

FOR PUBLICATION
IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Petitioner,

v.

THE SUPERIOR COURT
OF THE NORTHERN MARIANA ISLANDS,
Respondent,

FRANK S. ADA, DOROTHY SABLAN,
and STANLEY TORRES,
Real Parties In Interest.

ORIGINAL ACTION NO. 04-0001-0A

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

Cite as: *Commonwealth v. Superior Court (Ada)*, 2004 MP 14

Submitted on July 9, 2004
Saipan, Northern Mariana Islands
Decided July 20, 2004

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*

DEMAPAN, Chief Justice:

¶1 Petitioner Commonwealth of the Northern Mariana Islands (“the Commonwealth”) challenges the Superior Court’s May 25, 2004 Order, which requires the Commonwealth to amend and include the name of the Attorney General in its criminal information. Because the Commonwealth has not adequately shown that it is entitled to the extraordinary remedy of writ of prohibition, its Petition is DENIED.

I.

¶2 On March 11, 2004, the Commonwealth brought numerous criminal charges against Real-Parties-in-Interest Frank S. Ada, Dorothy Sablan, and Stanley Torres (collectively “Defendants”). Included among the charges were: theft, conspiracy to commit theft, conspiracy to commit theft by deception, misconduct in public office, and illegal use of public resources. Subsequently, Defendants filed a Motion to Quash Penal Summons and Information, claiming that their rights under Article III, Section 11 of the Commonwealth Constitution were violated when the information, penal summons, and related documents failed to bear the name of the Attorney General. On May 25, 2004, the Superior Court denied the Commonwealth’s Motion to Quash Penal Summons and Information, concluding that “there is no right under [the Commonwealth] Constitution to have the attorney general named in an information” because “the attorney general may delegate a portion of [her] power to others.” *Commonwealth v. Ada*, Crim. No. 04-0112 (N.M.I. Super. Ct. May 25, 2004) (Order Denying Motion to Quash Penal Summons and Information at 2) (“Order”).

¶3 Despite its denial to grant Defendants’ motion, the Superior Court went on to note in its Order that “where the identity of the attorney general is relevant to the defense, a defendant is

entitled to know the identity of the attorney general under whose authority penal summons issue and information [is] filed and to have this stated on the record[,]” and ordered the Commonwealth to amend its information to include the Attorney General’s name. Additionally, in an Order Concerning Motion for Clarification, the Superior Court further explained that “a criminal defendant has the right to know under whose authority a prosecution is occurring . . . if he or she asks[, and that t]he only showing that needs to be made is a desire for [such] information.”

¶4 On July 9, 2004, the Commonwealth filed a Petition for Writ of Prohibition, challenging the lower court’s May 25, 2004 Order, which ordered the Commonwealth to amend its criminal information by including the name of the Attorney General.¹

II.

¶5 Pursuant to 1 CMC § 3102(b), this Court “has original jurisdiction but not exclusive jurisdiction to issue writs of mandamus . . . and all other writs or orders necessary and appropriate to the full exercise of its appellate and supervisory jurisdiction.”

III.

¶6 The Commonwealth challenges the lower court’s May 25, 2004 Order. However, a petition for writ of prohibition should be exercised only in an extraordinary situation, and only exceptional circumstances amounting to a judicial “usurpation of power” will justify the invocation of this extraordinary remedy. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶28 (citing *Tenorio v. Superior Court*, 1 N.M.I. 1, 9 (1989)). “A writ of prohibition is a drastic remedy that will not be granted except to confine an inferior court to the exercise of its prescribed jurisdiction.” *Feliciano*, 1999 MP 3 ¶3.

¹ Subsequently, Real-Party-in-Interest Frank S. Ada moved to strike the Commonwealth’s Petition for Writ of Prohibition on moot and inapplicable grounds. Real-Party-in-Interest Stanley Torres filed a Joinder in Defendant Ada’s Motion to Strike Petition for Writ of Prohibition.

