

**IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION**

<p><b>AIKEN UEHARA,</b> <i>Petitioner,</i> v. <b>PRESIDING JUSTICE KATHLEEN M. SALII, TRIAL DIVISION OF THE SUPREME COURT,</b> <i>Respondent.</i></p>
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Cite as: 2021 Palau 13  
Special Proceeding No. 21-008  
Criminal Case No. 20-065

Decided: May 20, 2021

Counsel for Petitioner ..... Johnson Toribiong

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice  
JOHN K. RECHUCHER, Associate Justice  
GREGORY DOLIN, Associate Justice

Petition from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice,  
presiding.

**ORDER DENYING WRIT OF PROHIBITION**

PER CURIAM:

[¶ 1] Before the Court is Petitioner Aiken Uehara’s Petition for a Writ of Prohibition, pursuant to Rule 21 of the Rules of Appellate Procedure, filed on May 12, 2020, whereby Petitioner seeks to bar the Trial Division from proceeding with the criminal trial with a new jury against Petitioner, set to commence on June 14, 2021.

[¶ 2] A writ of prohibition is “an extraordinary remedy that [the Court] shall issue only in ‘extraordinary circumstances.’” *Jones v. Rudimch*, 2020 Palau 20 ¶ 2 (quoting *First Commercial Bank v. Wong*, 20 ROP 1, 2 (2012)).

Furthermore, all elements of the following three-part test must be “clearly established” as a pre-requisite to such a writ:

- “1. That the lower court is about to exercise judicial or quasi-judicial power;
2. That the exercise of such power is unauthorized by law; and
3. That the exercise of such power will result in injury for which there is no other adequate remedy.”

*ROP v. Asanuma & Malsol*, 3 ROP Intrm. 48, 50-51 (1991)(citing 63 Am. Jur. 2d (Prohibition) § 6).

[¶ 3] If any one of these prongs is not satisfied, the writ will not issue. *See Kruger v. Mokoll*, 5 ROP Intrm. 121, 122 (1995). Furthermore, a writ of prohibition is not an appropriate vehicle “to review and correct errors and irregularities of a lower court, or where there is another legally adequate remedy,” such as appeal, exists. *Asanuma & Malsol*, 3 ROP Intrm. at 51; *see also Jones*, 2020 Palau 20 ¶ 4.

[¶ 4] Petitioner fails to specifically address this three-prong test and the facts as presented by Petitioner do not clearly establish these elements. The trial court ordered a mistrial “due to illness of the prosecutor and . . . before the jury reached a verdict . . .” Order Denying Defendant’s Motion to Dismiss at 4 (Apr. 30, 2021). The order specified that a new jury was to resume with the criminal proceedings. *See Order Declaring Mistrial* (Apr. 7, 2021).

[¶ 5] The facts, as alleged by Petitioner, are insufficient to “clearly establish” that the trial court is “about to exercise [its] judicial power in an unauthorized manner.” *First Commercial Bank*, 20 ROP at 2. The mistrial was granted on Petitioner’s own motion, and as Petitioner recognizes, “in most cases, the Petitioner’s motion functions as a sort of waiver that removes the double jeopardy barrier to re-prosecution,” Petition at 18 (May 12, 2021), unless “the prosecutor purposefully instigated [the] mistrial or if he committed misconduct designated to bring one about,” *id.* (citing *United States v. McIntosh*, 380 F.3d 548, 557 (1st Cir. 2004)). Whatever the merits of Petitioner’s arguments that the mistrial provided the prosecution with an unfair

opportunity to amend the charges against him, it is not “clearly established” in our law that such behavior is improper.

[¶ 6] Uehara’s failure to show that his right to the writ is “clearly established,” is fatal to his petition. Accordingly, pursuant to Rule 21(b) of the Rules of Appellate Procedure, the Petition for the Writ of Prohibition is **DENIED**.