

Peter L. **Nakatsukasa**,
Petitioner,
v.
Superior Court of the Commonwealth
of the Northern Mariana Islands,
Respondent,
Commonwealth of the Northern Marianas,
Real Party in Interest.
Original Action No. 99-006
Criminal Case No. 98-0368
December 28, 1999

Argued and submitted August 17, 1999

Counsel for Petitioners: Wesley M. Bogden, Assistant Public Defender, Saipan.

Counsel for Real Party in Interest: Ramona V. Manglona, Assistant Attorney General, Saipan.

BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice, and ATALIG, Justice *Pro Tem*.

DEMAPAN, Chief Justice:

¶1 [1] THIS MATTER is before us on a Petition for Writ of Mandamus brought by Peter L. Nakatsukasa (“Petitioner”) to direct the Superior Court, sitting as an adult criminal court, to dismiss the criminal case filed against him on the grounds that the court lacks jurisdiction. We have jurisdiction to issue extraordinary writs pursuant to our general supervisory powers. *See* N.M.I. Const. art. IV, § 3 (1997); 1 CMC § 3102(b).

ISSUE PRESENTED AND STANDARD OF REVIEW

¶2 We must determine whether the Superior Court, sitting as an adult criminal court, has jurisdiction over an 18 year old individual who allegedly committed an offense while under the age of 18 years and has not been certified as an adult under 6 CMC § 5102.¹

¶3 [2] The issue of jurisdiction is a question of law subject to *de novo* review. *Office of the Attorney General v. Riviera*, 3 N.M.I. 436, 441 (1993).

¹ Appellant also makes an argument for pre-accusatorial delay which this Court will not address in this writ of mandamus.

FACTUAL AND PROCEDURAL BACKGROUND

¶4 On April 15, 1998, Petitioner was a juvenile under the age of eighteen years and he allegedly committed acts that if committed by an adult person would constitute the crime of assault and battery under 6 CMC § 1202 (a). Petitioner turned eighteen on May 28, 1998.

¶5 On September 22, 1998, the Office of the Attorney General filed a criminal Information with the Superior Court charging Petitioner with the alleged April 15th incident. As a result, Petitioner appeared before the adult criminal court of the Superior Court without a certification hearing under 6 CMC §5102.

¶6 On December 30, 1998, Petitioner filed a motion to dismiss the criminal Information on the grounds that the Superior Court, sitting as the adult criminal court, lacks jurisdiction over him. On March 10, 1999, the court issued an order denying appellant's motion to dismiss. *Commonwealth v. Nakatsukasa*, Crim. Case No 98-368 (N.M.I. Super. Ct. Mar. 10, 1999)(Order Denying Defendant's Motion to Dismiss).

¶7 On April 22, 1999, the Superior Court granted a motion to stay the proceedings below pending our review of this matter. The Petitioner timely filed this Petition for Writ of Mandamus.

ANALYSIS

I. Writs of Mandamus

¶8 This Court has yet to rule on the issue of which court has jurisdiction over juveniles when the juvenile commits a crime while under eighteen but subsequently reaches the age of eighteen before criminal charges are filed or before resolution of juvenile proceedings.²

¶9 [3] Because the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations, this Court has adopted a five part standard to govern its issuance. *Tenorio v. Superior Court*, 1 N.M.I. 1 (1989). These guidelines are as follows:

- (1) The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired.
- (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal.
- (3) The lower court's order is clearly erroneous as a matter of law.
- (4) The lower court's order is an oft-repeated error, or manifests a persistent disregard of

² In another decision entered today, we address the issue of whether the trial court, sitting as the juvenile court has continuing jurisdiction over a case where the person was under the age of eighteen at the time they were charged with acts of juvenile delinquency, but reached the age of eighteen while the case was still pending. *See In re the Matter of N.T.M.*, No. 98-022 (N.M.I. 1999) (slip op.).

applicable rules.

(5) The lower court's order raises new and important problems, or issues of law of first impression.

Tenorio v. Superior Court, 1 N.M.I. 1, 9-10 (1989).

¶10 [4] In applying the *Tenorio* guidelines to a particular case, not always will there be a bright-line distinction; and the guidelines themselves often raise questions as to degree. *Id.* at 10. Rarely if ever will a case arise where all the guidelines point in the same direction or even where each guideline is applicable. The considerations are cumulative and proper disposition would often require a balancing of conflicting indicators. *Bauman v. United States Dist. Court (Union Oil)*, 557 F.2d 650, 655 (9th Cir. 1977).³

¶11 [5] A lesser showing is required in so called "supervisory mandamus" cases, "where the petition raises an important question of law or first impression, the answer to which would have a substantial impact on the administration of the . . . courts." *In re Cement Antitrust Litig.*, 688 F.2d 1297, 1307 (9th Cir. 1982).