¶7 Accordingly, where a petition for writ of prohibition is before the Court, the issue is not whether the Superior Court was in error, but whether the Superior Court's rulings were so far afield that a writ, rather than appeal, is a permissible method of review. *Paulis v. Superior Court*, 2004 MP 10 ¶22; *Feliciano*, 1999 MP 3 ¶23. In determining whether to issue a writ, the Court is guided by the five factors set out in *Tenorio*, 1 N.M.I. 1, 9-10 (1989):

1. The party seeking the writ has no other adequate means, such as direct appeal, to attain relief desired;
2. The petitioner will be damaged or prejudiced in a way not correctable on appeal;
3. The lower court's order is clearly erroneous as a matter of law;
4. The lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and
5. The lower court's order raises new and important problems, or issues of law of first impression.

¶8 It is noted that in applying the above guidelines to a particular case, there will not always be a bright-line distinction. *Paulis*, 2004 MP 10 ¶23. The guidelines themselves often raise questions of degree such as how clearly incorrect the lower court's order is or how severe a damage will petitioners suffer if extraordinary relief is withheld. *Id.* The considerations are cumulative, and proper disposition will often require a balancing of conflicting indicators. *Id.*

¶9 In applying the five *Tenorio* factors to the present petition, the writ remedy is unwarranted. First, nothing prevents the Commonwealth from seeking relief through direct appeal. On appeal, the Commonwealth will be allowed to properly address the issue involving the inclusion of the Attorney General's name. By the same reasoning, the Court fails to see how the Commonwealth will be damaged or prejudiced in a way not correctable on appeal. Even in the event that the lower court dismisses the Commonwealth's criminal information with prejudice as the Commonwealth fears it might, the Commonwealth will still be able to appeal the

lower court's final decision of dismissal. Simply put, the present case does not involve special circumstances where a direct appeal would be ineffective for obtaining relief such that the Court must take the extraordinary step of issuing a writ at this time.

¶10 In addition, the lower court's order was not clearly erroneous as a matter of law. Under Article III, Section 11 of the Commonwealth Constitution, the Attorney General is granted the responsibility of prosecuting violations of the Commonwealth law. However, to date, the issue of whether the attorney general's name is required on some or all criminal information is an issue yet to be decided by the Court. And currently, no statutory law that is precisely on point appears to exist. Accordingly, the lower court's order was not clearly erroneous as a matter of law. Moreover, as the Court stated in *Tenorio*, the lack of clear error on the part of the lower court is "substantially persuasive in itself" to require denial of a writ petition. *Tenorio*, 1 N.M.I. at 12-13.

¶11 Additionally, the Commonwealth's argument that the lower court's Order was in violation of the separation of powers doctrine appears dubious. It is undisputed that the executive branch has the power and responsibility to bring criminal prosecutions in whichever manner it sees fit. In the instant case, the lower court merely ordered that the Commonwealth amend its information to formally apprise Defendants of the Attorney General's identity, which is no secret anyway.

¶12 The fourth of the *Tenorio* factors is irrelevant in the present case and will not be addressed. On the other hand, the fifth factor seems to run in favor of the Commonwealth's Petition because although it is arguable whether the lower court's order raises new and important problems, the issue at hand at least involves an issue of first impression. Nonetheless, when all

the *Tenorio* factors are weighed and balanced, and the lack of clear error on the part of the lower court is considered, it is clear that granting of the writ remedy is unwarranted in the instant case.

¶13 Furthermore, the Court finds there is a strong interest in moving the criminal proceedings along without an unnecessary delay. Indeed, Defendants are entitled to a speedy trial under Article I, Section 4(d) of the Commonwealth Constitution. Additionally, because Defendants used to be public officials, in whom the public entrusted its faith and confidence, and because the charges against them involve misconduct in public office, the Court finds there is a great public interest as well in seeing a speedy trial without an unnecessary delay.

IV.

¶14 For the foregoing reasons, the Commonwealth's Petition for Writ of Prohibition is **DENIED.**

SO ORDERED THIS 20th DAY OF JULY 2004.

/s/
MIGUEL S. DEMAPAN, Chief Justice