IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

COLLIER SIKSEI,
Appellant,
v.
RICKY NGIRAKED, Warden of the Koror Jail; BALKUU SANDARIO, Chairman of the Palau National Parole Board,
Appellees.

Cite as: 2018 Palau 7
Civil Appeal No. 17-018
Appeal from Civil Case No. 17-308

Decided: June 28, 2018

Counsel for Appellant..... Public Defender's Office
Counsel for Appellees..... Lance Seibenhener, AAG

BEFORE: JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Trial Court, the Honorable Kathleen M. Salii, Associate Justice, presiding.

OPINION

MICHELSEN, Justice:

[¶ 1] This appeal concerns the trial court's denial of Appellant Siksei's second Writ of Habeas Corpus after his parole was "revoked," and then voided. He seeks to have the parole reinstated. Because the Parole Board was correct when it voided a grant of parole in excess of its statutory authority, we **AFFIRM** the trial court's decision to deny the Appellant's petition for the writ.

FACTUAL BACKGROUND

[¶ 2] The parties agree on the pertinent facts. On February 25, 2016, Siksei entered into a plea agreement in Criminal Case No.15-068, pleading guilty to one count of Trafficking a Controlled Substance in violation of 34 PNC § 3301. He was sentenced to twenty-five years of imprisonment and a

$50,000 fine, all but the first three years of the term of imprisonment suspended. He began to serve his sentence on March 1, 2016.

[¶ 3] Exactly one year later, Siksei appeared before the National Parole Board (the Board) at a parole hearing. At that hearing, the Board determined that Siksei had served one third of his unsuspended sentence and was eligible for parole which was immediately granted. Two days later on March 3, 2017, the Board informed Siksei via letter that his parole was revoked and he must serve the remainder of the three year unsuspended portion of his sentence.

[¶ 4] On May 4, 2017, Siksei filed a Petition for Writ of Habeas Corpus which was eventually granted on the grounds that his parole was revoked by letter without prior notice or hearing. In turn, the Board sent him a second letter, voiding his parole, rather than revoking it, and set a hearing on the matter. At that subsequent hearing, the Board clarified that his parole had not been revoked but rather was void, and should never have been granted. On October 4, 2017, Appellant filed a second Petition for Writ of Habeas Corpus, which was denied on the basis that the Board's initial grant of parole was void *ab initio* because the Board lacked the authority to grant parole at that time. The court cited 18 PNC § 1209(a): "If a portion of the sentence of incarceration is to be suspended, the date of eligibility of parole shall be after one third of the combined total of the suspended and executed portions." Siksei appeals the denial of his second Petition.

STANDARD OF REVIEW

[¶ 5] The facts are not in dispute, so we only review the trial court's conclusions of law. Our review is de novo. *Maidesil v. Maidesil*, 19 ROP 162 (2012).

DISCUSSION

[¶ 6] Siksei's core argument relates to the sentencing classification of Trafficking of a Controlled Substance. He argues his crime should be classified in such a way as to allow the Board to properly grant parole after one year, making the initial parole eligibility calculation (after serving of one third of a non-suspended sentence) correct. Next, he argues that the Board

lacked the authority to rescind its first order granting parole without complying with required parole revocation procedures.

I. Classification of Trafficking of a Controlled Substance

[¶ 7] Siksei asserts that Trafficking of a Controlled Substance is a class C felony, pursuant to Chapter 6 of Palau's Penal Code (17 PNC §§ 601-671). That Chapter provides for a classification structure "for sentencing purposes." 17 PNC § 621(a).

[¶ 8] The sentencing provisions for class A crimes authorize terms of incarceration of less than twenty-five years, but more than one year. Class B felonies are limited to a maximum sentence of ten years in prison, and class C felonies are limited to five years' incarceration at most. 17 PNC §§ 662 and 663. The sentencing classes also have different permitted lengths of probation. Class A crimes are limited to ten years of probation, and classes B and C crimes are both limited to a maximum of five years. 17 PNC § 634. First and Second Degree Murder and First and Second Degree Attempted Murder are not given a class. These crimes have the authorized sentences provided in section 661.

Pursuant to 17 PNC § 621(b), all unclassified felonies are automatically given class C status for sentencing purposes.

> A felony is a class A, class B, or class C felony when it is so designated by this Penal Code, Except for first and second degree murder and attempted first and second degree murder, a crime declared to be a felony, without specification of class, is a class C felony.

[¶ 9] Siksei argues that Trafficking of a Controlled Substance is a class C felony because 34 PNC § 3301(d), does not explicitly state a class. The statute states:

> Any person who attempts to import into the Republic or to manufacture methamphetamine, heroin, cocaine, LSD, or morphine, shall be sentenced to a term of imprisonment of not less than twenty-five (25) years but not more than fifty (50)

> years, and a fine of not less than fifty thousand dollars ($50,000) but not more than one million dollars ($1,000,000).

[¶ 10] Siksei concludes that because the crime of Trafficking a Controlled Substance is not classified, it is deemed a class C felony. His arguments regarding length of terms for probation and parole flow from that conclusion. But this approach overlooks 17 PNC § 611: "All sentences shall be imposed in accordance with this chapter unless otherwise provided by statute outside of this Penal Code." Because Trafficking of a Controlled Substance contains its own sentencing provisions, the Chapter 6 classification structure established "for sentencing purposes" is not applicable.

II. The Parole Board's Initial Calculation and Subsequent Rescission of its Grant of Parole

[¶ 11] Siksei assumes, as did the Board at first, that parole eligibility will be calculated by focusing only on the portion of the sentence that was not suspended. But the sentence includes both the suspended and non-suspended portions. His total sentence of incarceration is for twenty-five years. That twenty-two of those years are suspended does not negate the fact that his sentence is twenty-five years. Parole eligibility requires serving one third of a total sentence, both suspended and unsuspended, as noted by the trial court. 18 PNC § 1209(a). The Board's initial calculation regarding parole eligibility was inconsistent with the explicit terms of the statute. The Board realized the error, and corrected it.

[¶ 12] Siksei also argues that the trial court imposed two distinct sentences by sentencing him to suspended and non-suspended terms of imprisonment. He believes the suspended and non-suspended portions of his sentence should be considered separate from each other. Thus, he concludes he has one three year prison sentence, and one twenty-two year sentence of "probation." With that reading, the first sentence is only three years, which would make him eligible for parole after serving one year. This is an improper reading of the statute concerning suspended sentences. He was given a single sentence of a twenty-five year term of incarceration, with a suspended portion.

[¶ 13] Upon realizing the error in its calculation, the Board "revoked" the parole shortly after it was granted. Siksei argues that he should have been afforded a hearing, notice of the hearing, and the proving of a parole violation by a preponderance of the evidence as is required by 18 PNC § 1218. Those protections apply only if his parole actually been revoked. Appellant never had his parole revoked because he never legitimately received it.

CONCLUSION

[¶ 14] The sentencing parameters for Trafficking of a Controlled Substance are provided in 34 PNC § 3301. Therefore the classification of crimes for sentencing purposes found in Chapter 6 of Title 17 does not apply to that Trafficking offense. The Parole Board initially miscalculated Siksei's parole eligibility and did not conform to the requirements of 18 PNC §1209(a). Siksei was not eligible for parole. Therefore, there was no need for a parole revocation hearing, notice of hearing, or evidence of specific misbehavior of the parolee while on parole.

[¶ 15] For the reasons above, the Court **AFFIRMS** the denial of Siksei's petition for Writ of Habeas Corpus.

SO ORDERED, this 28th day of June, 2018.