



FOR PUBLICATION



E-FILED  
CNMI SUPERIOR COURT  
E-filed: May 04 2021 04:22PM  
Clerk Review: May 04 2021 04:22PM  
Filing ID: 66568737  
Case Number: 20-0168-CV  
N/A

IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SHAWN APPLEBY, ) CIVIL ACTION NO. 20-0168

Petitioner, )

v. )

DENIAL OF MOTION TO DISMISS  
HABEAS PETITION AS MOOT

COMMONWEALTH DEPARTMENT OF )  
CORRECTIONS, AND WALLY )  
VILLAGOMEZ, IN HIS OFFICIAL )  
CAPACITY AS THE COMMISSIONER )  
OF THE COMMONWEALTH )  
DEPARTMENT OF CORRECTIONS, )

Respondents. )

ON April 22, 2021 the Court in open court ruled that the Commonwealth’s Motion to Dismiss this Habeas Petition based on mootness is **DENIED**. The Commonwealth was represented by Robert Glass, Jr. and Petitioner Shawn Appleby was represented by Public Defender Jean Pierre Nogues. The Commonwealth had earlier submitted its motion on July 16, 2020, and this Court immediately dismissed the case for lack of subject matter jurisdiction on August 17, 2020. Subsequently, the Supreme Court found that this Court does have subject matter jurisdiction, and upon reconsideration, the Court now rules on Respondent’s motion to dismiss, as follows.

**LEGAL STANDARD**

This Court has a duty to “decide only actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principle or rules of law which cannot affect the matter [at] issue in [the case.]” *Kenneth L. Govendo*

By order of the Court, Presiding Judge Roberto C. Naraja

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1 *v. Micronesian Garment Manufacturing, Inc.*, 2 N.M.I. 281 (1991) quoting *Wong v. Board of Regents*,  
2 *University of Hawaii*, 616 P.2d 201, 204 (Haw. 1980). The mootness doctrine is not without  
3 exceptions, however, one of which is when the issue is capable of repetition yet evading review.

4 In *Govendo*, the Commonwealth's Supreme Court held that an issue which otherwise would  
5 be moot must still be considered when: 1) the question presented in this case is of public concern and  
6 2) if it were to recur, it would likely become moot before it could be redressed. When both conditions  
7 are met, the Court must then consider the merits. *Id.* at 281-82.

### 8 DISCUSSION

9 The Commonwealth's July 2020 Motion to Dismiss focuses on the petition being moot  
10 because the alleged deprivation of the Constitutional right to legal representation in the Preliminary  
11 Hearing was cured by legal representation at the Final Revocation Hearing. *See* Respondent's  
12 Motion to Dismiss at 2. However, when applying *Govendo's* holding to the facts of this case, the  
13 Court finds that even if the failure to allow legal representation at the preliminary revocation  
14 hearing is cured by legal representation at the final revocation hearing the Petition is not moot  
15 because this is a matter of public concern which may reoccur.

16 The two prongs of the *Govendo* holding are both satisfied. The first prong is accomplished  
17 because the public has a vested interest in ensuring that an agency of the CNMI government does not  
18 unlawfully detain its citizens. The second prong is also met because of the likelihood, as in this case,  
19 that if the Commonwealth denies a parolee legal representation in the Preliminary Hearing that the  
20 Final Revocation Hearing would moot the issue before the parolee could obtain judicial relief. The  
21 controversy is therefore one that presents a danger of repetition yet a continual evasion of review. *See*  
22 *e.g. Bank of Saipan v. Superior Court, et. al.*, 2004 MP 15 citing *Bd. of Educ. of Hendrick Hudson*  
23 *Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982) and *Meyer v. Grant*, 486 U.S. 414 (1988).

1 Furthermore, a genuine question remains as to the absolute mootness of the issue. The United  
2 States Supreme Court has held that an incarcerated parolee’s challenge to their detention remains a  
3 live controversy so long as the process or decision which they challenge at the time of the filing of  
4 the petition continues to cause “some concrete and continuing injury”—i.e., some “collateral  
5 consequence”—as a result of that challenged issue or decision. *Spencer v. Kanma*, 523 U.S. 1, 7  
6 (1998). Unlike in *Spencer*, the Petitioner’s injury is not speculative but rather concrete. His continued  
7 detention resulting from the Final Revocation Hearing is at the very least, a collateral, if not a direct,  
8 consequence of the decision to continue to hold him in detention after a Preliminary Hearing with  
9 disputed Constitutional validity.

10 **CONCLUSION**

11 The Motion to Dismiss is **DENIED**. The issue of legal representation at a Preliminary  
12 Revocation Hearing, even if moot, presents a controversy which is capable of repetition yet can evade  
13 review before a Court can consider the merits.

14 The Parties are further ordered to meet and confer to establish a pretrial scheduling order with  
15 a timeline for conducting discovery, amending the writ, and scheduling a final hearing on the merits.  
16 Because time is of the essence in Habeas proceedings, the case shall proceed in an expediated fashion  
17 and the Parties shall submit their pretrial scheduling order post-haste.

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19 **IT IS SO ORDERED** this 4th day of May 2021.

20  
21 /s/ \_\_\_\_\_  
22 **ROBERTO C. NARAJA**  
23 Presiding Judge  
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