

factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. 404 U.S. 257, 262.

The Court continues to hold that the inadvertence of the breach does not lessen its impact. *Id.* When the government makes a plea agreement upon which the defendant relies in good faith, the judiciary will not let the defendant be prejudiced if that reliance is betrayed. *United States v. Goodrich*, 493 F.2d 390, 393 (9th Cir. 1974).

Santobello prescribed two possible remedies for a breach of the plea agreement: (1) "special performance" of the agreement through resentencing by a different judge; or (2) withdrawal of the guilty plea and an opportunity to plead anew to the original charges. The ultimate relief to which the appellant is entitled is to be left to the trial court. 404 U.S. 257, 263. In the interests of justice, the case should be reassigned upon remand. *Id.* See, e.g., *State v. Waiiau*, 60 Hawaii 93, 588 P.2d 412, 415-16 (1978).

The judgment is vacated and the case is remanded for reassignment and reconsideration not inconsistent with this opinion.

SIHDA SOHRAM, Plaintiff-Appellee
v.
ESKE SOHRAM, Defendant-Appellant
Civil Appeal No. 340
Appellate Division of the High Court
Ponape District
March 18, 1983

Appeal of judgment in land ownership dispute. The Appellate Division of the High Court, per curiam, held that where appellant was not served with, or given an opportunity to review and comment on, Master's Reports which

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were the basis for the trial court judgment, appellant was denied due process and therefore judgment was vacated and the case remanded to the Trial Division.

1. Constitutional Law—Due Process

Notice and an opportunity to be heard are essential elements of due process of law guaranteed by the Trust Territory Bill of Rights. (1 TTC § 4)

2. Constitutional Law—Due Process—Remedies for Deprivation

Where defendant was never given an opportunity to review and comment upon Master's Reports, which were the basis for trial court judgment defendant was denied due process of law and judgment was vacated.

Counsel for Appellee: MIGUEL MARQUEZ & CHARLES
PHILLIP

Counsel for Appellant: LAVAIL HULL, MLSC, Ponape

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

PER CURIAM

In April, 1970, plaintiff-appellee, Sihda Sohram, and defendant-appellant, Eske Sohram, became involved in an action in Ponape, seeking to determine the ownership of land located on Ngatik Atoll. In July, 1971, hearings on the matter were held in Ngatik Atoll before Carl Kohler, Presiding Judge, Ponape District, who was acting as a Master appointed by the late Associate Justice Arvin H. Brown.

A Master's Report and Findings of Fact were issued and served upon the parties on October 20, 1971. On January 6, 1977, an additional Master's Report was filed. On January 28, 1977, the late Associate Justice Brown asked several questions of the Master in order to clarify the Master's Report. In response to Justice Brown's inquiries, the Master issued a further report on February 8, 1977. The

Master's Reports of January 6, 1977, and February 8, 1977, were not served upon the appellant or appellant's counsel. In fact, copies of the reports could not have been served upon appellant's counsel, appellant's counsel having passed away in 1973.

On March 26, 1979, Associate Justice E. F. Gianotti, relying on the Master's Report and the clarification thereof, rendered on February 8, 1977, entered judgment against defendant-appellant. In rendering that judgment, the court stated that it found no reason to dispute said Master's Report, and the court noted that no objections to the report had been filed subsequent to February 8, 1977, a period of approximately two years.

[1] Title 1, chapter 1, section 4, of the Trust Territory Code states: "No person shall be deprived of life, liberty, or property without due process of law." Notice and an opportunity to be heard are essential elements of due process of law guaranteed by this section of the Trust Territory Bill of Rights. Cf. *Ichiro v. Bismark*, 1 T.T.R. 57 (Tr. Div. 1953).

[2] Since the appellant was not served with the Master's Reports of January 6, 1977, and February 8, 1977, appellant was never given an opportunity to review and comment on these Master's Reports. For this reason, appellant was not afforded proper notice and an opportunity to be heard and was, therefore, denied his right to due process of law.

For the aforementioned reasons, the judgment dated March 26, 1979, is hereby Vacated, and the instant action is Remanded to the Trial Division for hearings on the Master's Reports of January 6, 1977, and February 8, 1977, and for other proceedings not inconsistent with this opinion.