

Lin v. ROP, 13 ROP 55 (2006)
CHIEN JEN LIN,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 04-001
Criminal Case No. 03-318

Supreme Court, Appellate Division
Republic of Palau

Argued: October 25, 2005
Decided: February 17, 2006

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Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Christopher Hale

BEFORE: LARRY W. MILLER, Associate Justice; LOURDES F. MATERNE, Associate Justice; and JANET HEALY WEEKS, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Chien Jen Lin (“Lin”) appeals his conviction on eight counts of buying undersized lobsters in violation of the Marine Protection Act of 1994 (“the Act”), 27 PNC § 1204(e). Lin argues that the trial court erred in construing the Act as criminalizing the sale or purchase of protected marine life on land where the plain language of the statute only criminalizes such acts within the fishery zones of Palau. Lin further submits that any ambiguities found by the trial court should have been construed against the government as the Act is a penal statute. We find that the clear and unambiguous language of the Act is not subject to the liberal interpretation urged by the Appellee as application of the plain language of the statute does not lead to absurd results or render any portion of the statute meaningless. Accordingly, we reverse the judgment of the trial court and vacate Lin’s convictions.

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BACKGROUND

The Government charged Lin by Information with eight counts of illegally buying and selling undersized lobsters in violation of the Marine Protection Act of 1994 (“the Act”), 27 PNC § 1204(e). Specifically, the Information accused Lin of unlawfully buying bleached lobsters smaller than six inches in length within the fishery zones of the Republic of Palau. Prior to trial, Lin filed a motion to dismiss pursuant to ROP R. Crim. P. 12(b)(2). In his motion, Lin argued that the facts alleged did not constitute offenses under the Act. Specifically, Lin asserted that the Government could not satisfy a critical factual element of the offenses charged because he had not purchased the undersized lobsters “within the fishery zones of the Republic” as required by the Act. The trial court found that:

[u]nder Defendant’s interpretation, a person engaged in the prohibited acts of fishing, taking, buying, and exporting within the waters of the Republic would be engaged in a criminal act, but the same acts would not be unlawful if conducted from a fishmarket in downtown Koror. This is an illogical result, and when such result is based on a literal reading of a statute, it should be rejected. The logical interpretation of the section is that marine life found within the fishery zones of the Republic cannot be fished for, taken, bought, or exported if undersized.

Based on this reasoning, the trial court denied Lin’s motion to dismiss and the case proceeded to trial on April 8, 2004.

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At trial, Ngiraitaoch Ngiraked (“Ngiraked”), an Officer with the Division of Fish and Wildlife Protection, testified that, on August 14, 2003, he observed Lin purchase lobsters at the Blue House Market ¹ and put them in the trunk of a car. Noticing that the lobsters appeared undersized, Ngiraked followed Lin by car to the parking lot of the Taiwan Restaurant where he demanded that Lin open the trunk of his car to show him the lobsters. Inside the trunk Ngiraked found eight bleached lobsters. After Ngiraked verified that all of the lobsters were less than six inches in length, Lin was taken to the Fish and Wildlife Office where he later gave a written statement. In his statements to the officers, Lin acknowledged that he was the manager of the Taiwan Restaurant and that he bought seafood to sell to the restaurant’s customers. He also admitted buying the eight lobsters at the Blue House Market.²

At the conclusion of trial, the trial court found Lin guilty of each of the eight counts charged in the Information. Accordingly, Lin was sentenced to pay a fine of \$250.00 for each count, resulting in a total fine of \$2,000.00. In addition, the car Lin was driving at the time of the violations was forfeited to the Republic of Palau in accordance with 27 PNC § 1208(b)(3). On April 20, 2004, Lin filed the instant appeal.

¹ The Blue House Market is located in the Dngeronger Hamlet of Koror. Ebil Inabo, the licensed owner of the Blue House Market, testified that the seafood sold at the market is not imported from outside of Palau.

² At trial, Lin’s testimony matched his written statements. He also testified that August 14, 2003, was the first time he had been to the Blue House Market and the first time he had purchased lobsters for the restaurant.

