

**In the Matter of Alleged Delinquent Minor**

Juvenile Case No. 105

Trial Division of the High Court

Marshall Islands District

May 18, 1972

Habeas corpus proceeding for release of juvenile from order placing him in his uncle's custody. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the order could not stand where there had been no adjudication of delinquency.

Remanded.

**1. Judgments—Collateral Attack**

That judgment order was based upon former Trust Territory Code section and should, rather, have recited provisions of code then in effect did not warrant disturbing the order. (T.T.C., Sec. 432; 11 T.T.C. § 6; 15 T.T.C. §§ 4, 6)

**2. Infants—Juvenile Delinquency Proceedings—Disposition**

Case dealing with sentence in criminal proceedings was not applicable to habeas corpus proceeding for release of juvenile from custody, on grounds that, *inter alia*, judgment order imposed sentence which was contrary to the criminal case.

**3. Infants—Juvenile Delinquency Proceedings—Nature of Proceedings**

Juvenile delinquency proceedings are not criminal proceedings. (15 T.T.C. § 3)

**4. Infants—Juvenile Delinquency Proceedings—Disposition**

Where Code limited confinement of juvenile to the maximum allowable for the criminal offense made the basis of the delinquency proceeding, that juvenile was ordered placed in custody of his uncle for a longer period was not a basis for issuing a writ of habeas corpus. (15 T.T.C. § 6)

**5. Appeal and Error—Discretion to Review**

District Court judgment placing juvenile in delinquency proceeding in custody of his uncle having been brought to High Court's attention by habeas corpus proceeding, court would exercise its discretion and review the order. (6 T.T.C. § 354)

**6. Constitutional Law—Right to Counsel**

That juvenile charged in delinquency proceeding with assault and battery was not represented by counsel or advised he had a right to counsel, and made no understanding waiver of counsel, at hearing held with juvenile, his mother and assistant district prosecutor present, was alone sufficient to vacate order placing him in his uncle's custody.

**7. Infants—Juvenile Delinquency Proceedings—Right to Counsel**

In Marshall Islands District at least, it shall be mandatory that, as of time of instant decision, a juvenile in a delinquency proceeding be represented by counsel. (Rules of Proc. for Juvenile Delinquency Proceedings, Rule 6(3))

**8. Infants—Juvenile Delinquency Proceedings—Disposition**

In a juvenile delinquency proceeding, the court must adjudicate the juvenile delinquent or non-delinquent, and an adjudication of delinquency must be made upon findings of fact proved by at least the fair weight of the evidence as clearly as is required in ordinary civil actions.

**9. Infants—Juvenile Delinquency Proceedings—Disposition**

Following a determination of delinquency, the court must consider custody, supervision and schooling and, upon evidence received or ordered to be received, make findings and order the disposition of the delinquent in his best interests.

**10. Infants—Juvenile Delinquency Proceedings—Disposition**

Order in juvenile delinquency proceeding, placing juvenile in his uncle's custody, would be set aside where there was no finding of delinquency on any ground and neither the record nor the judgment showed that the lower court took evidence on, considered, and made findings regarding, disposition of the child in his best interests.

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TURNER, *Associate Justice*

Application for Writ of Habeas Corpus having been filed by the Public Defender's Representative in behalf of the above-named juvenile and return to the Order to Show Cause having been filed by the Marshall Islands District Chief of Police, hearing was held this day pursuant to 9 T.T.C. 106.

Three grounds for issuance of the writ and discharge of the juvenile from custody were recited in the application and urged by counsel for the juvenile. These were:

[1] 1. The District Court order was based upon Section 432 of the former Trust Territory Code. It should have recited 11 T.T.C. 6, 15 T.T.C. 4, and 15 T.T.C. 6. It is an irregularity that does not constitute ground for disturbing the order under review. 6 T.T.C. 351.

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2. The argument that Section 432 of the Code, which is no longer in effect, is void because it is "vague and insufficient to designate any crime" is without merit and unworthy of consideration.

