

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

**IN THE MATTER OF [ALLEGED JUVENILE
DELINQUENT],**
An Alleged Juvenile Delinquent.

Cite as: 2021 Palau 39
Juvenile Case No. 21-004

Decided: July 1, 2021

BEFORE: HONORA E. REMENGESAU RUDIMCH, Associate Justice

**DECISION AND ORDER ON ALLEGED JUVENILE
DELINQUENT’S MOTION TO DISMISS**

[¶ 1] Before the court is the alleged juvenile delinquent’s motion to dismiss filed on April 28, 2021. The Republic filed its opposition on May 11, 2021, followed by the alleged juvenile’s reply on May 14, 2021. After reviewing said pleadings and being fully advised on the premise, the court finds that the proceeding is compliant with 34 PNC chapter 61 – Delinquent Children Act, and that the alleged juvenile delinquent’s constitutional rights have not been violated. The court hereby **DENIES** the motion.

BACKGROUND

[¶ 2] Alleged juvenile delinquent raises four arguments which can be summed up into two. The first argument is that despite the case being filed as a juvenile delinquency case, the reality is that this case is being prosecuted as a regular criminal case and the alleged juvenile is being treated like an adult, in violation of the provisions of Title 34, Chapter 61 – Delinquent Children Act. As a result, any adjudication in essence will be a conviction in violation of the Delinquent Children Act, and Article IV, Section 13 of the ROP Constitution. Second, the alleged juvenile delinquent argues because there are no special rules of procedures for juvenile delinquency proceedings pursuant to the Delinquent Children Act, his constitutional right to due process is being violated.

[¶ 3] The Republic responds that under the Delinquent Children Act, proceedings can be made against a person under 18 years of age who violates the criminal laws of the Republic of Palau and that even though there are no specific rules of procedures for juvenile delinquency proceedings, the ROP Rules of Criminal Procedure and Title 18 of the Palau National Code are still applicable and are used in conjunction with the Delinquent Children Act. The Republic specifically points out that the requirements of probable cause, proof beyond reasonable doubt, presumption of innocence, admissibility of evidence, amongst other fundamental principles remain the foundation of the proceedings regardless of a person's age. Further, the Republic contends that the courts, in dealing with alleged juvenile delinquents, practice procedural safeguards to protect the alleged juvenile delinquents. For instance, the proceedings are closed, the alleged juvenile delinquent and his or her parents are provided notice, and a parent must be present in all proceedings. Finally, the Republic notes that the pleas are that of "admission" and "no admission", and upon finding by the court, a minor is adjudged a "juvenile delinquent" or a "juvenile traffic offender" and the records are sealed.

ANALYSIS

A. Prosecuted as a Regular Criminal Case

[¶ 4] As counsels point out, the Delinquent Children Act provides the mechanisms for the court to deal with cases involving "delinquent children." The Act defines a "delinquent child" according to four categories: (a) law violators; (b) children who are beyond the control of their parents, guardians, teachers, and custodians; (c) truants from home and school; and (d) children who present a threat to the health or morals of themselves or others. 34 PNC § 6101.

[¶ 5] Alleged juvenile delinquent argues that even though a petition was filed, the reality is that the Republic is seeking a criminal conviction against him for the crime of Unauthorized Control of Propelled Vehicle and Criminal Property Damage in the Second Degree, in violation of 17 PNC § 2608 and § 2502, respectively. However, counsel for the juvenile misstates how the Delinquent Children Act works. Section 6101 of the Act provides that a child can be considered a delinquent *for* violating a law of the Republic. Thereafter, protections arise under the status of delinquent, *see generally* 34 PNC Ch. 61,

but still require first that the child is a delinquent, and one such method is finding that the child has violated a law in order to meet the definition of delinquent. In this case, the alleged juvenile delinquent is alleged to have violated 17 PNC § 2608 and § 2502, respectively.