STANDARD OF REVIEW

Factual findings of the lower court are reviewed using the clearly erroneous standard. *Temaungil v. Ulechong*, 9 ROP 31, 33 (2001). This Court employs the *de novo* standard in evaluating a lower court's conclusions of law, including a trial court's interpretation of a statute. *Wenty v. ROP*, 8 ROP Intrm. 188, 189 (2000). As the factual findings of the trial court are not at issue here, we review *de novo* the issues raised in this appeal.

ANALYSIS

At issue in this appeal is the trial court's interpretation of § 1204 of the Marine Protection Act of 1994, which provides in pertinent part that “[i]t shall be unlawful for any person within the fishery zones of the Republic to . . . (e) fish for, sell, or buy the following species of rock lobsters (cheraprukl): raiklius, bleyached, or melech smaller than six (6) inches in total length of the carapace, as measured from the tip of the rostrum midway between the eyes to the end of the carapace, or a berried female of any size whatsoever” 27 PNC § 1204. For purposes of the Act, “[f]ishery zones’ means the internal waters, territorial sea, and exclusive economic zone as defined in this chapter and all other waters over which the Republic may have jurisdiction in accordance with international laws.” 27 PNC § 1203(f). In other words, the fishery zones include the waters between the shoreline and either the encircling reef system or where no reef system exists the low water line (internal waters),³ the sea extending twelve nautical 158 miles seaward from the encircling reef system (territorial sea),⁴ and the area of water extending from the seaward boundary of the territorial sea to 200 nautical miles seaward of the seaward boundary of the internal waters (exclusive economic zone).⁵

Lin raises two arguments on appeal. First, he argues that the trial court erred in construing 27 PNC § 1204 of the Marine Protection Act of 1994 as prohibiting the purchase of undersized lobsters on land, where the language of the statute prohibits such purchases only “within the fishery zones of the Republic.” Lin continues that the statute is not subject to such a liberal interpretation as the statutory language, which is clear and unambiguous, does not lead to illogical results. Second, Lin submits that even if the language of the Act were subject to interpretation, the trial court erred in construing § 1204 against him and in favor of the Republic because the Act is a penal statute.

The Government counters that the trial court properly looked beyond the express language of the Act because a literal interpretation of the language “within the fishery zones of the Republic” would thwart the purpose of the Act by allowing the purchase and sale of protected marine life on land. As further support for the trial court's construction of § 1204, the Government argues that the interpretation urged by Lin would render the words “buy” and “sell,” as used in the statute, meaningless because fish are only sold on land in Palau and not on floating

³ See 27 PNC § 142(b) (defining internal waters); see also 27 PNC § 141 (describing the baseline from which zones are to be measured).

⁴ 27 PNC § 1203(k).

⁵ 27 PNC § 1203(b).

fish markets. The Government contends that such absurd results warrant construing even a penal statute in its favor.

The first step in statutory interpretation is to look at the plain language of a statute. *Wenty v. ROP*, 8 ROP Intrm. 188, 189 (2000). The Palau National Code provides that “[w]ords and phrases . . . shall be read with their context and shall be interpreted according to the common and approved usage of the English language.” 1 PNC § 202. It is well-established that if statutory language is clear and unambiguous, the courts should not look beyond the plain language of the statute and should enforce the statute as written. See *Senate v. Nakamura*, 7 ROP Intrm. 212, 216 (1999); *United States v. Gonzales*, 520 U.S. 1, 6 (1997) (citing *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992)); 73 Am. Jur. 2d *Statutes* § 113 (2001) (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997) and *U.S. v. James*, 478 U.S. 597 (1986)). “Where a statute is so plain and unambiguous that it is not susceptible of more than one construction, courts construing the same should not be concerned with the consequences resulting therefrom. The undesirable consequences do not justify a departure from the terms of the act as written.” 73 Am. Jur. 2d *Statutes* § 171 (citations omitted). Only in situations where the plain statutory language would lead to absurd results sufficient to “shock the general moral or common sense,” and particularly where a strict reading of the statute would render a law a nullity, courts may proceed with caution in such rare and exceptional circumstances to supply plainly omitted words or phrases to the statute. *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930). See also 73 Am. Jur. 2d *Statutes* § 123 (2001) (citations omitted).

