ROP v. Mobel, 13 ROP 283 (CCP 2006)
REPUBLIC OF PALAU,
Plaintiff,

v.

JUNIOR MOBEL,
Defendant.

CRIMINAL ACTION NO. 06-023

Supreme Court, Court of Common Pleas
Republic of Palau

Decided: August 8, 2006
⊥284
HONORA R. RUDIMCH, Senior Judge:

Before the Court is Defendant's Motion to Dismiss for Violation of the Speedy Trial Act, filed on July 6, 2006. The government responded on July 17. For the reasons articulated below, the motion to dismiss is DENIED.

BACKGROUND

The underlying facts to this motion are simple and uncontested. On December 29, 2005, police arrested Defendant Junior Mobel without a warrant on suspicion of drunk driving. No complaint was filed contemporaneously with his arrest. On February 1, 2006, the government filed information charging Mobel with one count of driving under the influence of intoxicating liquor and one count of reckless driving.

Mobel contends that the government violated the Speedy Trial Act, 18 PNC §§ 403-405 ("the Act"), in failing to file information within thirty days from Mobel's arrest. The Act requires that "[a]ny information or complaint charging an individual with the commission of an offense shall be filed within thirty days from the date on which the individual was arrested or served with a summons in connection with such charges." 18 PNC § 403(b). "If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no complaint or information is filed within the time limit required by section 403(b) as extended by section 403(h), such charge against that individual contained in such complaint shall be dismissed or otherwise dropped." 18 PNC § 404(a)(1).

The Trial Division of the Supreme Court has had the opportunity to comment on the applicability of this Act under similar circumstances in two recent cases. *See ROP v. Matsutaro*, Crim. Case No. 05-375 (Tr. Div. Feb. 8, 2006) (Salii, J.); *ROP v. Iyar*, Crim. Case No. 04-144 (Tr. Div. Nov. 28, 2005) (Ngiraklsong, C.J.). In *Iyar*, the court stated—albeit in *dicta*—that the provisions of the Act were triggered by an arrest or summons that was coupled with a complaint. *Iyar*, slip op. at 4. It reasoned that sections 403(b) and 404(a) must be read together, and thus,

that the language requiring dismissal of the "charge contained in such complaint" refers to the complaint filed contemporaneously with the defendant's arrest. The *Matsutaro* court adopted the reasoning in *Iyar* as its holding. *Matsutaro*, slip op. at 3.

Mobel argues that the reasoning in these cases should be rejected because they inappropriately relied on American case law. He would have the Court interpret the subtle changes the O.E.K. made to the U.S. Speedy Trial Act when adopting the Palauan version to reflect a distinct departure from the American cases interpreting the its Act. Moreover, the interpretation given by the courts in *Matsutaro* and *Iyar*, he argues, presents "illogical and absurd" results in Palau. In response, the government urges the Court to follow the reasoning set forth in these cases, and argues, in addition that the Court of Common Pleas has no authority to contradict decisions of the Trial Division.

⊥285 **ANALYSIS**

The Court of Common Pleas has concurrent jurisdiction with the Supreme Court,[1] and any appeal of a decision in this Court is made to the Appellate Division of the Supreme Court. 4 PNC §§ 206-207. Thus, the Court of Common Pleas and the Trial Division of the Supreme Court are courts of equal rank. A court's orders and opinions are not binding on courts of equal rank. *See ROP v. Erbai*, 11 ROP 247, 248 (Tr. Div. 2004); *Greenburg v. United* States, 1 Cl. Ct. 406 (1983); *Mueller v. Allen*, 514 F. Supp. 998, 1001 (D. Minn. 1981); *see generally*, 20 Am. Jur. 2d *Courts* § 141. Nothing in Article X of the Constitution changes this finding.[2] Although the *Matsutaro* and *Iyar* decisions are not binding, Trial Division opinions serve as highly persuasive authority and will not be disregarded lightly.

The reasoning in the *Iyar* and *Matsutaro* cases serves as an excellent starting point to discuss Mobel's argument. These cases accurately summarize the state of American law. There are numerous federal cases holding that the remedy provisions of the Speedy Trial Act are triggered by an arrest coupled with formal charges pending against the defendant, such as a complaint. *See United States v. Boyd*, 214 F.3d 1052, 1056-57 (9th Cir. 2000); *United States v. Graef*, 31 F.3d 362, 364 (6th Cir. 1994); *United States v. Mills*, 964 F.2d 1186, 1189 (D.C. Cir.

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[1] The Code states that the Court of Common Pleas has concurrent jurisdiction with the Supreme Court in all civil cases where the amount at controversy is less than $10,000. 4 PNC § 206. Although the word "concurrent" does not appear in the statute on criminal jurisdiction, it is clear that this court has concurrent jurisdiction because the Chief Justice of the Supreme Court may assign certain cases to this court. 4 PNC § 207.