[¶ 6] Moreover, the Delinquent Children Act provides that a juvenile delinquency adjudication shall not be considered a criminal conviction. *Id.* at § 6103. Meaning, a finding by this court that the child has violated the aforementioned laws is not a criminal conviction, but rather a finding that the child is in fact a delinquent. Thereafter, the Act is engaged to protect the delinquent. At no point will the finding be a criminal conviction.

[¶ 7] Alleged juvenile delinquent further argues that although this matter was filed as a petition for juvenile delinquency, it is in fact a criminal charge because it is accompanied by an affidavit of probable cause, a penal summons, an entry of a not guilty plea, requirement of bail, and so forth, which is an application of the Rules of Criminal Procedure. The court begins first by noting that the Delinquent Children Act states that proceedings against a person under 18 years of age as a delinquent child are to be conducted not just according to the provisions of the Act, but that courts shall adopt flexible procedures based on the accepted practices of juvenile courts of the United States. *Id.* at § 6102.

[¶ 8] Under the United States Federal Juvenile Delinquents Act, the United States Supreme Court has found that the Constitution demands many of the same features of an adult criminal trial, including notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross examination, proof beyond a reasonable doubt, protection against double jeopardy, and application of the Fourth Amendment exclusionary rule, to name a few. *Schall v. Martin*, 467 U.S. 253, 263 (1984) (citing *In re Gault*, 387 U.S. 1, 31-57 (1967); *In re Winship*, 397 U.S. 358, 365-67 (1970); *Breed v. Jones*, 421 U.S. 519 (1971)); *see also United States v. Doe*, 226 F.3d 672, 680 (6th Cir. 2000) (proof beyond a reasonable doubt); *United States v. Doe*, 801 F. Supp. 1562, 1568 (E.D. Tex. 1992). As the Republic points out, these are all addressed under the ROP Rules of Criminal Procedure and Title 18 of the Palau National Code. Therefore, this court notes that in a delinquency proceeding, the rules of criminal procedures apply in addition to the heightened protections,

not *instead of*. In other words, the application of the criminal procedure rules assures that the rights of the alleged juvenile delinquent are protected but does not inherently convert the proceeding into a criminal proceeding.

[¶ 9] Finally, if a delinquent is confined by the court, such confinement does not make the proceeding criminal in nature. While Section 6107 requires that the term of confinement be no more than the maximum for the crime, crucially it also requires no minimum confinement. 34 PNC § 6107. This discretion and flexibility allow a court to determine an appropriate disposition in the best interest of the delinquent. *See Id.* As a result, confinement would not be a criminal punishment, but instead a rehabilitation disposition in the best interest of the delinquent.

B. Constitutional Violation

[¶ 10] Alleged juvenile delinquent argues that because there are no rules of procedures specifically for juvenile delinquency proceedings, his right to due process is violated. Due process requires “notice and opportunity to be heard.” *Ngerketii Lineage v. Seid*, 8 ROP Intrm. 44, 47 (1999). The alleged juvenile delinquent fails to point to a specific instance where these rights, or his rights in general, were violated. The idea that because there are no specific rules of procedures for delinquency proceedings that this inherently violates his constitutional rights is flawed for two reasons. Firstly, there is nothing in the Act to suggest that not having specific procedures makes the proceeding unconstitutional. Secondly, the courts have adopted procedures based on accepted practices as mentioned above for delinquents. For instance, through the application of the Rules of Criminal Procedures, alleged juvenile delinquent and his parents were given notice of the allegations, informed of his rights, and provided an opportunity to be heard. In addition, the proceedings are closed, his parent(s) and attorney must be present during all proceedings, and his records are sealed and will not be unsealed without notice to him and court approval.