It is clear from the plain language of § 1204 that it is a violation of the Act to fish for, sell, or buy bleached lobsters less than six (6) inches in length within the waters surrounding the Republic of Palau. The plain language of § 1204 further prohibits seventeen separate acts, primarily related to the fishing for, selling of, or buying of protected marine life and unmistakably prohibits said acts “within the fishery zones of the Republic.” What is contested on appeal is whether the trial court properly construed this statutory language as also prohibiting the sale or purchase of undersized lobsters where the sale takes place on land in the Republic of Palau and not within the fishery zones. 159

Section 1204 contains no language indicating that the protections it provides for marine life are to be extended beyond the fishery zones of the Republic. Indeed, section 1203 of the Act specifically defines the fishery zones for purposes of the Act as including only the waters of the Republic. If we are to presume, and we must, that the Olbiil Era Kelulau (“OEK”) knows the meaning of the words used in the Act and further has used those words advisedly, then § 1204(e) unambiguously and clearly prohibits the fishing for, selling, or buying of undersized bleached lobsters only when such acts are conducted within the fishery zones of the Republic. See *In the Matter of the Application of Won and Song*, 1 ROP Intrm. 311, 312 (Tr. Div. May 1986) (quoting 73 Am. Jur. 2d *Statutes* § 196) (noting that courts are required to presume that the legislature knowingly used the words found in a statute). Accordingly, absent a finding that a literal interpretation of this language would lead to an absurd result or render the provision a nullity, this Court may not look beyond the Act’s plain language. *Connecticut Nat’l Bank*, 503 U.S. at 253-54 (acknowledging that judicial inquiry is complete if the language of a statute is unambiguous).

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Appellee urges this Court to find that a literal interpretation of § 1204 would render the words “buy” and “sell” found in § 1204(e) meaningless thereby gutting the purpose of the Act, which is to sustain and develop the marine resources of Palau while preserving the livelihood of commercial fishermen. *See* 27 PNC § 1202. Appellee would have us read the statute as if it said that it shall be unlawful for any person to fish for, sell, or buy the named species of rock lobsters *caught* within the fishery zones of the Republic. As support, Appellee asserts that prohibiting the purchase and sale of protected marine life only within the fishery zones and not on land would be absurd because there is no occasion where fish are bought and sold on the water as there are no floating fish markets in Palau. Appellee also notes that limiting the language “within the fishery zones” to its plain meaning would result in those subsections prohibiting the export of particular protected marine life being applicable to export by ship, but not by air. According to Appellee, such a limited construction of § 1204 would gut the enforcement power of the Act in contravention of the OEK’s intent in enacting the statute.

Although Appellee is correct that a literal reading of the statute may limit the enforcement power of the Republic of Palau in protecting marine life, the fact that a statute is limited in its application to circumstances not before the court, or even to circumstances that are not likely to arise, does not yield a result so absurd as to require the Court to read into the statute words not included in the unambiguous language of the Act. *See Crooks*, 282 U.S. at 60; ⁶ *see also Sigmon Coal 160 Co., Inc. v. Apfel*, 226 F.3d 291, 308 (4th Cir. 2000) (recognizing that only shockingly absurd results can justify a court adding language to a statute) (quoting *Crooks*). Appellee’s argument rests on the assumption that all sales of marine life occur at markets on land. But it is possible to envision situations where fishermen sell their catch to other individuals on boats or off their boats to persons standing on land. Indeed, the owners of markets may purchase fish for resale in this manner. Moreover, it seems to the Court that fishermen who are aware that they are selling protected marine life might be more likely to conduct illegal sales within the vast waters of the fishery zones as opposed to a market where the potential for being caught is greatly increased. Similarly, export by ship would appear to constitute a more likely avenue for exporting protected marine life than by air, where the border is more easily monitored.⁷ Thus, even taking judicial notice of the fact that there are no floating fish markets in

⁶ In *Crooks*, the Supreme Court explained that:

[i]t is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation. Laws enacted with good intention, when put to the test, frequently, and to the surprise of the lawmaker himself, turn out to be mischievous, absurd, or otherwise objectionable. But in such case the remedy lies with the lawmaking authority, and not with the courts.

