I refuse to try this case with all due respect, Your Honor.

THE COURT: Court finds you in contempt. You're sentenced to four hours in custody. Before the police takes her over to jail, I'll give her 15 minutes to deliberate. Court is in recess for minutes.

RECESS

After the recess, the Court explained that Ms. Tower should have made an ex parte motion when she received the analysis and the chain of custody. Additionally, the Court stated that she could have made the motion at 7:30 a.m., on the morning of the trial. Although the Court had denied the motion at that time, the Court re-emphasized that the Defendant was not precluded from bringing

the motion again after the Court addressed the issue of whether she wanted a continuance. Finally, the Court explained that the proper procedure for having an adverse ruling changed was to seek a stay of the court's ruling and appeal the matter.⁵

Public Defender Daniel DeRienzo appeared on behalf of Ms. Tower and requested that the Court schedule a hearing for Ms. Tower's contempt charge.⁶ The Court granted his request.

On March 12, 1993, the Court conducted the hearing⁷ and treated Mr. DeRienzo's request for a hearing as a motion to reconsider the contempt order. Following oral argument, the matter was taken under advisement.

III. ISSUE PRESENTED

The Court will address the issue of whether Deputy Public Defender Pam Tower is guilty of criminal contempt under 6 C.M.C. § 3307.⁸

⁵ As a result of Ms. Tower's conduct, the trial was continued.

⁶ The Court agreed to suspend Ms. Tower's sentence until after the hearing.

⁷ At the outset of the hearing, the Court explained it was proceeding pursuant to Rule 42(a) of the Commonwealth Rules of Criminal Procedure.

⁸ Ms. Tower also raised the issue of whether 6 C.M.C. § 3307 was void for vagueness and thus unconstitutional. As a general rule, the Court will not rule on a constitutional issue where the matter can be resolved on non-constitutional grounds. *Marianas Public Land Trust v. Marianas Public Land Corp.*, 1 C.R. 974, 978 (N.M.I. Tr. Ct. 1984). In light of the holding in the instant case, the Court will not address the constitutional argument raised by Ms. Tower.

IV. ANALYSIS

Criminal contempt is defined as doing that which is prohibited.⁹ *Hicks v. Feiock*, 485 U.S. 624, 632 (1988). The ultimate goal of a criminal contempt proceeding is to "vindicate the authority of the court and to deter similar derelictions." *U.S. v. United Mine Workers of Am.*, 330 U.S. 258, 302 (1947); see also *Lucky Dev. Co., Ltd. v. Tokai*, Appeal Nos. 91-023, 91-024, 01-026, 91-027, 91-028, slip op. at 13 (N.M.I. 1992) (citing *C.N.M.I. v. Borja*, Appeal No. 91-010, slip op. at 7 (N.M.I. 1992)). As the United States Supreme Court has explained,

the underlying concern that gave rise to the contempt power was not . . . merely the disruption of court proceedings. Rather, it was disobedience to the orders of the judiciary, regardless of whether such disobedience interfered with the conduct of trial.

Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 798 (1987).

Section 3307 of Title Six of the Commonwealth Code gives the courts of the Commonwealth the power to punish contemptuous conduct.¹⁰ 6 C.M.C. § 3307. Section 3307 states that:

⁹ Criminal contempt is characterized by the imposition of an unconditional penalty. *C.N.M.I. v. Borja*, Appeal No. 91-010, slip op. at 7 (N.M.I. 1992) (citing *Hicks v. Feiock*, 108 S.Ct. 1423, 1429 (1988)). A criminal contempt proceeding is used where the court intends to punish the contemnor. *Borja, supra*, slip op. at 7.

¹⁰ The Commonwealth Rules of Criminal Procedure set forth the procedural requirements for criminal contempt proceedings. Com. R. Crim. Pro. 42. Rule 42(a) provides:

(a) Summary Disposition: A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The

Every person who unlawfully, knowingly, and willfully interferes directly with the operation and function of a court, *by open defiance of an order*, in or near the courtroom; or who resists or refuses or fails to comply with a *lawful order* of the court; . . . is guilty of criminal contempt and upon conviction thereof may be imprisoned for a period of not more than six months, or be fined not more than \$100, or both.