[2] Citing *ROP v. Wong*, Crim. Case No. 03-355 (Tr. Div. Jan. 16, 2004), and *ROP v. Soriano*, Crim. Case No. 03-433 (Tr. Div. Mar. 23, 2004), Mobel argues that there is a conflict amongst trial courts regarding this issue, and therefore, this court may choose which set of cases is based on better reasoning. This argument is inferentially premised on the concept that this Court is bound by the decisions of the Trial Division, which this Court rejects. Contrary to Mobel's position, even if this Court were bound by Trial Division decisions, the most recent decisions are generally regarded as controlling. *See Billiot v. Puckett*, 135 F.3d 311, 316 (5th Cir. 1998); *Jolley v. Clemens*, 82 P.2d 51, 60 (Cal. 1938); *Parker v. Plympton*, 273 P. 1030, 1034 (Colo. 1929); 21 C.J.S. *Courts* § 145 (2006). *But see Meade v. Commonwealth*, 282 S.W. 781, 783 (Ky. 1926) (finding that the court should look to which conflicting decision has the sounder reasoning).

1992); *United States v. Blackmon*, 874 F.2d 378, 381 (6th Cir. 1989); *United States v. Varella*, 692 F.2d 1352, 1358 (11th Cir. 1982); *United States v. Solomon*, 679 F.2d 1246, 1252 (8th Cir. 1982); *United States v. Jones*, 676 F.2d 327, 331 (8th Cir. 1982); *United States v. Francis*, 390 F. Supp.2d 1069, 1072 (N.D. Fla. 2005); *United States v. Padro*, 508 F. Supp. 184, 186 (D. Del 1981). These cases support this finding based on both the text of the statute and legislative history that is consistent with the statute. *See, e.g.*, *Prado*, 508 F. Supp. at 185-186.

In adopting the Act, the O.E.K. made one simple change to the statutory provisions in the U.S. Speedy Trial Act. In light of the fact that Palauan law does not provide for grand jury indictments, the O.E.K. replaced the word "indictment" with "complaint." The remedy provision, therefore, reads: "If, in the ⊥286 case of any individual against whom a complaint is filed charging such individual with an offense, no complaint or information is filed within the time limit required by section 403(b) as extended by section 403(h), such charge against that individual contained in such complaint shall be dismissed or otherwise dropped." 18 PNC § 404(a)(1).

Mobel argues that there a significant problem with the statutory substitution and how the Act was interpreted in *Matsutaro* and *Iyar*. In his interpretation of statutes and the Rules of Criminal Procedure, complaints cannot be used in felony cases. Thus, the Act would provide a remedy only when the Attorney General files a complaint in conjunction with an arrest and later files a second charging complaint thirty days after the arrest. It would seem improbable that the O.E.K. intended on requiring the Attorney General to file two separate criminal complaints in one case. Moreover, this creates a problem because the Attorney General's Office does not use complaints. As a result, Mobel argues that the provision of the Speedy Trial Act at issue will never provide a remedy in Palau as a practical matter. Thus, he would interpret the Act to provide that the thirty-day period for filing formal charges under the Act begins with any arrest, with or without a corresponding complaint.

Mobel's argument has several flaws. To start, criminal complaints can be used as the basis of an arrest in felony cases. The Palau National Code permits anyone other than the Attorney General to make a complaint so that an arrest warrant can be issued by any court, judge, the Clerk of Courts, or other authorized person. 18 PNC §§ 204, 203. No limitation is made based on whether the alleged crime is a felony or misdemeanor. The language in 18 PNC § 101(d) cited by Mobel—"If a felony is not charged, the court may accept a complaint in lieu of an information"—relates to formal charges by the government, and does not pertain to complaints submitted in order to obtain an arrest warrant. Not only does this reading have support in other jurisdictions,[3] it is consistent with other Palauan statutes. If section 101(d) were interpreted to preclude a *court* from accepting a complaint for the purposes of issuing a warrant

[3] For example, Illinois has a similar statute requiring that all felonies shall be prosecuted by information or indictment. 725 Ill. Comp. Stat. 5/111-2. Nevertheless, it is common practice for police officers to file complaints in felony cases to arrest an individual. *Bowsell v. Roth*, No. 90-5303, 1991 WL 192153, at *3 (N.D. Ill. Sept. 26, 1991) (unpublished). After the arrest, the prosecutor files an information or obtains an indictment, which replaces the complaint as the charging document. *Id.*; *see generally* Wayne R. LaFave, et al., *Criminal Procedure* § 1.3 (2d ed. 2006) (stating the same in an overview of common American criminal procedure).

for a felony, there would be a giant loophole permitting other individuals listed in section 203 to issue warrants for felonies. Thus, the statutory scheme permits police officers to file complaints based on felonies in order to obtain an arrest warrant. Under section 101(d), after an arrest for a felony is made based on a complaint, the Attorney General is required to file a superceding information if he is to pursue charges. It follows that the Speedy Trial Act, as written and interpreted with other statutes, has viability in felony cases in Palau.