⁷ Section 1208(b)(3) lends support to Appellee’s argument in that it provides for the seizure of vehicles and aircraft used to violate the Act. However, this is hardly a clear expression of the legislature’s intent to prohibit the sale and purchase of protected marine life on land in addition to the prohibition of such sales on the water. A person who purchases protected marine life from a boat on the water could subsequently use a plane or car to transport the illegally purchased marine life. Accordingly, this provision of the statute is not a decisive indication that the legislature intended to criminalize the prohibited acts of § 1204 when conducted on land.

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Palau, reading the statute literally does not render it either meaningless or absurd.

It is true that reading the statute as the government asks would make it more effective and better serve its policy of sustaining and developing marine resources. And it may be that, had it considered the question more closely, the OEK would have drafted it to cover Appellant's actions. But, "the supposed policy of a state cannot, in a judicial tribunal, prevail over the plain language of a statute," 73 Am. Jur. 2d *Statutes* § 70 (2001) (citing *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581 (1945)), and particularly in the absence of legislative history showing the contrary, it is the plain language of a statute that demonstrates the intent of the legislature. *Crooks*, 282 U.S. at 60. Where the language does not lead to absurdity, we are not at liberty to reverse this course and, by surmising the probable intent of the legislature, rewrite the statute accordingly. *Id.* Excluding sales that occur on land might well reflect the OEK's intent to exclude unsuspecting purchasers in the market place or restaurants from prosecution, while focusing protection efforts on fishermen who are more able to identify endangered marine life and more aware of the Act's restrictions. If that was not the intent, "the consequences, if objectionable, can only be avoided by a change of the law itself, to be effected by the legislature, and not by judicial action in the guise of interpretation." 73 Am. Jur. 2d *Statutes* § 171 (citations omitted). Accordingly, we decline to interpret the Act as criminalizing any behavior not plainly § 161 prohibited by its unambiguous language.

The fact that the Act in question is a penal statute lends further support to the conclusion reached herein. Penal statutes are to be construed strictly against the government and liberally in favor of the accused. 73 Am. Jur. 2d *Statutes* § 194 (2001); *see also Basilius v. ROP*, 1 ROP Intrm. 230, 231 (Tr. Div. June 1985), *vacated on other grounds*, 1 ROP Intrm. 417 (1987). Although a court should "give effect, if possible, to every clause and word of a statute," *Moskal v. U.S.*, 498 U.S. 103, 109 (1990), the scope of a penal statute cannot generally be extended beyond the plain meaning of the unambiguous language used. 73 Am. Jur. 2d *Statutes* § 194 (2001). The strict construction of criminal statutes should not prevail as a substitute for common sense or so as to defeat the obvious intention of the legislature; however, if a reasonable doubt exists as to the scope of such a statute, it must be construed in favor of the accused. *Id.* at § 197 (citing *Moskal*). Thus, it is clear that even if we were to find that a reasonable doubt exists as to whether § 1204 was intended to prohibit the purchase of protected marine life on land, which we do not, we would be required to liberally construe § 1204 in Lin's favor, leaving what is within the province of the legislature to the OEK.

CONCLUSION

Lin purchased undersized lobsters at a market on land in the Republic of Palau. The plain language of the Marine Protection Act of 1994 clearly and unambiguously prohibits the purchase of undersized lobsters in the waters of the Republic but the statutory language does not prohibit such purchases when they are conducted on land. As a strict construction of this unambiguous penal statute does not lead to absurd results, it is not subject to interpretation by the courts. Accordingly, the trial court erred in liberally construing the Act as criminalizing Lin's purchase of undersized lobsters on land. Therefore, the trial court's judgment is reversed and Lin's convictions must be vacated.