

ROP v. Siang, 10 ROP 202 (Tr. Div. 2002)
REPUBLIC OF PALAU,
Plaintiff,

v.

DANIEL SIANG,
Defendant.

CRIMINAL CASE NO. 02-133

Supreme Court, Trial Division
Republic of Palau

Decided: December 2, 2002

LARRY W. MILLER, Associate Justice:

This matter is before the Court on defendant's motion to dismiss for failure to prosecute within three years. For the reasons stated herein, the motion is denied.

The Information in this case, filed with the Court on June 21, 2002, charges that defendant committed the crime of grand larceny on or about December 16, 1997. The affidavit of probable cause alleges that he left the Republic on May 24, 1998, and, although it does not say so specifically, suggests that he returned to Palau and was arrested shortly before the Information was filed.

At the time defendant allegedly committed the crime with which he is charged, 17 PNC § 107 provided:

No person shall be prosecuted, tried or punished for any crime, except murder in the first or second degree, unless the prosecution is commenced within three years next after such crime shall have been committed; provided, however, that nothing in this section shall bar any prosecution against any person who shall flee from justice, or absent himself from the Republic, or so secrete himself that he cannot be found by the officers of the law, so that process cannot be served upon him.

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On February 16, 1999, however, President Nakamura signed into law RPPL No. 5-21, Section 1 of which amended 17 PNC § 107 so that it now reads "within six years next after such crime was committed" rather than "within three years" as it said previously. Section 6 of that law stated:

Section 1 of this Act shall not be construed to revive any causes of action which are time barred as of the effective date of this Act. However, in all instances in which causes of action have not run as of the effective date of this Act, such causes of action shall be subject to a six year statute of limitations period.

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Defendant's motion was initially premised on the previous version of § 107, which provided for a three-year statute of limitation. Anticipating the government's reliance on the proviso to that section, defendant asserted, and offered to prove by way of an evidentiary hearing, that he had returned to the Republic in May 1999 for one week.

The Government responded to defendant's motion by pointing to the passage of RPPL No. 5-21. Defendant then replied that retroactive application of an amended statute of limitations for criminal prosecutions violates the due process¹ and ex post facto² clauses of the Palau Constitution, both of which are contained in Article IV, Section 6. The Government then filed a sur-reply arguing that the extension of a statute of limitations, as opposed to the revival of an expired statute, presents no constitutional difficulty. It also argued that whether or not a three- or six-year limitations period applied, and even accepting defendant's assertion that he had returned to the Republic in May 1999, the statute of limitations was tolled by defendant's lengthy absence from the Republic.

The briefing having been completed,³ the Court now finds that it is in agreement with the government on both points. Taking the non-constitutional issue first, the Court agrees that the statute of limitations was tolled for as long as he was out of the Republic. The Court accepts that a defendant who leaves but then "openly returns and resumes his accustomed activities, *and who so continues for the full period of limitation fixed for the crime*," is entitled to the protection of the statute of limitations. *United States v. Parrino*, 180 F.2d 613, 617 (2d Cir. 1950) (emphasis added) (rejecting the argument that once a suspect "flees from justice," he "may be prosecuted as long as he lives"). The Court does not believe, however, that the statute should be deemed to have run (and the tolling provision not apply) for a defendant who returns for a brief period of time in the midst of a lengthy absence from the Republic. Here, if one subtracts the time defendant has been **L204** out of the country from the time between the alleged commission of the crime and the filing of the Information, less than three (and far less than six) years elapsed and the Information was therefore timely.

In any event, the Court also agrees that the passage of RPPL No. 5-21 did not violate defendant's constitutional rights. The principal case relied on by defendant held that the Oregon Constitution "prohibits the retroactive application of an amended criminal statute of limitations, extending the period of limitations, *to revive prosecutions that already were time-barred when the amendment took effect*." *State v. Cookman*, 920 P.2d 1086, 1094 (Or. 1996) (emphasis added). The question whether the same result would obtain under the Palau Constitution is not presented here: the OEK specifically disclaimed any intention to revive alleged crimes that were already barred, and defendant's liability for a crime allegedly committed in 1997 was not already barred when the amendment took effect in February 1999.

¹"The government shall take no action to deprive any person of life, liberty, or property without due process of law."

²"No person shall be held criminally liable for an act which was not a legally recognized crime at the time of its commission, nor shall the penalty for an act be increased after the act was committed."

³Motion, response, reply, and sur-reply were filed on consecutive days from Monday, November 18 through Thursday, November 21. On Friday, both sides rested.

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The question that *is* presented here—whether there is any constitutional bar to extending a statute of limitations period that has not yet expired—has universally been answered in the negative. *See id.* at 1095 & n.2 (dissenting opinion) (citing cases for the proposition that “other jurisdictions unanimously have concluded that an extension of a statute of limitations, at least before the original limitations period had expired, does not implicate *ex post facto*”); *see generally* 21 Am. Jur. 2d *Criminal Law* § 294 & n.72 (1998) (“[W]here a statute extends the period of limitation, the extension applies to offenses not barred at the time of the passage of the act, so that a prosecution may be commenced at any time within the newly established period.”) (citing state cases); *id.* § 304 (same; citing federal cases).⁴ The Court can see no reason (and defendant has offered none) to reach a different result here. The motion to dismiss is accordingly denied.

⁴Many of the cases quote from an early decision by Judge Learned Hand (who also authored the *Parrino* case cited above):

Certainly it is one thing to revive a prosecution already dead, and another to give it a longer lease of life. The question turns upon how much violence is done to our instinctive feelings of justice and fair play. For the state to assure a man that he has become safe from its pursuit, and thereafter to withdraw its assurance, seems to most of us unfair and dishonest. But, while the chase is on, it does not shock us to have it extended beyond the time first set, or, if it does, the stake forgives it.

Falter v. United States, 23 F.2d 420, 425-26 (2d Cir. 1928); *see also, e.g., United States v. Taliaferro*, 979 F.2d 1399, 1403 (10th Cir. 1992) (quoting *Falter*).