The Court also dismisses Mobel's argument related to whether the Attorney General ever files criminal complaints. Section 204 explicitly states that "[a]ny person . . . may personally appear and make a ⊥287 complaint before an official authorized to issue a warrant." The statute is not limited to what the Attorney General can file, and thus, the Court's interpretation of when the Speedy Trial Act is triggered cannot be limited in the same fashion.

The Court might be inclined to follow the intent of the legislature if such an intent had been clearly articulated. Here, however, there exist too many inconsistences in the Congressional Reports for the Court to discern what the O.E.K. had in mind in adopting the Act. For example, the bill is entitled, "A BILL FOR AN ACT To amend Title 18 of the Palau National Code to provide for the speedy resolution of criminal charges pending against a person." Similarly, the Sentate's Judiciary and Governmental Affairs Standing Committee Report No. 6-102 starts, "The Bill is to establish by law a time within which a person *charged with a crime* must be tried,"(emphasis added) and the House of Delegate's Judiciary and Governmental Affairs Standing Committee Report No. 6-102 indicates that it is concerned with the amount of time "criminal defendants . . . languish in jail or uncertainty." An individual does not become a criminal defendant until criminal charges are pending, and criminal charges are not pending until formal charges, via a complaint or information, are filed by the Attorney General. *See, e.g., United States v. Varella*, 692 F.2d 1352, 1357-58 (11th Cir. 1982) (citing *Padro*, 508 F. Supp. at 185). Moreover, that report states that the bill was adopted from the U.S. Speedy Trial Act, from which there were only "minor stylistic amendments" and the House of Delegate's Judiciary and Governmental Affairs Standing Committee Report No. 6-22 also states that the bill was based off its American counterpart. "'When the legislature of a state adopts a statute which is identical or similar to one in effect in another state or country, the courts of the adopting state usually adopt the construction placed on the statute in the jurisdiction in which it originated.'" *ROP v. Wong*, Crim. Case No. 03-355, slip op. at 3 (Tr. Div. Jan. 16, 2004) (quoting 2 B Norman J. Singer, *Sutherland Statutory Construction* § 52.02 at 282 (5th ed. 1992)). These indicators suggest that the O.E.K. intended to require an arrest coupled with a complaint before the provision of the Speedy Trial Act at issue in this case was triggered.

Other comments in the reports suggest that the O.E.K. wanted the remedy provisions to be triggered at an earlier point. For example, H.O.D. Report No. 6-22 states that the bill was introduced "to address the problem of the length of time that often passes either before criminal charges are brought against a person, or that a prosecution takes before coming to a resolution. An undue length of time in resolving a criminal case not only presents difficulties for persons *suspected* of involvement in an offense but not charged . . . but also for the victims of crimes who desire a resolution for determination of restitution and for emotional closure." (emphasis added). In addition, H.O.D. Report No. 6-102 also mentions that the remedy provisions will

only occur after "the defendant has already spent a significant amount of time either in jail or *under threat of prosecution*." (emphasis added).

In addition to the fact that there are these inconsistences as to when the Act is triggered, there are other statements in the reports that cause the Court concern. First, H.O.D. Report No. 6-22 states that dismissal under the act is "not automatic" and that "[t]he court is not required to grant a motion to dismiss." Section 404(a) of the Act, however, states that the court "shall" dismiss the charges, and any statement that suggest dismissal is optional weakens any surrounding ⊥288 statements. In addition, Senate Report No. 6-102 reiterates what is enacted in § 404, except it states, "If no complaint or information is filed against an individual within 30 days after arrest (or a longer period, if extensions apply), the judge is required to dismiss the charge, with or without prejudice to refiling." Notably, the report left off the clause "contained in such complaint." Mobel would argue that the omission of that clause suggests that the delegates intended that any arrest would trigger the Act. If that were true, however, the delegates should not have included that language in the Act.[4]

The inconsistencies in the congressional reports render them less than helpful in the present case, and the Court cannot rely on them for its decision. In addition, Mobel's argument that the Act, as interpreted in *Matsutaro*, will never provide a remedy cannot succeed because the criminal procedure statutes permit circumstances in which the Act's remedy provisions can apply. Based on the Act, in conjunction with the entire Palau National Code, the Court agrees with the reasoning presented in *Matsutaro*.

In this case, Mobel was arrested on December 29, 2005, but no formal charges were brought against him at that time. Therefore, the Speedy Trial Act was not triggered, and the motion to dismiss must be denied.

CONCLUSION

For the reasons set forth above, the Defendant's Motion to Dismiss for Violation of the Speedy Trial Act is DENIED.

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[4] The Court notes that the mere omission of this language in the Act may or may not change the result of this case, but the Court need not address this matter because that is not the statutory language (or lack thereof) at issue.