6 C.M.C. § 3307 (emphasis added).

The statute identifies specific acts which give rise to criminal contempt. The first two types of acts identified in the statute require the issuance of an "order" of a court.¹¹ *Id.* An "order" is defined as "a mandate; precept; command or direction authoritatively given; rule or regulation." BLACK'S LAW DICTIONARY 988 (5th ed. 1979).

The Ninth Circuit has analyzed a provision of the federal criminal contempt statute¹² which similarly requires the issuance

order of contempt shall recite the facts and shall be signed by the judge and entered on record.

Com. R. Crim. Pro. 42(a).

Summary disposition is proper where the need to protect the judicial institution necessitates immediate action. 3 Charles Alan Wright, *Federal Practice and Procedure*, § 707, at 847 (2d ed. 1982) [hereinafter *Federal Practice and Procedure*]. This type of proceeding is thus limited to exceptional circumstances. *Harris v. United States*, 86 S.Ct. 352 (1965); *Federal Practice and Procedure*, § 707, at 836.

¹¹ The analysis of this statute is limited to these provisions because the other provisions are not applicable to the instant case.

¹² In pertinent part, 18 U.S.C. § 401 provides that "[a] court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none others, as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." 18 U.S.C. § 401(3).

of an order. *United States v. Rylander*, 714 F.2d 996 (9th Cir. 1983). The court stated that the court order must be clear and definite. *Id.* at 1001; see also *United States v. Powers*, 629 F.2d 619, 627 (9th Cir. 1980).

The Court has carefully reviewed the transcript of the proceedings dated March 11, 1993. The Court finds that the transcript does not reveal a clear and definite order which directed Ms. Tower to proceed or to move for a continuance.¹³ See, e.g., *In Re McDonald*, 819 F.2d 1020, 1024 (11th Cir. 1987) (contempt upheld where court ordered attorney *not* to pursue certain line of questioning during cross-examination); *Com. of Pa.*, 552 F.2d. at 509 (defense counsel found guilty of criminal contempt where he insisted upon stating grounds for his objection even though court repeatedly warned him not to do so); see also *United States v. Baldwin*, 770 F.2d. 1550 (11th Cir. 1985), *cert. denied*, 475 U.S. 1120 (1986).

Although Ms. Tower's conduct fell short of violating 6 C.M.C. § 3307, the Court is compelled to comment on her behavior in the courtroom. The transcript does not sufficiently reflect her demeanor and the extent of her hostility towards the court and opposing counsel¹⁴ on March 11, 1993. The ethical obligation to

¹³ The holding is limited to the facts of the case. Further, the Court warns that it will not be so formalistic as to require the use of the words, "you are hereby ordered," in the colloquy. *Re Grand Jury Proceedings, Ortloff*, 708 F.2d 1455, 1457 (9th Cir. 1983).

¹⁴ Ms. Tower made a motion to dismiss for prosecutorial misconduct and then shortly thereafter withdrew it. This Court warns that it considers such allegations to be extremely serious.

zealously represent clients certainly does not require disrespectful conduct toward the Court and opposing counsel. This Court finds that, at the very least, Ms. Tower engaged in conduct that is unbecoming of an attorney.¹⁵ Ms. Tower, and for that matter, all other attorneys, should closely heed to the following passage in practicing law:

Without order in a courtroom, justice may be empty and evanescent. A balance must be maintained, however, between the necessity for judicial power to curb obstruction of justice in the courtroom and the need for lawyers to present their clients' cases fairly, fearlessly, and strenuously. In preserving the balance, a court must not exercise its summary power of contempt to stifle courageous and zealous advocacy and thereby impair the independence of the bar. On the other hand, the dignity, the independence, and the control of the court must not be degraded by lawyers who "equate contempt with courage [T]he processes of orderly trial, which [are] the supreme object of the lawyer's calling," must be protected.

