

COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS

vs.

Bok Sun PARK

DCA No. 87-9007
CTC No. 84-04
District Court NMI
Appellate Division

Decided May 21, 1987

**1. Appellate Procedure - Rules -
Interpretation**

A local rule designed for the convenience of the court should not be elevated to the status of a jurisdictional requirement. Dist.Court R.App.P. 7(a).

**2. Appellate Procedure -
Dismissal of Appeal**

Where appellant failed to timely pay for transcript, the denial of an extension of time effectively dismissed the appeal and was too harsh a sanction. Dist.Court R.App.P. 7(a).

**3. Appellate Procedure -
Sanctions**

Where appellant disregarded or misread the local rules and made an ex parte contact, appellant would be sanctioned \$200.

FILED
Clerk
District Court

MAY 21 1987

IN THE DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

APPELLATE DIVISION

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4 COMMONWEALTH OF THE NORTHERN) DCA NO. 87-9007
5 MARIANA ISLANDS,) CTC NO. 84-04
6 Plaintiff-Appellee,)
7 vs.) DECISION
8 BOK SUN PARK,)
9 Defendant-Appellant.)

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11 THIS MATTER came before the Court on May 15, 1987, for
12 hearing of appellee's motion to dismiss for failure to cause
13 timely transmission of the docketed appeal.

14 No testimony was taken but the following unchallenge
15 representations were made to the Court:

16 Defendant was convicted of a misdemeanor in the
17 Commonwealth Trial Court and sentenced on February 13, 1987. A
18 notice of appeal was timely filed on March 9, 1987, and a
19 transcript was timely ordered on March 19, 1987. Payment for the
20 transcript was not tendered until May 8, 1987, along with an ex
21 parte oral request for an extension of time in which to transmit
22 the record. This request was denied.

23 Rule 23 of the Commonwealth Trial Court Rules of
24 Practice states:

- 25 (a) Except as otherwise provided by law, the
26 clerk and other officers of the court
shall not be required to perform any

1 the Trial Court stated:

2 Although appellant requested the court
3 to extend time, the court: (1) did not have
4 time to consider the request until this
5 morning; and (2) declines to extend time, and
6 (3) now more than 60 days has elapsed and
7 there is no authority for the court to extend
8 time

9 Under Rule 4(c) of the Appellate Division Rules, only
10 the filing of the notice of appeal is deemed jurisdictional. All
11 other violations of the rules subject the offending party to
12 sanctions, up to and including dismissal.

13 [1,2] This Court believes it must, by analogy, follow the
14 reasoning of Cintron v. Union Pacific Railroad Co., No. 86-5695
15 (9th Cir. March 30, 1987). See also Loya v. Desert Sands Unified
16 School District, 721 F.2d 279 (9th Cir. 1983); United States v.
17 Dae Rim Fishery Co., 794 F.2d 1392 (9th Cir. 1986). Cintron
18 states that a local rule designed for the convenience of the
19 court should not be elevated to the status of a jurisdictional
20 requirement. In the instant case, by refusing to consider other,
21 less onerous sanctions, the Trial Court has succeeded in so
22 elevating the requirement of local Appellate Rule 7(a). On the
23 record presented, the denial of an extension effectively
24 dismissed the appeal. This seems too great a sanction in light
25 of this transgression of the rules. Therefore, appellant is
26 hereby granted an extension of time to transmit the record.
Appellant shall pay the full estimated cost of the transcript
within two days of the date of this order. The transcript shall
be prepared as soon as practical.

1 service for a party other than the
2 Government of the Northern Mariana
3 Islands for which a fee is lawfully
4 prescribed, unless the amount of the
5 fee, if it is known, or an amount
6 sufficient to cover the fee reasonably
7 expected by the officer to become due
8 for performance of the service has been
9 deposited with the court.

6 (b) This provision shall not apply to a
7 party who is proceeding in forma
8 pauperis.

8 Rule 6(b) of the Rules of Procedure for the Appellate
9 Division of this Court requires that at the time the transcript
10 is ordered the appellant "must make satisfactory arrangements
11 with the reporter for payment of the costs for the transcript."
12 There is nothing before this Court to indicate what, if any,
13 arrangements were made regarding such payment.

14 Rule 7 of the Rules of Procedure for the Appellate
15 Division requires that the record on appeal, including any
16 transcripts, be transmitted by the Clerk of the Trial Court to
17 the Clerk of the Appellate Division within sixty days after the
18 filing of the notice of appeal unless, under 7(c), the Trial
19 Court has extended the time. The same rule authorizes this Court
20 to extend the time to transmit the record.


21 Clearly, appellant's presentation of full payment on
22 the sixtieth day rendered impossible the fulfillment of the
23 requirement that the Clerk of the Trial Court transmit the record
24 on appeal within sixty days of the date of the filing of the
25 notice of appeal.

26 In denying the oral request for an extension of time,

1 [3] The Court has further considered appellant's disregard
2 or misreading of the local rules and the fact of the ex parte
3 contact. Appellant is hereby sanctioned \$200, payable to the
4 Clerk of this Court within five days of the date of this order.

5 IT IS SO ORDERED.

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8 DATED this 21st day May, 1987.

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12 _____
13 Alfred Laureta
14 Judge
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