

him in a habeas corpus civil proceeding within the week after time for criminal appeal expired.

[18] The burden was on the petitioner to prove that he was denied due process of law because he was denied effective and adequate assistance of counsel. *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019; *Bostic v. Rives*, 107 F.2d 649, 652. Even the textwriters recognize the applicable presumption is contrary to that urged by petitioner. In 39 C.J.S., Habeas Corpus, Section 100, page 672, it is said:

“. . . it will be presumed that petitioner was informed as to his privilege of appeal from a conviction and the necessity of appealing within the prescribed time. . . .”

[19] Petitioner's denial of knowledge as to appeals, even though this is his tenth conviction and sentence to jail, was not sufficiently convincing to overcome the presumption against him. It is

Ordered, the writ of habeas corpus heretofore issued pending hearing be dismissed, denied and set aside.

GREGORIO MARBOU, and HENRY DACHELBAI, Plaintiffs

v.

EUSEVIO TERMETEET, CHIEF OF POLICE, PALAU DISTRICT, Defendant

Civil Action No. 520

Trial Division of the High Court

Palau District

September 19, 1972

Petition for habeas corpus. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, ruled that a juvenile suspected of committing a crime may only be proceeded against as a juvenile offender, though government may subsequently move for trial of a juvenile sixteen or older as an adult.

MARBOU v. TERMETEET

1. Infants—Delinquent Child—Action Against

The only permissible action against a juvenile believed to have committed a crime is as a juvenile offender; the government may then, if the juvenile is sixteen or older, move that he be tried as an adult, but must defer to the court's discretion.

2. Infants—Delinquent Child—Trial as Adult

The court has discretion to decide whether an alleged juvenile offender over sixteen years of age shall be tried as an adult upon government's motion.

3. Courts—"Stare Decisis"

The Trial Division of the High Court and the District Courts are bound by the decisions of the Appellate Division of the High Court, and are required to abide by them, until the decisions are changed by subsequent Appellate Division decision or appropriate legislative action.

TURNER, *Associate Justice*

This civil action arose on a petition for habeas corpus in behalf of both plaintiffs who previously had been charged in the Trial Division of the High Court in Criminal Cases No. 379 relating to Marbou and No. 380 relating to Dachelbai. The complaint for habeas corpus alleged excessive bail had been set by the District Court as committing magistrate in both cases and also that Dachelbai was a minor, seventeen years of age, and should have been charged first in juvenile proceedings instead of in a criminal complaint.

After hearing on the Order to Show Cause issued in response to the complaint for habeas corpus, the Trial Division held that bail was within the discretion of the District Court judge and even though the criminal cases were pending in the Trial Division that this Court should not substitute its judgment for that of the District Court, and that as to the question of procedure that the law did not require that a juvenile complaint first be brought. The Public Defender appealed these adverse rulings to the Appellate Division.

On December 29, 1971, the Appellate Division reversed and remanded with instructions. The decision required that an Information of Delinquency be filed against Dachelbai, the minor, and that thereafter, "The government may elect to move for transfer to criminal proceedings, or the Court may initiate such motion; upon a showing of sufficient maturity" The decision also required the Trial Division to reconsider the motion for modification of bail in accordance with 12 T.T.C. 256, and suggested any action taken be in the light of the statutes applicable to bail.

The Trial Division took no further action after remand until at the call of the calendar September 11, 1972, the question of modification of bail and further juvenile proceedings was set for hearing. It then developed from the criminal case records that this Court dismissed the criminal charge against Dachelbai, upon motion of the Government, all as set forth in Criminal Case No. 380. It further appeared that Criminal Case No. 379, charging Marbou, was ordered transferred to the District Court May 25, 1972. Neither of these dispositions referred to nor took cognizance of the instructions of the Appellate Division in its remand of Civil Action 520. However, the disposition of the foregoing criminal cases have now made moot the Appellate Division's instructions as they pertain to Marbou and Dachelbai and the criminal charges against them in the Trial Division.

This Court and the District Attorney both ignored the Appellate Division holding regarding commencement of juvenile proceedings before any criminal action is taken when an Information was filed against Dachelbai charging the offense of rape on February 17, 1972, some six weeks after entry of the Appellate Division judgment. Dachelbai was 17 years, 6 months and 26 days old at the time of the commission of the offense charged.

Dachelbai plead guilty to Criminal Case No. 423 charg-

TRUST TERRITORY v. SINGEO

ing rape and the Court granted motion for dismissal of Criminal Case No. 380, which was involved in these civil proceedings.

[1,2] It is emphasized for the future guidance of all Judges and Justices of the Districts and the High Courts and all District Attorneys and Public Defenders that whenever a juvenile is believed to have committed a criminal offense, the only permissible action against a juvenile 16 years of age and less than 18 years of age must be against him as a juvenile offender. The government may then move that a juvenile sixteen or older be tried as an adult, but must defer to the legal discretion of the Court as to disposition of such a motion.

[3] A further admonition is required in this matter. All Trial Division and District Courts are bound by Appellate Division decisions and are required to abide by them until they have been changed by subsequent decision or appropriate legislative action. *Elechus v. Kdesau*, 4 T.T.R. 444.

Because of the disposition of the above-mentioned criminal cases, further proceedings are not required in Civil Action No. 520 and the case is ordered closed on the records of the Clerk of Courts.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

TOMMY SINGEO

Criminal Case No. 336

Trial Division of the High Court

Palau District

September 27, 1972

Prosecution for burglary and grand larceny. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where, in hearing on