

APR 17 1997
CLERK OF COURT
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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

COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS,)
)
Plaintiff,)
)
vs.)
)
JOSEPH MICHAEL ADA, JOSEPH)
LIZAMA, SHAWN APPLEBY,)
ARTHUR LIZAMA, and)
BO SUNG KIM,)
)
Defendants.)

Criminal Case No. 96-0319

ORDER DENYING DEFENDANT
SHAWN APPLEBY'S MOTION FOR
RECONSIDERATION OF
COMMITMENT ORDER

I. INTRODUCTION

This matter came on for a hearing on April 8, 1997 before this Court on Defendant Shawn Appleby's Motion for Reconsideration of Judgment and Commitment Order. Plaintiff was represented by Deputy Attorney General Loren A. Sutton and Defendant was represented by Kevin E. Moore, Esq. At the hearing, this Court granted Defendant's motion to amend this Court's Commitment Order giving Defendant Appleby credit for time served from December 4, 1996 to the date of his sentencing, March 25, 1997, and denied Defendant's motion to reduce Defendant's sentence to twenty-seven years with a minimum of nine years to be served. The only issue before the Court is Defendant Appleby's Motion to Reconsider the Court's Commitment Order. In his motion, Appleby asks the Court to remand him to the custody of the Division of Youth Services ("DYS"). The Court hereby renders its opinion.

FOR PUBLICATION

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II. PROCEDURAL FACTS

Defendant Shawn Appleby ("Appleby"), a juvenile (DOB 12/12/79), pled guilty to first degree murder on February 18, 1997. On March 25, 1997, this Court sentenced Appleby to forty (40) years of imprisonment with a minimum of ten (10) years to be served. This Court also ordered Appleby committed to the custody of the Division of Corrections, an adult penal institution. Appleby remains in the custody of the Division of Corrections.

III. ISSUE

Whether a juvenile, tried and convicted as an adult pursuant to 6 C.M.C. § 5103(a), is entitled to the protection in conditions of imprisonment provided by Article 1, section 4(j) of the Commonwealth Constitution.

IV. ANALYSIS

Appleby argues he has a constitutional right to be confined separate from adult offenders under Article I, section 4(j) of the Constitution of the Commonwealth of the Northern Mariana Islands. Section 4(j) states that "[p]ersons who are under eighteen years of age shall be protected in criminal judicial proceedings and in conditions of imprisonment." C.N.M.I. CONST., art. I, § 4(j) (hereafter "Section 4(j)"). Appleby cites the explanation of Section 4(j) provided in the ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (1976) ("ANALYSIS"), and argues that he is entitled to separate housing from adult offenders because the ANALYSIS fails to expressly grant authority to the legislature or the courts to subject "juveniles to the same conditions of imprisonment that adults are subjected to." Memorandum of Points and Authorities in Support of Motion for Reconsideration of Judgment and Commitment Order as to Defendant Shawn Appleby, p. 3 (Mar. 27, 1997). This Court is called for the first time to interpret the meaning of Section 4(j)'s provision on protecting minors in conditions of imprisonment. As will be explained, this Court disagrees with Appleby's arguments.

The C.N.M.I. Supreme Court has said that "[w]e will apply the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended." *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362, 368 (1990)

1 (internal quotes omitted). Section 4(j) of the C.N.M.I. Constitution applies to Appleby because
2 he is under eighteen years of age. However, the Section does not specify what protection he is
3 entitled to in conditions of imprisonment.

4 In the ANALYSIS, the Framers of our constitution stated that "the requirement that persons
5 under 18 be protected is a flexible standard. . . ." ANALYSIS, p. 19. The Framers expressed their
6 intent that "conditions of imprisonment encourage rehabilitation and minimize contact with adult
7 offenders." *Id.* However, they did not preclude the legislature from "directing that certain
8 offenders who are under the age of 18 may be tried as adults in specified circumstances," and left
9 it to the courts to "interpret this provision on a case by case basis and give it meaningful content
10 over time." *Id.* at 20. This Court's decision turns on the reconciliation of the Framers' decision
11 to grant the legislature the authority to try certain minors as adults in criminal proceedings, and
12 their intent to "encourage rehabilitation and minimize contact with adult offenders" in conditions
13 of imprisonment.

14 The Framers defined criminal proceedings as the hearings and trials in which juveniles
15 appear on criminal or delinquency charges and the publicity given or records kept with respect to
16 these matters. ANALYSIS, p. 19. In *Commonwealth v. Cabrera*, 2 CR 1092, 1099 (Dist. Ct. App.
17 Div. 1987), the Appellate Court stated that the protections provided juveniles in criminal
18 proceedings centers on shielding them from the harsh glare of publicity, helping them to avoid the
19 life-long stigma of a criminal record, minimizing their contact with adult criminals, and
20 rehabilitation. These protections are not provided adults in criminal proceedings.

21 In *Cabrera*, the Appellate Court upheld the constitutionality of Title 6 C.M.C. § 5103(a),
22 *which automatically certifies as an adult a juvenile between the ages of sixteen and eighteen*
23 *accused of specified offenses.* *Cabrera*, 2 CR at 1100 (emphasis added). The *Cabrera* court
24 reasoned that "the legislative intent [of Section 5103(a)] can be justified on the ground that it
25 removes from the juvenile adjudicative process those accused of severe offenses which place them
26 beyond the rehabilitative capacity of the system." *Id.* at 1098-1099.

1 This Court extends *Cabrera's* reasoning and concludes that once a juvenile is certified as
2 an adult, the juvenile is no longer entitled to protections as a juvenile in criminal proceedings
3 afforded by Section 4(j). This Court also concludes that a juvenile offender convicted as an adult
4 is not entitled to the protection in conditions of imprisonment afforded by Section 4(j).
5 Accordingly, sentencing a juvenile, who is tried and convicted as an adult, to an adult penal
6 institution is consistent with the intent of Article 1, section 4(j) of the Commonwealth
7 Constitution.

8 In this case, Appleby, a juvenile, was tried as an adult under 6 C.M.C. § 5103(a).
9 Appleby pled guilty to the charge of first degree murder. Upon the Court's acceptance of his
10 guilty plea, Appleby became an adult offender with a criminal conviction. As a convicted adult
11 offender, Appleby is not entitled to Section 4(j)'s protection in conditions of imprisonment. He is
12 not entitled to be confined separate from adult offenders.

13
14 **V. CONCLUSION**

15 For the forgoing reasons, Defendant Appleby's Motion for Reconsideration of
16 Commitment Order is hereby denied. Appleby shall remain under the custody of the Department
17 of Corrections.

18 So ORDERED this 7 day of May, 1997.

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22 EDWARD MANIBUSAN, Associate Judge
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