[¶ 11] Under the United States Federal Juvenile Delinquents Act, upon finding of a delinquency, the court may dispose of a juvenile by suspending sentence, or by ordering restitution or probation, or by committing juvenile to custody. 18 U.S.C. § 5037. Although Palau’s Delinquent Children Act does not specify other options of disposition aside from confinement, Palau’s Penal

Code does, and provides for different dispositions of convicted defendants ranging from deferring acceptance of a guilty plea, probation, suspension of sentences, restitution and other similar alternatives aside from imprisonment or confinement, that are also available for the courts to consider when adjudicating a juvenile delinquent. 17 PNC § 601, *et seq.* The argument of escaping delinquency due to lack of specific rules of procedures is therefore misguided.

[¶ 12] There is no dispute alleged juvenile offenders should be treated differently from adult offenders because they are considered to lack the same capacity to appreciate the consequences of their actions as adult offenders. *In the Matter of Robin Kuchad*, 1 ROP Intrm. 547EE (1988). Furthermore, the aim of delinquency proceedings is to promote the policy against classifying juvenile offenders as “criminal”, but instead to guide and rehabilitate a juvenile offender. *Marbou v. Termeteet*, 5 TTR 655 (1971). This is why, in addition to 34 PNC chapter 61 – Delinquent Children Act, the Palau Judiciary has entered into a Memorandum of Understanding Concerning Juvenile Procedures with the Bureau of Public Safety and Attorney General’s Office on July 31, 2013 (Appendix A) to improve the system of juvenile justice. The Judiciary among others, agreed to set aside days/times for juvenile hearings separate from adults, and to the extent beneficial to the youth, agreed to consider referral to specific services or programs prior to disposition. In addition, the Judiciary agreed to expedite the initial processing of the matter and to the extent possible, strive for a “one judge or justice, one juvenile” policy. These are all consistent with the mandate of the Delinquent Children Act.

CONCLUSION

[¶ 13] Accordingly, the court based on the above, hereby **DENIES** alleged juvenile delinquent’s motion to dismiss.



MEMORANDUM OF UNDERSTANDING CONCERNING JUVENILE PROCEDURES

This Memorandum of Understanding ("MOU") is entered into this 31 day of July, 2013, by and between the Bureau of Public Safety ("BPS"), the Attorney General's Office, and the Supreme Court and Court of Common Pleas of the Republic of Palau.

RECITALS:

In recognition of the ongoing efforts to improve the system of juvenile justice in the Republic of Palau and of the increasing need for interagency cooperation necessary to accomplish mutually-accepted goals, the Parties to this MOU mutually endeavor to:

- Expedite first appearances where juveniles are in custody and the Republic seeks to have them brought for a first appearance before release,
- Expedite court proceedings for juvenile offenders in order to create swifter sanctions where appropriate,
- Increase reliance on the Youth Service Team (or equivalent) for coordinating optimum plans for juvenile offenders, and
- Enhance the communications between the Division of Corrections of BPS, the Probation Department of the Supreme Court, and the Attorney General's Office regarding the progress being made by juvenile offenders in detention.

AGREEMENT:

In light of the foregoing, the Parties to this MOU each separately agree as follows:

BUREAU OF PUBLIC SAFETY:

(1) With regard to juveniles that have been arrested and held in custody pending investigation and expedited filing of juvenile cases, BPS will provide reports when possible to the Attorney General's Office within 12 hours of the arrest. If the arrest occurs on a weekend BPS will seek guidance from the Attorney General's Office on the detainment of the juvenile arrestee. Reports will include the initial arrest report and any witness statements taken at or close to the scene of the crime.

(2) With regard to juveniles that are summoned to appear in court by citations, BPS will schedule the hearing on those citations to occur within seven days of the offense. BPS will forward the citations to the Clerk of Courts not less than two working days of the court date.

(3) With regard to juveniles that are punished to detention, the Division of Corrections will designate an employee who will be in charge of coordinating any services ordered or appropriate to assure that those juveniles receive such services while in detention. A Probation Officer will meet with the Division of Corrections representative to review the progress of each juvenile on a monthly basis.

(4) BPS agrees to designate a Department of Corrections representative to sit as a member of the Youth Services Team (or equivalent), to address juveniles serving detention or on remand needing specific services.