Com. of Pa., supra, 552 F.2d at 503 (quoting *Sacher v. United States*, 343 U.S. 1, 14 (1952)) (emphasis added).

In light of the foregoing discussion, the Court grants Ms. Tower's motion for reconsideration.

Counsel should make such assertions only when it is necessary and supported by facts.

¹⁵ Based on the Defendant's motions, it is clear that he did not want to go to trial on March 11, 1993. At the time, it appeared that the motions were dilatory in nature. This suspicion has since been confirmed; even though the Court subsequently granted the Defendant's motion for an appointment of an independent expert, the Defendant ultimately decided that he no longer needed one.

APPENDIX

THE COURT: Do you want a continuance, yes or no.
Yes or no.

MS. TOWER: Your Honor, I'll have to, I have to object. You're putting me in this spot. The continuance to be forced into a continuance by the government's failure to provide.

THE COURT: If you don't want a continuance the government is ready. We'll proceed to trial.

MS. TOWER: Without ruling and giving me an independent hearing on my ex-parte motion, Your Honor?

THE COURT: Ex-parte motion denied. Untimely. Not on an eve of trial.

MS. TOWER: I provided it as soon as possible, as soon as I had the lab results. I provided it this morning to the court. I did all the calculations yesterday, Your Honor.

THE COURT: Objection noted. Ex-parte motion denied.

MS. TOWER: Well, then why am I getting a continuance to have independent analysis?

THE COURT: Not an ex-parte. I'm making -- this is not ex-parte at this time.

MS. TOWER: Your Honor, are you saying that the court won't appoint independent expert to do the analysis?

THE COURT: I don't know yet. That's the next question whether I'm going to grant it or not. But at this time, the ex-parte motion is denied. It doesn't mean that you cannot

bring it back. All I'm asking at this time is do you -- in view of the time frame that you received the analysis and the chain of custody, you're entitled if you want to to a reasonable continuance.....

MS. TOWER: Am I entitled to a four months continuance, the time that it took the government to get this ice back to me?

THE COURT: Reasonable continuance.

MS. TOWER: And why is four months not reasonable, Your Honor.

THE COURT: Because the CNMI government does not have control over the Guam Crime Lab, ma'am.

MS. TOWER: And why were -- Your Honor think that the Public Defender would have control over any other crime lab?

THE COURT: If you wanna cross examine the court, I would take the witness stand.

MS. TOWER: I'm sorry, Your Honor. I apologize. I would like to have 15 minutes to think about this.

THE COURT: Okay, court would take a break 15 minutes.

THE COURT: Back to Criminal Case 92-184, CNMI versus Sangalang. Ms. Tower, please.

MS. TOWER: Thank you, Your Honor. With all due respect to this court's ruling and conditions placed upon defense

counsel, at this time, Your Honor, I must respectfully refuse to either continue this case or try it.

THE COURT: Anything further?

MS. TOWER: No, Your Honor.

THE COURT: Prosecution?

MR. PIXLEY: The government will further proceed, Your Honor.

THE COURT: We shall then proceed. Opening statement, please.

MR. PIXLEY: Yes, Your Honor. Thank you.

MS. TOWER: With all due respect, Your Honor, defendant is entitled to representation of counsel. I've just informed the court that I will not proceed to trial today. Nor will I waive his speedy trial rights. I am not going to go forward.

THE COURT: I'm confused. Let me get it straight.

MR. PIXLEY: Your Honor, I believe the court should find Ms. Tower in contempt of court.

THE COURT: What is your position, ma'am?

MS. TOWER: My position is that my client is being denied due process by the failure of the government to expedite or in any reasonable time which Your Honor says four months is not reasonable for me.....

THE COURT: No, I'm not saying -- I said reasonable time.

MS. TOWER:to have this.....

THE COURT: I don't know. It may be four months, it may be less. I don't know.

MS. TOWER: Your Honor, my client has speedy trial rights. I'm not waiving his speedy trial rights.

THE COURT: I understand that.

MS. TOWER: He has a right to have this evidence independently examined.

