

TRUST TERRITORY v. SKIADOPULUS

prohibit Judge Hefner from proceeding with Civil Case No. 74-103 since there is nothing more for Judge Hefner to do with regard to Civil Case No. 74-103.

Moreover, petitioner is not challenging the jurisdiction of the court in this matter but rather the bias and prejudice of the judge. A writ of prohibition shall not issue where the court below had jurisdiction to take the action so taken.

[6] Respondent correctly contends that a writ of prohibition shall not issue where there exists a plain, speedy, and adequate remedy in the ordinary course of law. Petitioner's contentions may properly be made on appeal and appeal in this instance is a plain, speedy, and adequate remedy. Extraordinary writs cannot be used as a substitute for appeal. *In re Buckey*, 395 F.2d 385, 387 (1968), *Bankers Life and Casualty Co. v. Holland*, 346 U.S. 379 (1953).

Respondent's motion to dismiss petitioner's complaint is hereby granted.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff-Appellee

v.

GEORGIOS SKIADOPULUS, et al., GEORGIOS LEONDIS, et al. and VASSILIOS GIANOUTSOS, et al., Defendants-Appellants

Criminal Appeal No. 40

Appellate Division of the High Court

Palau District

July 17, 1975

Consolidated appeals in criminal cases. The Appellate Division of the High Court, Hefner, Associate Justice, held that persons who were not defendants could not be ordered to place up to \$5000 at the disposal of others for their benefit, for a fine must be on a specific person, who is a defendant, and must be placed in the territorial treasury.

1. Appeal and Error—Notice and Filing of Appeal

Where no notice of appeal was filed for one of four consolidated criminal appeals, but all parties, attorneys and judicial personnel, and all documents regarding the consolidated appeal, treated it as part of the appeal, the appeal of that case would not be dismissed due to attorney's oversight.

2. Criminal Law—Appeals—Waiver

Any waiver of appeal in a criminal case should be carefully scrutinized, and the right to appeal should not be considered waived or abandoned unless it is clearly shown.

3. Appeal and Error—Abandoning Appeal—Absence From Jurisdiction

Where appellant diligently prosecuted his appeal and appeared by counsel, the appeal would not be dismissed on the ground he was not in the territory.

4. Appeal and Error—Notice and Filing of Appeal

Name and address of appellants' counsel, in notice of appeal, was sufficient compliance with rule, and the names and addresses of the appellants were not required. (Rules Crim. Proc. 31(a))

5. Criminal Law—Trial Procedure—Nolo Plea

Where appellants waived any defects in their "no contest" plea, which was a plea not authorized by the law, they could not complain on appeal. (Rules Crim. Proc. 10)

6. Criminal Law—Sentence—Persons Not Defendants

In criminal action, persons not made defendants could not be ordered to apply up to \$5000 to a use benefiting others, for a fine must be on a specific person, who is a defendant, and must be paid into the territorial treasury. (6 TTC § 451)

Counsel for Appellants: ROBERT K. SHOECRAFT

Counsel for Appellee: PHILIP JOHNSON, *District Attorney, Yap*

Before BURNETT, *Chief Justice*, HEFNER, *Associate Justice*, and WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

The appellants were charged with various offenses in three different criminal cases (Palau Criminal Cases 419, 421, and 422).

In the appellee's brief and at the time of oral argument, certain issues about the appeals themselves were raised.

[1, 2] First of all, it is contended that no appeal was taken from Criminal Case 419. Appellants' counsel filed a notice of appeal in Criminal Cases 421 and 422, but no separate notice of appeal was filed for Case 419. The Record of Criminal Hearing prepared and filed by the Court consolidates all four cases (Criminal Case 420 was dismissed). The Order of the trial court regarding the \$5,000 repatriation fund is made applicable to all of the cases, and the one order covers all cases. From the appeal file, it is evident that although appellants' counsel was confused as to the actual case numbers, appellants' counsel, the appellee, and the Clerk of Courts, Palau, all assumed that Criminal Case 419 was included in the appeal. On July 11, 1972, the Clerk of Courts, Palau, issued a receipt for the transcript noting that it was for all cases, including Case 419. There is, in fact, one transcript for all the cases. All case files with docket entries were transmitted to the Clerk, Appellate Division of the High Court, in Saipan. The Clerk in Palau certified Case 419 along with the others on September 26, 1972. A review of all subsequent documents in the appeal file, as well as the briefs filed indicate a clear intent and assumption by all parties, as well as the Clerk of the Appellate Division that Criminal Case 419 was included in the appeal. Under the circumstances in this case, the failure to file a separate notice of appeal cannot be a bar to having the appeal of the defendants in that case because of the oversight of appellants' counsel. Certainly, in criminal cases, any claimed waiver of appeal rights must be carefully scrutinized. The right of appeal should not be considered as having been waived or abandoned except where it is clearly established that such is the case. *McKinney v. United States*, 403 F.2d 57. Criminal Case 419 is so united and consolidated by trial, pleas, fines and court orders with Criminal Cases 421 and 422, it cannot be segregated and disregarded.