¶12 In applying the *Tenorio* factors, we find that the fifth factor is present in that the question of jurisdiction raises an issue of first impression which will have an impact on an individual's constitutional rights in this Commonwealth. We will therefore review the issue of jurisdiction under our general supervisory powers.

II Jurisdiction over Juveniles is created by statute and guaranteed by the Constitution

¶13 [6,7] The separation of powers concept came into being to safeguard the independence of each branch of the government and protect it from domination and interference by others. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996). Commonwealth courts are duty bound to give effect to the intention of the framers of the N.M.I. constitution and the people adopting it. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994), *cert. denied* 513 U.S. 1116, 115 S. Ct. 913, 140 L. Ed. 2d 794 (1995).

¶14 [8,9] In the federal judicial system, district courts interpret a federal statute by ascertaining the intent of Congress and giving effect to the legislation. Where the intent of Congress is evidenced clearly

³ For instance, the final two factors, by definition generally do not coexist: "[T]he fourth contemplates a case presenting an oft-repeated error, and the fifth a case presenting a novel question. Where one of the two is present, the absence of the other is of little or no significance." *United States v. Harper*, 729 F.2d 1216, 1222 (9th Cir. 1984). In this case we are concerned with the fifth factor, and not the fourth.

in the language of the statute, our inquiry ends there. *United States v. Koyomejian*, 946 F.2d 1450 (9th Cir. 1991). If however the statutory language gives rise to more than one reasonable interpretation, our duty is to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and the general purposes that the N.M.I. legislature manifested. *Id.* at 1453.

¶15 [10,11,12,13,14,15] Under the N.M.I. Constitution, as amended in 1997 by House Legislative Initiative 10-3, the Superior Court has original jurisdiction over criminal and juvenile cases in the Northern Mariana Islands. The N.M.I. Constitution expressly affords added protection, however, to persons under eighteen years of age who are accused of committing crimes. Article I, Section 4 of the N.M.I. Constitution provides:

In all criminal prosecutions certain fundamental rights shall obtain.

* * *

(j) Persons who are under eighteen years of age shall be protected in criminal judicial proceedings and in conditions of imprisonment.

N.M.I. Const. art I, § 4(j). The Commonwealth Legislature adopted a statutory scheme addressing juvenile delinquency in the Commonwealth. The relevant statutes are as follows:

§5101 Juvenile Court.

Proceedings brought against a person as a delinquent child shall be brought in the Commonwealth Trial Court, sitting as a juvenile court.

§5102 Juvenile Court: Flexibility of Procedures.

In cases involving offenders under the age of 18 years, the court shall adopt a flexible procedure based on the accepted practices of juvenile courts of the United States, including insofar as possible the following measures:

* * *

An offender 16 years of age or over may, however, be treated in all respects as an adult if, in the opinion of the court, his or her physical and mental maturity so justifies.

§ 5103 “Delinquent Child” Defined.

As used in this division, “delinquent child” includes any juvenile:

(a) Who violates any Commonwealth law, ordinance, or regulation while under the age of 18; provided, that a juvenile 16 years of age or older accused of a traffic offense, murder, or rape shall be treated in the same manner as an adult.

6 CMC §§ 5101, 5102, 5103 (a), 5104.

“Youth” or “minor” or “juvenile” or “child” means a person under the age of 18 years of age.

1 CMC § 2373 (f).

¶16 [16,17] THE ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARINA ISLANDS (1976) (“ANALYSIS”) on section 4(j) states: “5This section requires that persons who are under 18 years of age be protected in criminal proceedings and in conditions of imprisonment.” ANALYSIS at 19. “In addition to any legislation, it is intended that the courts may interpret this provision on a case by case basis and give it meaningful content over time.” Analysis at 20 (emphases added).

¶17 [18] The N.M.I. Code requires the courts to adopt “flexible procedures” in dealing with juveniles, based upon the “accepted practice of juvenile courts of the United States.” 6 CMC § 5102.⁴

¶18 In denying Petitioner’s motion to dismiss for lack of jurisdiction, the Superior Court relied on the case of *In Re the Matter of Sintoshi S. Suda*, 3 CR 15 (N.M.I. Trial Ct. 1986). In *Suda*, the juvenile allegedly committed acts which if committed by an adult would constitute the crimes of burglary, criminal mischief, and theft while he was under eighteen years of age. *Suda* at 16. The complaint of juvenile delinquency was not filed until *after Suda* turned eighteen. *Suda* 17.

¶19 The *Suda* court held that the *juvenile court* has no jurisdiction over a case where the alleged offense occurred while the individual was under eighteen years, but where the *juvenile charges were filed after* the individual reached the age of eighteen years⁵. *Suda* at 18 (emphasis added). The *Suda* court using 6 CMC § 5104 concluded that “the age of the person at the time of commencement of proceedings governs, so that once a person reaches 18 years of age, the juvenile court loses jurisdiction over that person.”⁶ *Id.* at 18. We disagree.