THE COURT: I also understand that.....

MS. TOWER: He has a right to the appointment of an independent examiner.

THE COURT:that's why I ask your position.....

MS. TOWER: I am not going to -- well, Your Honor, ask me to -- was to seek a continuance, a reasonable continuance and waives speedy trial. I've said it. Had to be a court continuance or credited against the government. I will not continue this case unless the continuance is credited against the government or a court continuance. It cannot be credited against my client. And in event that I do file a speedy trial claim some time in the future, we did not have possession or control over these drugs and that's our position. And I am not gonna try this case today because it's per se ineffective. I didn't get the lab report until two days ago. I didn't get the chain until yesterday morning. I did the calculations and I filed my ex-parte motion. The government calls it untimely. They have a

lot of nerve in my opinion, Your Honor, to call my motion untimely.

MR. PIXLEY: The court called it untimely.

MS. TOWER: How could be untimely when I have nothing to, nothing to ask for examination of. I have no results. I have nothing until Monday.

THE COURT: I've denied the ex-parte motion. What I said is that it could be brought in open court.

MS. TOWER: Your Honor, ex-parte motions if you'll read the briefs are brought ex-parte for a reason. And its reversible error to force defense counsel to do an ex-parte hearing in open court with the prosecutors present. And I have the cases for that.

THE COURT: I just deny the ex-parte motion. If there's gonna be a motion that is gonna be heard on the day of trial it is gonna be in the, in the courtroom.

MS. TOWER: Then it's your position that you're gonna deny an ex-parte motion.

THE COURT: I'm not. I'm not. All the ex-parte motion has been denied.

MS. TOWER: Okay.

THE COURT: It does not preclude you to argue that and argue that if there is a motion for a continuance before the court.....

MS. TOWER: It's not, I am not moving for a

continuance, Your Honor.

THE COURT: You can't have your cake and eat it too, ma'am.

MS. TOWER: Then I refuse to try this case with all due respect, Your Honor.

THE COURT: Court finds you in contempt. You're sentenced to four hours in custody. Before the police takes her over to jail, I'll give her 15 minutes to deliberate. Court is in recess for minutes.

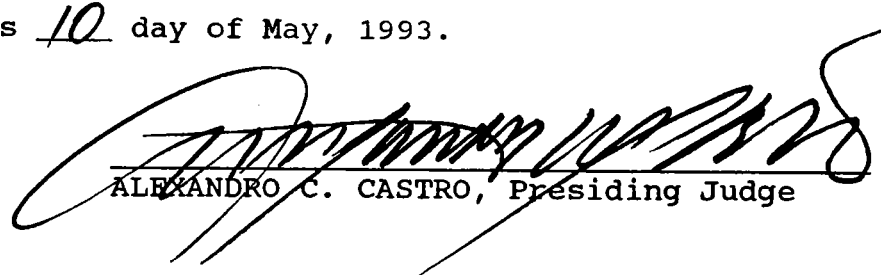
RECESS

THE COURT: Thank you, counsel and everybody. Please be seated. Back to Criminal Case 92-184, CNMI versus Sangalang. This court expects each and every lawyer that comes before it to protect jealously their clients. I have no problem with that. And I am -- I also have no problem saying that at least before today, one of the best defense lawyer that we've got is counsel in this case, Ms. Tower. She has done her work in previous cases, protect her clients jealously, and I admired her for that. This case is set for trial today. From the arguments of counsel, the court discovered that on March 9th, she received the alleged analysis and chain of custody at that time when there is an examination. That's the appropriate time to run to the court for an ex-parte motion. Even then 7:30 this morning, the eve of trial, but she waited until 9:00 o'clock on pre-trial motions. I've denied the ex-parte motion on this case but this

V. CONCLUSION

The order of March 11, 1993, finding Ms. Tower in contempt of this Court, is hereby vacated.

So ordered this 10 day of May, 1993.

A large, stylized handwritten signature in black ink, appearing to read 'Alejandro C. Castro', is written over the printed name below.

ALEXANDRO C. CASTRO, Presiding Judge