[3] Secondly, appellee has moved to dismiss the appeal since the appellants are absent from the Trust Territory, citing *Kaneshima v. Trust Territory*, 5 T.T.R. 99. However, a review of that case shows a decidedly different set of circumstances than those in this appeal. In *Kaneshima*, the defendant moved for a reconsideration of his sentence, while his case was on appeal. Once the defendant had gained his release, he left the Trust Territory and his appeal was moot. *Kaneshima* does not stand for the proposition that every appeal must be dismissed unless the appellants are in the Trust Territory. If an appellant diligently prosecutes his appeal and, as here, appears by counsel who is a member of the Trust Territory Bar, his presence in the Trust Territory is not required.

[4] Thirdly, the Government moves to dismiss the appeal for failure to list the addresses of the appellants in the notice of appeal pursuant to Rule 31(a) of the Rules of Criminal Procedure.

The notice of appeal does have appellants' counsel's name and address and that is sufficient compliance with the Rule.

Therefore, it is held that appellants have preserved their rights to appeal on the grounds enumerated in the notice of appeal and which are briefed.

Appellants urge this Court to reverse the conviction on the ground that the Court lacked jurisdiction over the offenses charged. Appellants' brief p. 1 and 4.

Title 5, Section 451, Trust Territory Code, extends the jurisdiction of the Trust Territory Courts to crimes committed by any person on board a Trust Territory vessel in any navigable waters. Counsel for Appellants in his brief and at oral argument conceded that at the time of the offense charged, the vessel in question was under charter to Micronesian InterOcean Line, Inc. which, by virtue of the agreement with the Trust Territory Government,

agreed to furnish shipping services throughout the Trust Territory. Under the circumstances, we see no distinction between this case and *Kodang v. Trust Territory*, 5 T.T.R. 581, therefore we believe the trial court had jurisdiction.

[5] Appellants then assert that the taking of the pleas of "no contest" was improper since such a plea is not authorized by the Trust Territory Rules of Criminal Procedure, Rule 10. The record is clear that the defendants especially waived any defect in accepting such a plea. The Court finds the case of *Buno v. Cook*, 224 So.2d 567 determinative. In that case, the plea of nolo contendere was conceded to not be available in the jurisdiction but the defendant waived any objection to the use of that plea. It was held the defendant could not obtain his release from penitentiary. See also *McGrath v. United States*, 402 F.2d 466. It is clear from the record here that the defendants knew that the plea was considered to be equivalent to a plea of guilty (R.T. 130-140). They were sentenced immediately thereafter and paid the fines imposed.

Although Rule 10, Rules of Criminal Procedure, provides for only a guilty or not guilty plea, if the defendants understood the effect and meaning of a nolo contendere plea and waived any defects in the court's accepting the plea, the defendants waive any irregularity and cannot complain on appeal.

The Trial Court assessed fines of \$1,000 for each of the defendants which is well within the scope and limitations of 11 TTC 401 or 11 TTC 852. However, the Court also ordered that "the crew, those members, officers and men, who've already been fined, deposit or cause to be deposited before the sailing of the PACIFIC PAUL from the Palau District, the sum of \$5,000 with the Clerk of Courts. The funds are to be used by the Micronesian InterOcean Lines, Inc. for the repatriation of those former crew members no longer serving aboard the PACIFIC PAUL desiring re-

Micronesian InterOcean Line, Inc., who, as pointed out above, was not even named in the criminal action.

The method of the return of the funds is not simple. Since the appellants are represented by counsel who also indicated he represents the persons actually paying the \$5,000, the Court can use him as a conduit for any refund.

However, it may well be that the owner of the vessel or Micronesian InterOcean Lines, Inc. had an obligation to repatriate crewmen under provisions of its agreements with the Trust Territory Government or pursuant to laws or rules and regulations of the Government.

It is therefore Ordered that the Clerk of Courts, Palau, shall deliver to appellants' counsel any remaining funds he now holds from the \$5,000 deposited with him. The owner of the PACIFIC PAUL, Micronesian InterOcean Lines, Inc. or its successor or the person or legal entity which actually paid the \$5,000 shall file with the Trust Territory Government any claim it deems it has for the return of its funds and which it was not otherwise obligated to pay. If settlement cannot be made between the paying party and the Government, the former may institute litigation, and have the Trial Division of the High Court determine the amount.

Appellants specified other grounds in their notice of appeal, but since they were not briefed nor argued, they are deemed waived.

Except as specified herein the conviction of the defendants and sentences imposed are affirmed.