

Paragraph seven refers to testimony that the witness Encher performed certain acts. His testimony, as it appears in the transcript, is entirely different, and does not suggest this claim.

[2] Under the circumstances, even if we were permitted to “second guess” the Trial Court, we would refuse to do so in light of misrepresentations of counsel.

The Judgment is AFFIRMED.

KERAD LONEY, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 92

Appellate Division of the High Court

Ponape District

November 14, 1980

Appeal taken from Order of Trial Division which denied habeas corpus relief. The Appellate Division of the High Court, Burnett, Chief Justice, held that order of revocation of parole by High Commissioner entered on February 1, 1980, was without effect, since by the date of the order the applicable statutory provision had been repealed and the order was inconsistent with the express constitutional authority of the President of the Federated States of Micronesia.

Criminal Law—Pardon and Parole—Power To Grant

Order of revocation of parole by High Commissioner entered on February 1, 1980 was without effect, since by the date of the order the applicable statutory provision had been repealed, and since the order was inconsistent with the express constitutional authority of the President of the Federated States of Micronesia. (11 TTC § 1501(1))

Before BURNETT, *Chief Justice*, and NAKAMURA,
Associate Justice

BURNETT, *Chief Justice*

This appeal is taken from an Order of the Trial Division which denied habeas corpus relief. No briefs have been filed, counsel having stipulated that the matter should be decided solely on the record in the Court below.

Appellant was committed in Ponape on January 31, 1975, to serve a sentence of twelve (12) years imprisonment. On July 13, 1978, he was paroled by the High Commissioner under authority of 11 TTC § 1501(1). On February 1, 1980, the High Commissioner, having determined that conditions of parole had been violated, entered an Order of revocation.

The notice of appeal raises first the question whether the High Commissioner had authority to revoke the parole on the date of his order. For reasons that follow, we conclude that he did not.

Any person convicted of a crime in the Trust Territory may be pardoned or paroled by the High Commissioner upon such terms and conditions as he shall deem best. 11 TTC § 1501(1).

No other provision of law confers similar authority on the High Commissioner, so the question becomes whether, on February 1, 1980, that law was in effect in Ponape.

Secretarial Order No. 3039 provided for the recognition of governmental entities, under locally ratified constitutions, in the Trust Territory. Section 4(c) of that Order reads: "Laws in effect in each jurisdiction on the effective date of its constitution shall continue in effect until modified or repealed pursuant to the provisions of the constitution or laws enacted thereunder."

It is undisputed, of course, that at the time in question, the Federated States of Micronesia was such a governmental entity of the Trust Territory, functioning under its constitution. Ponape is one of the states which make up that federation.

Section 1 of Article XV of the Constitution of the Federated States provides that "A statute of the Trust Territory continues in effect except to the extent it is inconsistent with this Constitution, or is amended or repealed."

Executive power of the national government is vested in the President of the Federated States of Micronesia by Section 1, Article X of the Constitution. Section 2(c) expressly delegates to the President the power "to grant pardons and reprieves . . ." The continued exercise by the High Commissioner of pardon and parole authority in the Federated States under 11 TTC § 1501(1) would seem to be clearly inconsistent with the express constitutional authority of the President.

In addition to the constitutional issue noted, 11 TTC § 1501 was amended by Public Law 1-69 to provide for the exercise of pardon and parole authority by the President, rather than the High Commissioner. The President approved on December 19, 1979, and the High Commissioner concurred (see Section 4(b), Secretarial Order No. 3039) on January 12, 1980.

It follows that the High Commissioner's authority to act with respect to paroles in the Federated States of Micronesia had terminated prior to entry of his Order of revocation February 1, 1980.

No purpose would be served by consideration of other issues raised by the notice of appeal.

We reverse the Order of the Trial Division denying petition for Writ of Habeas Corpus. Appellant will be released from custody and the parole granted him on July 13, 1978, reinstated in all respects.