¶20 [19] We find that *Suda*’s holding fails to give effect to the constitutional requirement set forth in

⁴ Each of the fifty states and the District of Columbia has its own statute, as does the federal court system. Thus, juvenile court practice in the United States is based on fifty-two different statutes.

⁵ The *Suda* court dismissed the complaint against the juvenile for lack of jurisdiction without prejudice to the Commonwealth to file an appropriate criminal information with the Criminal Division of the Commonwealth Trial Court. *Id.* at 19. In this case, charges were also filed after Appellant turned eighteen, but in Superior Court, sitting as an adult court.

⁶ § 5104 Juvenile Proceedings: Delinquency Not a Crime

Proceedings against a person under 18 years of age as a delinquent child shall be conducted in accordance with the provisions of this division, and an adjudication that a person is delinquent child does not constitute a criminal conviction.

Article I, Section 4(j) requiring that persons under eighteen years of age be protected in judicial criminal proceedings. Given the underlying purpose of the juvenile justice system to rehabilitate juveniles who allegedly commit crimes, the *Suda* court's holding failed to enforce the controlling statutes on this issue as written, and offended the special Constitutional protections afforded to juveniles in the Northern Mariana Islands. *In re J.R. Jr.* 4 N.M.I. 239 (1995). *See also* Analysis at 19-20 (The requirement that persons under 18 be protected is a flexible standard that looks to the prevention of harm to juveniles beyond the requirement of participation in the hearing or trial or the imposition of sentence.)

¶21 If we were to apply the “age of a person at the time of commencement of proceedings” to these cases, a gap would undoubtedly exist in the law in that if a juvenile’s case, properly filed in juvenile court, is not adjudicated or transferred before the juvenile turns eighteen, he or she may not receive the full benefits and protections of Article I, Section 4(j); nor would he or she be subject to the jurisdiction of the juvenile or the adult criminal court.

¶22 [20] The most impartial criteria in determining which court’s jurisdiction controls is clearly the “age at the time of offense”. A person’s age at the time he or she commits an offense is a fixed standard which can readily be ascertained and will usually not be open to question. However in using the date of arrest, the date when legal proceedings are instituted, or the date when the trial commenced, there are potential dangers for manipulation.

¶23 [21] The Federal Juvenile Delinquency Act⁷ which delineates exact procedures for adjudicating the status of a juvenile who has violated a law of the United States is instructive:

The language in the federal act defining juvenile delinquency as the violation of a law “committed by a juvenile” seemed to clearly indicate that the act was intended to apply to a child who was a juvenile at the time the offense was committed. If the age at the time of indictment or trial controlled the question, it might be delayed to the prejudice of the offender.

United States v. Fotto, 103 F. Supp 430 (S.D.N.Y.1952)(holding that defendant, under eighteen when offense was committed, but over eighteen when indicted, was entitled to be treated as juvenile under Federal Juvenile Delinquency Act).

⁷ Prior to 1974, Federal Juvenile Delinquency Act, 18 U.S.C. 5031, juvenile delinquency was defined as follows: “For the purposes of this chapter, a ‘juvenile’ is a person who has not attained his eighteenth birthday, and ‘juvenile delinquency’ is the violation of a law of the United States committed by a juvenile and not punishable by death or life imprisonment.” 18 U.S.C. § 5031(1970).

¶24 Based on the N.M.I.'s statutory scheme as set forth under 6 CMC § 5101 *et seq.*, the constitutional language and plain meaning of Article IV, section 2⁸ and Article I, section 4(j) of the N.M.I. Constitution, the Framers' intent as stated in the Analysis and the consequential concern of creating a jurisdictional gap, we find that juvenile proceedings should be afforded to persons who are adults, but who committed an offense while under the age of 18 years.

CONCLUSION

¶25 For the foregoing reasons, we **GRANT** Petitioner's request for a writ of mandamus against the Superior Court. This case is therefore **REMANDED** to the Superior Court with the following instructions:

1. The Superior Court, sitting as a juvenile court, shall permit the Government to file appropriate pleadings with the juvenile court within five working days from the date this Writ is issued;⁹
2. The Superior Court, sitting as the adult criminal court, shall thereafter enter a dismissal of this matter for lack of jurisdiction.

⁸ The Commonwealth Superior Court shall have original jurisdiction in all cases in equity and at law. The court shall also have original jurisdiction in all criminal actions. N.M.I. Const. art. IV, § 2.

⁹ If evidence exists that an offender sixteen years or older requires that he be treated in all respects as an adult person because of his/her physical and mental maturity, the Government must not only file a complaint of delinquency with the juvenile court but also a motion or petition to certify such person an adult. The juvenile court has the discretion to either grant or deny such request. 6 CMC § 5102.