3. The District Court "sentence . . . imposed a two-year period of punishment," contrary to the holding in *Tinteru v. Trust Territory*, 4 T.T.R. 361, and also, not mentioned in the petition, but pertinent, 15 T.T.C. 6 which limits "confinement" to a period not in excess of "the period for which he might have been confined if he were not treated as a 'juvenile offender' under this title."

[2] The case cited is not applicable because it pertains to criminal proceedings. The Code Section, 11 T.T.C. 1454, upon which *Tinteru* turned, pertains to High Court "orders as to residence" made to a person found "guilty of a criminal offense."

[3, 4] Juvenile proceedings, which the case under review was, are not criminal. 15 T.T.C. 3. The Code provision applicable, 15 T.T.C. 6, limits "confinement" of a juvenile to the maximum allowable for the criminal offense upon which delinquency proceedings rest. In the present case, there was no order of "confinement". The juvenile was ordered placed in custody of his uncle, who is a resident of Aur Atoll in the Marshall Islands District, for the remaining two-years of his minority.

We must conclude none of the grounds recited for the writ justify its issuance.

[5] The matter having been brought to the attention of this Court, the Court's discretion to review the District Court "Judgment Order" will be exercised. 6 T.T.C. 354.

The judgment does not conform to the Code relating to juveniles and it also appears serious error occurred in the proceedings. This opinion is intended to point out these mistakes so that both Court and counsel will have a better

understanding of the requirements for juvenile proceedings.

This action began with the filing of a complaint under oath charging assault and battery and asking the Court to adjudge [ ] and another "a delinquent child." This was in accordance with Rule 3, Juvenile Delinquency Procedure.

[6] A hearing was thereafter held with the juvenile, his mother and the Assistant District Prosecutor present. The minor was not represented by counsel, was not advised he had a right to counsel and, of course, made no understanding waiver of counsel. This, without more, is sufficient to vacate the District Court order.

[7] In the Marshall Islands District, at least, it hereafter shall be mandatory that a juvenile shall be represented by counsel, either of his own choosing or by the Public Defender's Representative. Under Rule 6(3), Juvenile Delinquency Proceedings, the District Court may not deem "it fair to so proceed" without counsel for the juvenile.

[8] When the hearing has been held, the Court is required to make an adjudication that the child is either delinquent or not delinquent. The judgment order in this case made no determination of delinquency, except by possible inference from the order committing the minor to Aur for two years.

A determination of delinquency must be made upon findings of fact "proved by at least the fair weight of the evidence as clearly as is required in ordinary civil actions." There were no findings as to any one of the four grounds of delinquency specified in 15 T.T.C. 2.

[9, 10] After a determination of delinquency, it is then incumbent upon the Court to consider custody, supervision and schooling and upon evidence received or ordered to be

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received, make findings and order the "disposition" of the delinquent "in the best interests" of the child. None of this was shown in either the judgment or the record reviewed. The errors in procedure require setting aside the judgment.

It is,

Ordered:

1. That the application for writ of habeas corpus is not supported by compelling reason and law and is therefore denied.

2. That the judgment order of the District Court is vacated and set aside and that [ ] shall be released forthwith from detention by the Marshall Islands District Chief of Police.

3. That this matter shall be returned to the District Court for further proceedings in conformity with the foregoing opinion.

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TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

LONE LINO

Criminal Case No. 65

Trial Division of the High Court

Marshall Islands District

May 26, 1972

Prosecution for assault and battery with a dangerous weapon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, found defendant guilty where he had asked a group of men if any would stand and help man defendant had seriously wounded with a machete, one man grabbed the machete in an attempt to disarm defendant, and defendant pulled it from the man's hand, thereby cutting him.

**1. Assault and Battery With a Dangerous Weapon—Acts Constituting**

Where defendant, after severely wounding one man with a machete, asked who among a group of nearby men would stand up and help first man attacked, a man grabbed the machete in an attempt to disarm defendant, and defendant pulled it out of second victim's hand, thereby