(5) BPS along with the Attorney General's Office will work to establish a formal police deferral protocol for juveniles in appropriate cases prior to filing charges with the Court.

ATTORNEY GENERAL'S OFFICE:

(1) With regard to juvenile offenders who have been arrested pending investigation and expedited filing of juvenile cases, the Attorney General's Office will strive to:

- a. File a charging document with the Supreme Court the following day after the juvenile's arrest (within 24 hours of arrest). If the following day after juvenile is arrested is a Saturday, Sunday or legal holiday, then the charging document will be filed by the next day that is not a Saturday, Sunday or legal holiday. The Attorney General's Office will advise BPS of the juvenile arrestee's detainment.
- b. Ensure that the charging document will reflect in the caption that the juvenile is being held in custody pending a first appearance so that the Office of the Chief Justice can immediately assign a justice or judge.
- c. Contact the Public Defender's Office, if the Attorney General's Office does not have adequate reports to file a charging document within 24 hours.
- d. Ensure that the juvenile is advised of his rights and the basis for his detention in cases where charges are not filed immediately, pursuant to 18 PNC 218 and Trust Territory of the Pacific Islands v. Yushin Kaneshima, 4 TTR 340 (1969).

(2) With regard to juveniles that are alleged to have committed crimes but are not held in custody pending expedited filing of charges, the Attorney General's Office will strive to prioritize these cases and file charges when possible within 45 days of receipt of cases so that extensive periods of time do not lapse between the report of the crime and the filing of charges.

(3) With regards to juveniles summoned to appear in court by citations, the Attorney General's Office will strive to review the citations prior to the hearing date to ensure completeness.

(4) With regard to juveniles that would benefit from specific services and/or alternative punishments, the Attorney General's Office agrees to continue to coordinate with the Youth Services Team (or equivalent) and to encourage support and participation from the members so that optimum recommendations can be provided to the Court.

SUPREME COURT and COURT OF COMMON PLEAS:

(1) With regard to juveniles that are arrested and being held in custody pending expedited filing of charges, upon receiving a charging document and a request for an arrest warrant that indicates that the juvenile is in custody pending first appearance, the Office of the Chief Justice will immediately assign a justice or judge. The justice or judge assigned will also immediately review the charging documents and if sufficient, will issue an arrest warrant and schedule an appearance that same day if possible.

(2) In all other juvenile cases filed, upon receiving a charging document, the Office of the Chief Justice will assign a justice or judge in a timely manner. The justice or judge assigned will then schedule the arraignment in a timely manner and as soon as the justice or judge's schedule allows. The justice or judge whenever possible will set aside certain day(s)/time(s) for juvenile hearings only.

(3) With regard to juveniles summoned to court by citations, the justices or judges, whenever possible, will set aside certain day(s)/time(s) for juvenile hearings only.


(4) With regard to juveniles that would benefit from specific services and/or alternative punishments, the justices or judges will consider referral to the Youth Services Team (or equivalent) prior to disposition of final punishment so that optimum plans can be provided.


(5) When appointing counsels for juveniles, the justices or judges will first consider any attorneys listed by the Palau Bar Association as having specialty or vast experience in juvenile matters.


(6) To the extent possible, when cases are assigned, the Courts will strive for a “one justice or judge, one juvenile” policy.

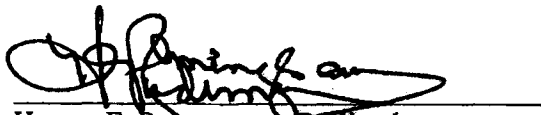
The parties to this MOU agree to review these terms yearly and on an as-needed basis.

SO AGREED:


Ismael Aguon
Director of the Bureau of Public Safety
Republic of Palau


Victoria Roe
Attorney General
Republic of Palau


Arthur Ngraklsong
Chief Justice of the Supreme Court
Republic of Palau


Honora E. Remengesau Rudimch
Senior Judge of the Court of Common Pleas
Republic of Palau